Laws and Resolutions

OF THE

STATE OF MONTANA

ENACTED BY THE

Forty-Fifth Legislature

In Regular

Session

Held at Helena, the Seat of Government

Regular Session

January 3, 1977 to April 19, 1977

COMPILED BY MONTANA LEGISLATIVE COUNCIL

Printed by
COLOR WORLD OF MONTANA, INC.
201 E. Mendenhall, Bozeman, MT 59715

HeinOnline -- 1977 Vol. I i 1977

TABLE OF CONTENTS

	Vol.	Page
Officers & Members	1	iii
Contents: Senate & House Bills, Resolutions	1	vii
Chapters 1-584	1-2	1-1965
Appropriation Bills	2	1969
Resolutions	2	2017
Changes in Names Decreed, 1975	2	2155
Changes in Names Decreed, 1976	2	2158
Ballot Issues	2	2163
General Index (By Subject)	2	2175
Code Index (By Code Section No.)	2	2259
Index to Senate Bills (Bill to Chapter No.)	2	2307
Index to House Bills (Bill to Chapter No.)	2	2313
Index, Chapter No. to Bill No.	2	2323
Effective Dates Other Than July 1, 1977	2	2337

HeinOnline -- 1977 Vol. I ii 1977

OFFICERS AND MEMBERS
MONTANA
FORTY-FIFTH
LEGISLATURE 1977
SENATE

W. Gordon McOmber, President of the Senate
Cornie R. Thiessen, President Pro Tempore

25 Democrats
25 Republicans
—
50 Senators

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY OF RESIDENCE	POLITICS
*Aber, L. M. (Larry)	228 Third Ave. North, Columbus 59019	36	Stillwater	Republican
*Bergren, Russell J.	Box 1323B, Darby 59829	46	Ravalli	Democrat
*Blaylock, Chet	502 3rd Avenue, Laurel 59044	35	Yellowstone	Democrat
*Boylan, Paul F.	Star Route, Bozeman 59715	38	Gallatin	Democrat
Brown, Bob	Route #2, Whitefish 59937	10	Flathead	Republican
*Devine, John W. (Jack)	Park Garden Lane, Great Falls 59404	19	Cascade	Democrat
Dover, Harold L.	712 7th Ave. No., Lewistown 59457	24	Fergus	Republican
*Dunkle, Frank	1725 Golden Avenue, Helena 59601	15	Lewis & Clark	Republican
Etchart, Mark	Box 229, Glasgow 59230	2	Valley	Republican
Fasbender, Larry	Rt. 1, Box 23, Fort Shaw 59443	17	Cascade	Democrat
*Flynn, Elmer	Route 2, Flynn Lane, Missoula 59801	48	Missoula	Democrat
*Galt, Jack E.	Martinsdale 59053	23	Meagher	Republican
*Goodover, Pat M.	803 Forest Avenue, Great Falls 59404	22	Cascade	Republican
Graham, Carroll	Drawer K, Lodge Grass 59050	29	Big Horn	Democrat
Hager, Tom	150 Norris Ct., Billings 59101	30	Yellowstone	Republican
Hazelbaker, Frank W.	P. O. Box 430, Dillon 59725	41	Beaverhead	Republican
*Healy, John E. (Jack)	624 W. Granite St., Butte 59701	44	Silver Bow	Democrat
*Himsl, Matt	305 4th Ave. East, Kalispell 59901	9	Flathead	Republican
Jergeson, Greg	Box 8, Star Route 71, Chinook 59523	3	Blaine	Democrat
*Kolstad, Allen C.	P. O. Box 648, Chester 59522	5	Liberty	Republican
Lee, Robert E. "Bob"	1945 Florida, Butte 59701	43	Silver Bow	Democrat
Lensink, Everett R.	1611 So. Willson, Bozeman 59715	39	Gallatin	Republican
Lockrem, Lloyd C., Jr.	3109 Edmond Street, Billings 59102	32	Yellowstone	Republican
Lowe, William R. (Bill)	1008 Poly, Billings 59102	33	Yellowstone	Republican
McCallum, George	Niarada 59852	12	Sanders	Republican
*McOmber, W. Gordon	Fairfield 59436	6	Teton	Democrat
*Manley, John E.	Drummond 59832	14	Powell	Democrat
*Manning, Dave	Hysham 59038	25	Treasure	Democrat
Mathers, William L.	Box 267, Miles City 59301	26	Custer	Republican
Mehrens, John (Sandy)	206 Evergreen, Anaconda 59711	45	Deer Lodge	Democrat
*Murphy, Terry	Cardwell 59721	40	Jefferson	Democrat
†Murray, William E.	1727 South Ave. W., Missoula 59801	50	Missoula	Republican
*Nelson, Harold C.	704 Third St. S.E., Cut Bank 59427	7	Glacier	Republican
*Norman, Bill	440 Connell St., Missoula 59801	47	Missoula	Democrat
*Olson, S. A.	Glendive Med. Center, Glendive 59330	28	Dawson	Republican
Peterson, Bob	3049 Atherton Lane, Butte 59701	42	Silver Bow	Democrat
Rasmussen, A. T. "Tom"	731 Stuart, Helena 59601	16	Lewis & Clark	Republican
*Regan, Pat	204 Mountain View, Billings 59101	31	Yellowstone	Democrat
*Roberts, Joe R.	Box 795, Libby 59923	11	Lincoln	Democrat
Roskie, George F.	3440 Sixth Ave. So., Great Falls 59405	21	Cascade	Republican
Smith, Ed B.	Dagmar 59219	1	Sheridan	Republican
Smith, Richard G.	Box 411, Columbia Falls 59912	8	Flathead	Democrat
*Stephens, Stan	422 Third Street, Havre 59501	4	Hill	Republican
*Story, Pete	Emigrant 59027	37	Park	Republican
Thiessen, Cornie R.	Box 195, Lambert 59243	27	Richland	Democrat
Thomas, Bill	704 52nd St. So., Great Falls 59405	20	Cascade	Democrat
*Towe, Thomas E.	2640 Burlington, Billings 59102	34	Yellowstone	Democrat
Turnage, Jean A.	P. O. Box 450, Polson 59860	13	Lake	Republican
*Warden, Margaret S.	208 3rd Ave. N., Great Falls 59401	18	Cascade	Democrat
Watt, Robert D.	451 Kensington Ave., Missoula 59801	49	Missoula	Democrat

*Term Expires Jan., 1979
All Other Terms Expire Jan., 1981
†Appointed 12-22-76 to replace Don H. Weston, deceased.

HeinOnline -- 1977 Vol. I iii 1977

HOUSE OF REPRESENTATIVES

John B. Driscoll, Speaker of the House
Joe Brand, Speaker Pro Tempore

57 Democrats
43 Republicans

100 Representatives

NAME	RESIDENCE OR MAILING ADDRESS	DIST. NO.	COUNTY OF RESIDENCE	POLITICS
Aageson, David	Gildford 59525	9	Hill	Republican
Baeth, Russell	P. O. Box 137, Martin City 59926	15	Flathead	Democrat
Baeth, William R. (Bill)	805 Minnesota Avenue, Libby 59923	21	Lincoln	Democrat
Bardanouve, Francis	RR, Harlem 59526	6	Blaine	Democrat
Barrett, Fred O.	259 Maple, Lewistown 59457	48	Fergus	Republican
Bengtson, Esther G.	Shepherd 59079	59	Yellowstone	Democrat
Bertelsen, Verner L.	Ovando 59854	27	Powell	Republican
Bradley, Dorothy M.	427 N. Tracy, Bozeman 59715	77	Gallatin	Democrat
Brand, Joe	800 Montana Ave., Deer Lodge 59722	28	Powell	Democrat
Burnett, James H. "Jim"	Luther 59051	71	Carbon	Republican
Colburn, Gary L.	117 South 35th, Billings 59101	61	Yellowstone	Democrat
Conroy, Thomas R.	607 W. 3rd St., Hardin 59034	58	Big Horn	Democrat
Cooney, Mike	2929 Burke Lane, Butte 59701	83	Silver Bow	Democrat
Courtney, Jim	2003 Argyle, Butte 59701	86	Silver Bow	Democrat
Cox, Edith E.	316 North Fifth, Livingston 59047	74	Park	Republican
Curtiss, Aubyn A.	P. O. Box 102, Fortine 59918	20	Lincoln	Republican
Dassinger, E. N.	Box 753, Forsyth 59327	50	Rosebud	Democrat
Davis, Dale H.	P. O. Box 645, Belgrade 59714	79	Gallatin	Republican
Day, William M. (Willie)	Bloomfield Rt., Glendive 59330	54	Dawson	Democrat
Driscoll, John Brian	116 North Ninth St., Hamilton 59840	91	Ravalli	Democrat
Dussault, Ann Mary	775 Monroe, Missoula 59801	95	Missoula	Democrat
Ellerd, Robert A.	2206 Bridger Drive, Bozeman 59715	75	Gallatin	Republican
Ellis, Howard L.	Rte. #4, Missoula 59801	93	Missoula	Republican
Ellison, Orval S.	West Boulder Rt., McLeod 59052	73	Park	Republican
Ernst, Gene N.	Box 39, Stanford 59479	47	Judith Basin	Republican
Estenson, JoEllen	608 North Rodney, Helena 59601	32	Lewis & Clark	Democrat
Eudaily, Ralph S.	234 Kensington Ave., Missoula 59801	100	Missoula	Republican
Fabrega, W. Jay	2700 Bonita Drive, Great Falls 59404	44	Cascade	Republican
Fagg, Harrison G.	1414 Mystic Drive, Billings 59102	63	Yellowstone	Republican
Feda, G. C. "Jerry"	206 Second Avenue N., Glasgow 59230	4	Valley	Republican
Frates, Eugene F.	1601 Bitterroot Drive, Billings 59101	60	Yellowstone	Democrat
Gerke, Harold E.	202 Mtn. View Blvd., Billings 59101	62	Yellowstone	Democrat
Gilligan, Peter J., Jr.	3330 13th Ave. S., Great Falls 59405	38	Cascade	Democrat
Gould, R. Budd	2121 35th Avenue, Missoula 59801	98	Missoula	Republican
Gunderson, Edna A.	612 Ninth St., Havre 59501	8	Hill	Democrat
Gunderson, Jack	RR #2, Power 59468	35	Cascade	Democrat
Halvorson, Ora J. (Mrs. Stan)	244 Woodland Ave., Kalispell 59901	16	Flathead	Democrat
Hand, William M.	P. O. Box 1298, Dillon 59725	82	Beaverhead	Democrat
Hansen, Harry	P. O. Box 80, Frenchtown 59834	24	Missoula	Democrat
Harper, Hal	221 So. Cooke, Helena 59601	30	Lewis & Clark	Democrat
Harrington, Dan W.	1201 N. Excelsior, Butte 59701	88	Silver Bow	Democrat
Hirsch, Les J.	Broadus Stage, Miles City 59301	52	Custer	Democrat
Holmes, Polly	1620 Ave. F, Billings 59102	67	Yellowstone	Democrat
Huennekens, Herb	3216 Rimrock Rd., Billings 59102	68	Yellowstone	Democrat
Hurwitz, Burt	Box 304, White Sulphur Springs 59645	45	Meagher	Republican
Jensen, William Ray	Rt. 1, P.O. Box 73, St. Ignatius 59865	25	Lake	Republican
Johnston, George R.	504 3rd St. S.E., Cut Bank 59427	13	Glacier	Democrat
Kanduch, Joe F., Sr.	Barker Creek, Anaconda 59711	89	Deer Lodge	Democrat
Kennerly, Leo M., Jr.	P. O. Box 523, Browning 59417	14	Glacier	Democrat
Kenny, John F.	2505 Third Ave. N., Great Falls 59401	40	Cascade	Democrat
Kessler, Gerald R.	1627 Wyoming Ave., Billings 59102	66	Yellowstone	Democrat
Keyser, Kerry R.	Box 126, Ennis 59729	81	Madison	Republican
Kimble, Gary Niles	640 S. 6th E., Missoula 59801	94	Missoula	Democrat
Kropp, Paul K.	Box 520, Malta 59538	5	Phillips	Republican
Kvaalen, Oscar S.	Lambert 59243	53	Richland	Republican
Lien, Edward	SR 231, Box A33, Wolf Point 59201	49	McCone	Democrat
Lory, Earl C.	Rte. 5, Miller Crk. Rd., Missoula 59801	99	Missoula	Republican
Lund, Art	Box 806, Scobey 59263	2	Daniels	Republican
Lynch, John "J.D."	532 W. Mercury, Butte 59701	87	Silver Bow	Democrat

HeinOnline -- 1977 Vol. I iv 1977

HOUSE OF REPRESENTATIVES

(Continued)

McLane, V. Jean	Box 186, Laurel 59044	72	Yellowstone	Republican
Manuel, Rex	R. R. Box #42, Fairfield 59436	11	Teton	Democrat
Marks, Robert L. (Bob)	Box 116, Clancy 59634	80	Jefferson	Republican
Meloy, Peter M. (Mike)	805 S. Rodney St., Helena 59601	29	Lewis & Clark	Democrat
Menahan, William (Red)	1304 W. Fifth, Anaconda 59711	90	Deer Lodge	Democrat
Metcalf, Jerry	201 Vawter St., Helena 59601	31	Lewis & Clark	Democrat
Meyer, Darryl	5306 4th Ave. S., Great Falls 59405	42	Cascade	Republican
Moore, Jack K.	1200 32nd St. S. #85, Great Falls 59405	41	Cascade	Republican
Mular, James T.	P. O. Box 3084, Butte 59701	85	Silver Bow	Democrat
Nathe, Dennis G.	Redstone 59257	1	Sheridan	Republican
O'Connell, Helen G.	703 4th Ave. SW, Great Falls 59404	34	Cascade	Democrat
O'Keefe, Warren	1409 6th Ave. S., Great Falls 59405	43	Cascade	Republican
Palmer, Bob	711 W. Spruce St., Missoula 59801	96	Missoula	Democrat
Pistoria, Paul G.	2421 Central Ave., Great Falls 59401	39	Cascade	Democrat
Porter, Howard C.	2412 Ash St., Billings 59101	65	Yellowstone	Republican
Quilici, Joe	3040 Kossuth, Butte 59701	84	Silver Bow	Democrat
Ramirez, Jack	4109 Rimrock Road, Billings 59102	64	Yellowstone	Republican
Robbins, Hershel M.	915 1st St. E., Roundup 59072	46	Musselshell	Democrat
Roth, Audrey	Box 489, Big Sandy 59520	10	Chouteau	Republican
Ryan, Patrick L.	3104 Second Ave. S., Great Falls 59405	37	Cascade	Democrat
Scully, John P.	P. O. Box 1172, Bozeman 59715	76	Gallatin	Democrat
Seifert, Carl A.	Rte. 1, Box 45-B Polson 59860	26	Lake	Republican
Severson, Elmer D.	Rt. 1, Box 28, Stevensville 59870	92	Ravalli	Republican
Shelden, Arthur H.	Rt. 1, Box 1650, Libby 59923	22	Lincoln	Democrat
Sivertsen, Robert	P. O. Box 531, Havre 59501	7	Hill	Republican
Smith, Carl M.	Olive 59343	57	Powder River	Republican
South, Carroll V.	506 Miss. Ave., Miles City 59301	51	Custer	Democrat
Staigmiller, John B.	P. O. Box 422, Cascade 59421	33	Cascade	Democrat
Stobie, Chris H.	Eddy Route 2, Thompson Falls 59873	23	Sanders	Republican
Teague, Wes	611 1st St. W., Billings 59101	69	Yellowstone	Democrat
Tower, Lee	904 Seventh Ave. E., Kalispell 59901	18	Flathead	Republican
Tropila, Joe	209—2nd St., N.W., Great Falls 59404	36	Cascade	Democrat
Turner, Clyde A.	920 Kalispell Ave., Whitefish 59937	19	Flathead	Republican
Uhde, Jack Brian	705 3rd Ave. W., Kalispell 59901	17	Flathead	Democrat
Underdal, Melvin	Box 605, Shelby 59474	12	Toole	Republican
Vincent, John	908 South Tracy, Bozeman 59715	78	Gallatin	Democrat
Vinger, Orren C.	517 Johnson, Wolf Point 59201	3	Roosevelt	Republican
Waldron, Steve	2344 W. Kent, Missoula 59801	97	Missoula	Democrat
Williams, J. Melvin	P. O. Box 245, Laurel 59044	70	Yellowstone	Democrat
Wood, L. E. (Gene)	221 N. River Ave., Glendive 59330	55	Dawson	Republican
Wyrick, Harold A.	Route 3, Baker 59313	56	Fallon	Republican

HeinOnline -- 1977 Vol. I v 1977

HeinOnline -- 1977 Vol. I vi 1977

CONTENTS

HOUSE AND SENATE BILLS

Chap. Num.	Senate Bill	House Bill	Title
1	20		An act to amend the laws relating to the recodification of the Revised Codes of Montana, 1947; amending sections 12-501, 12-505, 12-506, 12-507, 12-509, and 12-510, R.C.M. 1947; and providing an immediate effective date. ....Page 1
2		16	An act for the general revision of laws relating to state parks. ....Page 5
3	3		An act to generally revise and clarify the laws relating to libraries, arts, and antiquities; enacting three new sections; amending sections 44-139, 44-219.2, 44-517, 44-518, 44-520, 81-2508, 81-2510, 82-3607, and 82A-218, R.C.M. 1947; and repealing sections 44-522, 44-529, 78-302, 82-3205, and 82-3206, R.C.M. 1947. ....Page 6
4	7		An act to repeal Chapter 434, Laws of 1975, which was declared unconstitutional by the Montana Supreme Court. ....Page 9
5	8		An act to amend section 82-303 to clarify the requirement of licensure of all boxing, sparring, or wrestling exhibitions not otherwise excepted. ....Page 9
6	15		An act naming the blackspotted cutthroat trout as the state fish. ....Page 10
7		2	An act authorizing counties to convey tracts of county-owned land to other governmental units for cemetery purposes; amending section 16-1131, R.C.M. 1947; providing an immediate effective date. ....Page 11
8		38	An act to generally revise and clarify the laws relative to game wardens' retirement and death and disability benefits; amending sections 68-1401, 68-1402, 68-1405, 68-1406, 68-1407, 68-1409, 68-1410, 68-1413, 68-1415, 68-1417, 68-1421, 68-1422, 68-1425, 68-1427, and 68-1429; and enacting a new section 68-1402.1 to officially recognize and name the Montana State Game Wardens' Retirement System. ....Page 11
9		44	An act to generally revise and clarify the laws relating to fish and game; repealing sections 26-303.4, 26-307.1, 26-502, 26-909, and 26-922, R.C.M. 1947. ....Page 16
10		134	An act to amend sections 46-609 and 67-205 to provide for fee changes for recording, transferring, and rerecording marks or brands on domestic and certain wild animals and to clarify requirements relating to the branding of wild animals. ..Page 38
11		135	An act to amend section 52-322, R.C.M. 1947, to change the fees charged for handling brand security agreements filed with the Department of Livestock. ....Page 39
12	14		An act for the general revision and clarification of the laws relating to livestock. ....Page 40
13	19		An act to generally revise and clarify the laws relating to agriculture. ....Page 67
14	54		An act to amend section 34-101, R.C.M. 1947, by providing for a maximum innkeeper's liability of $500 in the absence of a writing providing otherwise. ....Page 87
15	55		An act removing ambiguities in statutes permitting the slaughter of livestock bearing altered brands to determine proper ownership; amending sections 46-706 and 46-708, R.C.M. 1947. ....Page 88
16	63		An act permitting the investment of the funds of certain earmarked accounts of the departments of livestock and agriculture; directing that the income from such investments be credited to the account from which the investment is made; and generally clarifying language; amending sections 3-2917, 3-233, 3-2033, and 82-1507, R.C.M. 1947. ....Page 89

HeinOnline -- 1977 Vol. I vii 1977

Chap. Num.	Senate Bill	House Bill	Title
17		167	An act amending section 46-2903.2 of the Livestock Dealers Act by changing the time of hearing requirements....Page 91
18	35		An act amending the state conservation districts law providing for excluding territory from existing districts; revising procedures for election of district supervisors; amending 76-105, 76-106, 76-107, and 76-114, R.C.M. 1947....Page 92
19		163	An act amending sections 27-405 and 27-407, R.C.M. 1947, to transfer the jurisdiction over transportation of milk to the Board of Milk Control from the Department of Business Regulation; repealing section 82A-406.1, R.C.M. 1947. ....Page 100
20		258	An act to remove obsolete wording which pertained to the old experience rating system for unemployment compensation benefits, changed by the 1975 Legislature....Page 104
21		325	An act to eliminate the requirement that county clerk and recorders prepare monthly lists of nonresident loans secured by chattel mortgage upon grain by repealing section 84-4903.12, R.C.M. 1947; providing an immediate effective date....Page 106
22		452	An act to clarify the authority of a cooperative state grazing district to possess, manage, and control agricultural lands; amending section 46-2312, R.C.M. 1947....Page 106
23		185	An act to exempt candidates for the office of trustee of certain school districts from the provisions of the election laws relating to campaign treasurers, campaign depositories, and filing reports with the Commissioner of Campaign Finances and Practices; amending sections 23-4778 and 23-4781, R.C.M. 1947; and providing an immediate effective date. ....Page 108
24		241	An act to provide for the correct period for appealing Board of Labor Appeals decision as provided for in section 87-108, R.C.M. 1947. ....Page 111
25		317	An act amending sections 3-3102 through 3-3107, R.C.M. 1947, pertaining to Montana apiculture law. ....Page 113
26		310	An act to amend section 89-8-105, R.C.M. 1947, to provide for an extension of the suspension of action on certain applications for permits to appropriate surface water or for changes in purpose of use in the Yellowstone river basin and providing an immediate effective date. ....Page 117
27		53	An act to amend section 64-306.1, R.C.M. 1947, to delete an erroneous reference to federal civil rights laws. ....Page 117
28		131	An act to provide a space on a driver's license for indicating when a document of gift under the Uniform Anatomical Gift Act has been made or revoked; providing a delayed effective date. ....Page 118
29		149	An act to provide for distribution of fees, fines, penalties, and other moneys collected under the Hardrock Mining Act and providing an immediate effective date....Page 118
30		246	An act to provide the Department of Agriculture authority to adopt rules concerning rural rehabilitation....Page 119
31		364	An act to provide for a special parking permit to be available to handicapped persons so there may be one recognizable statewide standard permitting a handicapped person to park a vehicle in a space reserved for use by the handicapped.....Page 119
32		580	An act to require railroads to install spotlights on cabooses; amending section 72-622, R.C.M. 1947; and providing an extended effective date. ....Page 120
33		14	An act to generally revise and clarify the laws relating to marriage, husband and wife, reconciliation, dissolution of marriage, support, parent and child, and adoption; including extending the power to solemnize marriages to mayors and justices of the peace. ....Page 122
34		15	An act to generally revise and clarify the laws relating to income, gasoline, and corporation taxes; amending sections 84-1501.2, 84-1838, 84-1840, 84-4903.8, 84-4926, 84-6305, and 84-6307, R.C.M. 1947; repealing sections 84-4903.1, 84-4903.13, and 84-6303, R.C.M. 1947....Page 134
35		17	An act to clarify sections 64-305 and 71-1305.1, R.C.M. 1947. ....Page 139
36		18	An act to provide a uniform collection procedure for the license taxes on express companies, freight line companies, sleeping car companies, telegraph companies, and telephone companies; amending section 84-4821; and repealing sections 84-1704, 84-1705, 84-1706, 84-1708, 84-2307, 84-2308, 84-2309, 82-2504, 84-2506, 84-2507, 84-2508, 84-2604, 84-2606, 84-2607, 84-2608, 84-4823, 84-4825, and 84-4826, R.C.M. 1947....Page 141

HeinOnline -- 1977 Vol. I viii 1977

Chap. Num.	Senate Bill	House Bill	Title
37		30	An act to generally revise and clarify the laws relating to vocational rehabilitation, public assistance, state institutions, the developmentally disabled, and the mentally ill; amending sections 38-110, 38-120, 38-506, 38-1202, 38-1205, 38-1206, 38-1208, 38-1222, 38-1302, 41-817, 71-113, 71-207, 71-210, 71-211, 71-212, 71-213, 71-214, 71-216, 71-217, 71-222, 71-226, 71-230, 71-233.1, 71-233.3, 71-302.2, 71-303, 71-305, 71-306, 71-307, 71-308, 71-311, 71-314, 71-501, 71-509, 71-710, 71-901, 71-1401, 71-1516, 71-1903, 71-2304, 71-2404, 71-2405, 80-1405, 80-1410, 80-1413, 80-1603, 80-1912, 80-2412, 80-2701, 80-2702, 80-2717, and 80-2802, R.C.M. 1947; and repealing sections 38-210, 71-101, 71-107, 71-118, and 71-233.5, R.C.M. 1947. .....Page 143
38		36	An act to standardize the grounds for unlawful discrimination to include the terms religion and creed and to delete the term ancestry which is included in the term national origin by definition; amending sections 11-3283, 11-3917, 16-4806, 37-104.10, 40-3512, 64-301, 64-306, 64-307, 64-317, 64-318, 64-319, 64-320, 64-321, 64-323, 64-324, 71-2412, and 80-2806, R.C.M. 1947; and repealing section 64-211, R.C.M. 1947. .....Page 179
39		40	An act to generally revise and clarify the laws relating to minerals, oil, and gas; amending sections 50-202, 50-204, 50-205, 50-303, 50-304, 50-305, 50-429, 50-476, 50-480.7, 50-714, 50-805, 50-1043, 50-1203, 50-1209, 50-1404, 50-1503, 50-1504, 50-1505, 50-1506, 50-1507, 50-1508, 50-1509, 50-1510, 50-1511, 50-1512, 50-1513, 50-1514, 50-1515, 50-1516, 50-1516.1, 50-1517, 60-227, 60-606, 69-3303, 69-3305, and 73-115, R.C.M. 1947.....Page 187
40		94	An act to repeal sections 84-2501 through 84-2508, R.C.M. 1947, the telegraph companies license tax.....Page 205
41		136	An act requiring notice to be given the Department of Livestock of any livestock imported into the state and requiring a brand inspection of such livestock after arrival in Montana but prior to being intermingled with native stock; amending section 46-801.1, R.C.M. 1947. .....Page 205
42		173	An act to repeal the Abortion Counselors and Counseling Services Act, sections 69-6901 through 69-6908, R.C.M. 1947. .....Page 207
43		234	An act to amend the law relating to grain standards, storage, and inspection and regulation of grain warehousemen; amending sections 3-209, 3-227, 3-228.1, 3-228.2, R.C.M. 1947. .....Page 207
44		240	An act to amend the livestock auction market law to remove the requirement that markets pay at least 75% of the cost of livestock inspection services provided at the market by the Department of Livestock; amending sections 46-909 and 46-912, R.C.M. 1947; and repealing section 46-910, R.C.M. 1947.....Page 209
45		289	An act to change the composition of the Teachers' Retirement Board; amending section 82A-212, R.C.M. 1947.....Page 210
46		477	An act to amend sections 89-318, 89-320, and 89-322, R.C.M. 1947, to provide that the Department of Natural Resources and Conservation rather than the applicant for a weather modification permit shall publish the notice of intention; and providing an immediate effective date.....Page 211
47		481	An act relating to the collection of the annual license tax fee on motor vehicles powered by liquified petroleum gases; providing for an annual license tax, prorated quarterly and payable quarterly, semiannually or annually; amending sections 84-1862 and 84-1863, R.C.M. 1947.....Page 212
48		483	An act to define and provide a manner for computing the amount of necessary expenses of litigation required by section 93-9921.1, R.C.M. 1947.....Page 214
49	13		An act for the general revision and clarification of laws relating to military affairs and civil defense; amending sections 53-106.10, 71-120, 75-8612, 77-501, 77-604, 77-707, 77-1601, 77-1606, 77-1705, 77-2102, 77-2106, 77-2305, 77-2306, and 77-2404, R.C.M. 1947; and repealing section 77-2308, R.C.M. 1947.....Page 214
50	45		An act to amend section 75-7003, R.C.M. 1947, to delete the requirement that school bus drivers be examined by a Montana physician before qualifying. .....Page 223
51	104		An act to amend sections 25-507.1 and 25-507.2, R.C.M. 1947, relating to the state central payroll system.....Page 223
52		13	An act for a standard definition of the word "person" in the taxation statutes; deleting inconsistent definitions from Title 84, R.C.M. 1947; amending sections 84-202, 84-704, 84-1601, 84-2301, 84-2401, 84-2402, 84-2404, 84-2405, 84-2410, 84-2411, 84-3501, 84-3502, 84-3510, 84-3512, 84-4155, 84-4166, 84-5402, 84-5410, 84-5413, 84-6201, 84-6401, and 84-7003, R.C.M. 1947; repealing sections 84-1101, 84-1201, 84-2001, 84-2201, and 84-5901, R.C.M. 1947. .....Page 224
53		72	An act to amend section 52-409, R.C.M. 1947, to require sheriffs and constables to post notices of sale upon request of a trustee in the case of a foreclosure of a trust indenture. .....Page 235

CONTENTS

Chap. Num.	Senate Bill	House Bill	Title
54		206	An act to remove the requirement of headgear for motorcycle riders eighteen years of age or older; amending section 32-21-105.1, R.C.M. 1947.....Page 236
55		276	An act amending section 53-114, R.C.M. 1947, to require a statement of origin before licensing of new motor vehicles.....Page 237
56		290	An act to prohibit the employment of aliens not lawfully authorized to accept employment; providing a penalty; and creating a civil cause of action.....Page 239
57		319	An act to provide for the training of fact finders and arbitrators.....Page 240
58		459	An act to increase the maximum pension that may be paid to a retired volunteer fireman by a fire department relief association; amending section 11-1925, R.C.M. 1947; and providing an immediate effective date.....Page 240
59		12	An act to generally revise and clarify the laws relating to sheriffs' retirement and death and disability benefits; amending sections 68-2602, 68-2604, 68-2607, 68-2610, 68-2614, 68-2616, 68-2618, 68-2621, 68-2622, 68-2626, 68-2627, and 68-2628, R.C.M. 1947.....Page 241
60		21	An act to generally revise and clarify the laws relating to deferred compensation plans for public employees; amending sections 68-2701, 68-2702, and 68-2708, R.C.M. 1947.....Page 246
61		23	An act for the general revision and clarification of laws relating to state finance; amending sections 78-1018, 78-1019, 78-1028, 78-1029, 79-208, 79-305, 79-603, 79-1012, 79-2707, and 82-1117, R.C.M. 1947; and repealing sections 59-705, 78-737 through 78-746, 78-1001 through 78-1010, 78-1202, 78-1203, 78-1209, 79-110, 79-802, 79-811, 79-812, 79-1102, 79-1103, 79-1104, 79-1603, 79-2701, 82-1104, and 82A-209, and Chapter 17 of Title 79, R.C.M. 1947.....Page 247
62		27	An act for the general revision and clarification of laws relating to corporations, partnerships, and associations; amending sections 9-107, 9-119, 9-804, 9-1003, 9-1004, 9-1006, 9-1013, 14-312, 15-2105, 15-2212, 15-2274, 15-2352, 15-2504, 63-504, 63-702, 63-803, 63-901, and 63-905; and repealing sections 14-221 and 14-222, R.C.M. 1947.....Page 249
63		32	An act to generally revise and clarify the laws relating to retirement of and death and disability benefits for judges of district courts and justices of the supreme court; amending sections 93-1107, 93-1110, 93-1111, 93-1112, 93-1113, 93-1116, 93-1120, 93-1128, and 93-1131, R.C.M. 1947.....Page 259
64		35	An act to generally revise and clarify the laws relating to coverage for Montana public employees under federal social security; amending sections 59-1102, 59-1102.1, 59-1104, 59-1105, 59-1106, 59-1109, 59-1110, 59-1111, and 59-1112, R.C.M. 1947.....Page 263
65		37	An act to generally revise and clarify the laws relating to highway patrol retirement and death and disability benefits, amending sections 31-201, 31-207, 31-208, 31-213, 31-215, 31-222, 31-223, and 31-228, R.C.M. 1947.....Page 270
66		74	An act to exclude the purchase of or participation in loans secured by mortgages, trust indentures, or other security interests in real or personal property from the definition of transacting business in the state by a foreign corporation; amending sections 7-130 and 15-2299, R.C.M. 1947.....Page 273
67		82	An act to restrict the entitlement of disabled veterans to free license plates to one passenger automobile or one truck up to, and including, three-quarter ton GVW-rated capacity; amending sections 53-106.8 and 53-106.10, R.C.M. 1947.....Page 275
68		254	An act to prohibit the disposal in Montana of large quantity radioactive materials produced in other states; defining terms; and providing a penalty.....Page 275
69		275	An act amending section 11-2003, R.C.M. 1947, to provide that certificates of volunteer fire companies shall be filed annually instead of quarterly.....Page 277
70		361	An act to submit to the qualified electors of Montana an amendment to Article XI of the Montana Constitution to make voter review of local government an optional procedure and to allow the people to exercise this option every 10 years.....Page 277
71	6		An act to generally revise and clarify the laws relating to banks, building and loan associations, credit unions, development credit corporations, and consumer loan businesses.....Page 278
72	23		An act to provide for the assessment of costs to petitioning property owners for discontinuation of streets, roads, and alleys owned by, or dedicated to, a municipality or county.....Page 297
73	42		An act to continue certain immunities from suit established by certain statutes

HeinOnline -- 1977 Vol. I x 1977

Chap. Num.	Senate Bill	House Bill	Title
			by reenacting these statutes under provisions of Article II, section 18, of the Constitution of the State of Montana; amending, clarifying, and reenacting sections 28-603, 77-2308, 89-115, and 89-3514, R.C.M. 1947. ....Page 297
74	64		An act to raise the ceiling on the mill levy for cemetery districts from 2 mills to 4 mills; amending section 9-209, R.C.M. 1947. ....Page 300
75	70		An act to provide for distribution of property held in joint tenancy whenever the last surviving joint tenant fails to survive the other joint tenants by 120 hours; and providing an immediate effective date. ....Page 301
76	78		An act amending section 90-180, R.C.M. 1947, to provide for three liquid quart containers in the packaging of fluid dairy products. ....Page 302
77	84		An act relating to the standards and the regulation of manufacture and distribution of petroleum products; repealing Chapter 2 of Title 60, R.C.M. 1947, in its entirety. ....Page 302
78	98		An act to amend section 32-2614, R.C.M. 1947, relating to funds for the replacement of bridges. ....Page 306
79	103		An act to apportion state construction funds to match federal-aid off-system road funds. ....Page 307
80	113		An act to amend section 16-1032, R.C.M. 1947, to allow lease of county property for hospital purposes for longer than 5 years in certain circumstances. ....Page 307
81	116		An act to create an alternative procedure for detracting a single piece of land from a fire district and annexing the same to a municipality; amending and clarifying sections 11-519 and 11-2008, R.C.M. 1947. ....Page 308
82	117		An act to authorize the Department of Fish and Game to utilize part of those portions of fishing license fees earmarked for purchase of fishing accesses for development, operation, and maintenance; amending section 26-234, R.C.M. 1947. ....Page 311
83	140		An act amending section 69-1512, R.C.M. 1947, by deleting certain boiler inspection fee requirements. ....Page 311
84	141		An act to repeal sections 69-1701 and 69-1702, R.C.M. 1947, which relate to markings and inspections of steam traction engines. ....Page 312
85	152		An act to regulate volunteer peace officers by establishing minimum qualifying standards and authorizing the Board of Crime Control to establish minimum training standards for such peace officers to safeguard the interests of the public. ....Page 313
86	157		An act amending section 69-3605, R.C.M. 1947, to clarify the definition of patient with regard to the operation of ambulance services. ....Page 316
87	159		An act to exempt one-half of small coal producer's gross proceeds from property taxation and providing an effective date. ....Page 317
88	161		An act to provide that the elected officers of the Senate include a president and a president pro tempore; and to provide that the elected officers of the House of Representatives include a speaker and a speaker pro tempore; amending section 43-214.1, R.C.M. 1947. ....Page 319
89	171		An act concerning service credits and survivorship allowances in the Public Employees' Retirement System; amending sections 68-1607, 68-1608, and 68-2304, R.C.M. 1947; and providing an immediate effective date. ....Page 320
90	183		An act to increase the maximum amount which may be paid to a qualified claimant under the volunteer firemen's pension plan from $50 to $100 per month; amending section 11-2022, R.C.M. 1947; and providing an immediate effective date...Page 321
91	184		An act to allow members of the Legislature to be candidates for other public office during their legislative term and to implement section 9, Article V, of the Montana Constitution. ....Page 323
92	190		An act to include local government general obligation revenue bonds as security for deposits of public funds; amending section 79-307, R.C.M. 1947. ....Page 324
93	274		An act amending section 68-2618, R.C.M. 1947, to provide increased benefits for the surviving spouses and minor children of members of the sheriffs' retirement system who die as a result of duty-related injuries; to provide for retroactive application of such benefits; and to provide for an immediate effective date. ....Page 325
94	339		An act to provide that, in a criminal prosecution for rape, evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim; amending section 94-5-503, R.C.M. 1947. ....Page 326

Chap. Num.	Senate Bill	House Bill	Title
95	377		An act creating an agency fund from which to make pension payments to eligible members of volunteer fire companies of unincorporated areas; amending sections 11-2022, 11-2025, 11-2028, and 11-2030, R.C.M. 1947. ....Page 327
96	383		An act to amend section 40-3010, R.C.M. 1947, to provide for a mandatory reserve for title insurance companies and for a method of amortizing the reserve...Page 330
97		24	An act to generally revise and clarify the laws relating to public contracts; amending sections 82-1131, 82-1133, 82-1147, 82-1150, 82-1917, 82-1922, 82-1926, and 82-1932, R.C.M. 1947; and repealing sections 82-1104, 82-1139, 82-1902, 82-1904.1, 82-1904.2, 82-1906, 82-1909, 82-1913, and 82-1915....Page 331
98		25	An act to consolidate property tax procedures for the centralized assessment of railroads, utilities, airlines, mines, and oil and gas wells and to generally revise and clarify the laws relating thereto; amending sections 84-404, 84-708.1, 84-801, 84-802, 84-901, 84-905, 84-5402, 84-5403, 84-5405, 84-5407, 84-6201, 84-6202, 84-6203, and 84-6403, R.C.M. 1947; repealing sections 84-719, 84-720, 84-721, 84-722, 84-802.1, 84-803, 84-804, 84-903, 84-903.1, 84-904, 84-906, 84-907, 84-5408, 84-5410, 84-6207, 84-6209, 84-6402, 84-6405, 84-6405.1, 84-6406, 84-6407, 84-6408, and 84-6410, R.C.M. 1947....Page 335
99		33	An act to generally revise and clarify the laws relating to the public employees' retirement system; amending sections 68-1602, 68-1604, 68-1605, 68-1608, 68-1901, 68-1904, 68-2103, 68-2201, 68-2203, 68-2304, 68-2505, 68-2506, and 68-2511, R.C.M. 1947....Page 348
100		39	An act to generally revise and clarify the law relating to minors. ....Page 355
101		42	An act for the general revision and clarification of laws relating to professional and occupational licensing....Page 368
102		47	An act amending section 84-4906, R.C.M. 1947, to allow a deduction for child and dependent care expenses; and providing an effective date....Page 388
103		57	An act to make consistent the statutes on the compensation and expenses paid to legislators; amending sections 43-218, 43-310, 43-310.1, 43-1112, 69-6510, 70-704, 79-2305, and 82-4203.3; repealing sections 43-311 and 43-714; and providing an immediate effective date. ....Page 389
104		66	An act creating a fire services training school. ....Page 392
105		89	An act to generally revise and clarify section 84-4202, R.C.M. 1947, and amend it to provide for the payment of personal property taxes on mobile homes and house trailers in two payments, except when assessments occur after July 1. .....Page 394
106		97	An act to change the rate of the cement dealers license tax; amending and clarifying sections 84-1102 and 84-1104, R.C.M. 1947. ....Page 396
107		98	An act to provide a 25% penalty for underreporting the value of business inventories; amending section 84-708.9, R.C.M. 1947; and providing a delayed effective date....Page 396
108		99	An act to change the rate of the cement and gypsum producer's license tax, to change penalty and interest rates, and to provide a procedure for filing liens; amending sections 84-1202, 84-1207, and 84-1209, R.C.M. 1947....Page 397
109		176	An act to amend section 71-217, R.C.M. 1947, to clarify the method of reimbursement of the state department by county boards of public welfare....Page 399
110		203	An act to amend section 28-111, R.C.M. 1947, and repeal section 28-124, R.C.M. 1947, to provide that fire protection tax assessments be deposited in the federal and private revenue fund. ....Page 400
111		214	An act to amend section 14-671, R.C.M. 1947, authorizing a central credit union with corporate shareholdings equal to or in excess of 95% of its total assets to elect exemption of insurance on share accounts. ....Page 401
112		288	An act to amend section 53-644, R.C.M. 1947, to exclude toppers and truck canopy covers from the definition of campers and to amend section 84-202, R.C.M. 1947, to exclude toppers and truck canopy covers from taxation....Page 402
113		347	An act to amend the Montana Religious Corporations Sole Act to remove the limitation on number of members of a board of advisors or consultors; amending section 15-2408, R.C.M. 1947, and providing an immediate effective date. ....Page 404
114		359	An act to repeal section 82A-2101, R.C.M. 1947, which transferred the federal-state coordinator to the governor's office and providing an immediate effective date....Page 404
115		420	An act to provide for a change in the definition of total unemployment and to

HeinOnline -- 1977 Vol. I xii 1977

Chap. Num.	Senate Bill	House Bill	Title
			remove superfluous material pertaining to subjectivity; amending section 87-149, R.C.M. 1947. ....Page 405
116		436	An act to reorder the placement of offices on ballots; amending section 23-3804, R.C.M. 1947. ....Page 406
117		451	An act to amend section 89-8-102.2, R.C.M. 1947, relating to fees for preparation of environmental impact statements by the Department of Natural Resources and Conservation on certain applications for permits or approvals under the Montana Water Use Act; to establish a method for determining the maximum fee payable; authorize that department to contract with applicants for payment of fees and the use thereof; and, authorize that department to utilize various sources of environmental data in preparing environmental impact statements. ....Page 407
118		500	An act to amend section 82-401, R.C.M. 1947, relating to the duties of the attorney general by specifying the effect of an attorney general's opinion; and providing an immediate effective date. ....Page 409
119		570	An act to authorize the establishment of mutual, stock, or reciprocal insurance companies to provide insurance coverage for professional liability claims resulting from the rendering of or failure to render professional services by health care providers or other professionals of the United States....Page 411
120		586	An act to establish a 1-mill levy on the assessed value of all livestock to provide additional funding for the Department of Livestock; amending sections 84-5211 and 84-5212, R.C.M. 1947. ....Page 413
121		619	An act to make clear the application of retirement fund provisions to community college districts; to change the date for community college elections to the first Tuesday in April; to increase travel expense reimbursement of trustees; to clarify county attorneys' duties; and to generally revise and clarify powers and duties of community college district trustees; amending sections 75-7204, 75-8114, 75-8117, 75-8119, and 75-8305, R.C.M. 1947; and providing an immediate effective date....Page 414
122		626	An act to establish a fuel conservation speed limit of 65 miles per hour; amending section 32-2144.1, R.C.M. 1947; repealing sections 32-2144.3 and 32-2144.4, R.C.M. 1947; and providing a contingent delayed effective date. ....Page 418
123		636	An act to amend section 84-429.7, R.C.M. 1947, to broaden the tax incentive for introduction of irrigation systems to include any irrigation system. ....Page 419
124	16		An act for the general revision and clarification of laws relating to recreational vehicles and conveyances; amending sections 53-1014, 53-1017, 53-1019, 53-1026, 69-3502 through 69-3505, 69-3507, 69-3508, 69-3508.1, 69-3512 through 69-3514, 69-3516, 69-3516.1, 69-3517, 69-3518, 69-6601, 69-6610, and 69-6615, R.C.M. 1947. ....Page 419
125	38		An act accepting the retrocession of such jurisdiction as had been ceded to the United States over the lands within the boundaries of the Big Hole National Battlefield; recognizing reservation in the United States of concurrent legislative jurisdiction. ....Page 431
126		20	An act to correct grammar and internal references, and delete redundant, obsolete, or unconstitutional provisions in the property tax and license tax laws; amending sections 82-1104, 84-201, 84-202, 84-406, 84-437.5, 84-501, 84-1608, 84-4002, 84-4166, 84-4169, 84-41-100, 84-4216, 84-5606.18, and 84-5606.26, R.C.M. 1947; and repealing sections 84-514, 84-713, 84-1902, 84-1903, 84-4011, 84-4144 through 84-4150, 84-4159, 84-5703 through 84-5717, 84-5718, and 84-5719, R.C.M. 1947. ....Page 432
127		34	An act to generally revise and clarify the laws relating to teachers' retirement and death and disability benefits. ....Page 439
128		184	An act to provide for payment for medical examination of victims of alleged sexual intercourse without consent. ....Page 454
129		256	An act to require taxidermists to keep records of all dead wildlife mounted, preserved, or prepared by them; amending section 26-907, R.C.M. 1947. ....Page 454
130		315	An act to allow trustees of elementary and high school districts to provide for a religious instruction released time program; amending section 75-7403, R.C.M. 1947. ....Page 455
131		323	An act to preserve existing garbage and solid waste services in the event of annexation and prohibit competitive or similar service provided by the municipality for 3 years following annexation except upon a proper showing that existing service is not adequate. ....Page 455
132		328	An act to change the name of the Board of Administration of the Department of Administration to the "Public Employees' Retirement Board" and to consolidate

HeinOnline -- 1977 Vol. I xiii 1977

Chap. Num.	Senate Bill	House Bill	Title
			such board, the Montana State Game Wardens' Retirement Board, and the Montana Judges' Retirement Board; amending sections 68-1401, 68-1405, 82A-210, and 93-1107, R.C.M. 1947; repealing sections 82A-210.1 and 82A-210.2, R.C.M. 1947; providing an effective date. ....Page 456
133		331	An act to amend section 87-106, R.C.M. 1947, to provide for a change in disqualification for benefits for voluntarily leaving work without good cause, discharge for misconduct or for refusing suitable work; for the removal to an appropriate section of the provisions pertaining to retirement compensation and pregnancy disqualification; and for disqualification of those receiving social security disability or who are self-employed. ....Page 459
134		362	An act to require county treasurers to include additional information in property tax notices sent to taxpayers; amending section 84-4101, R.C.M. 1947. ....Page 462
135		376	An act to extend the deadline for filing applications for Vietnam Veterans' Honorariums; amending section 77-2506, R.C.M. 1947; and providing an immediate effective date. ....Page 463
136		395	An act to clarify that the Consumer Counsel has discovery powers in contested cases that arise before any administrative agency of the state of Montana; amending section 70-707, R.C.M. 1947; and repealing section 70-708, R.C.M. 1947. ....Page 464
137		396	An act to mandate the Public Service Commission to adopt rules of practice and procedure for rate cases; and providing an immediate effective date. ....Page 465
138		417	An act creating a class "D" motor carrier encompassing all motor carriers transporting garbage and solid waste; amending section 8-102, R.C.M. 1947. ....Page 466
139		418	An act establishing motor vehicles transporting garbage and solid waste as being within the term "motor carrier" as defined in the Montana Motor Carrier Act; amending section 8-101, R.C.M. 1947. ....Page 467
140	2		An act to generally revise and clarify the laws relating to environmental protection; amending sections 26-1514, 26-1517, 32-4728, 69-3911, 69-3912, 69-3914, 69-3915, 69-3916, 69-3917, 69-4820.1, 69-4824, 69-5003, 69-5602, 69-5603, 69-5607, 69-5803, 69-5806, 69-6807, and 69-6811, R.C.M. 1947; and repealing section 26-339, R.C.M. 1947. ....Page 469
141	46		An act revising the egg dealer's law to reflect current marketing practices, to lower the cost of a wholesale egg dealer's license, and to remove archaic or redundant language; amending sections 3-2301, 3-2303, 3-2305, 3-2311, and 3-2313; repealing sections 3-2304, 3-2309, and 3-2315, R.C.M. 1947. ....Page 482
142	92		An act to revise and modernize statutes governing the state law library; removing the state auditor and secretary of state from the board of trustees; broadening the authority of the librarian; amending sections 44-402 and 44-405, R.C.M. 1947; and repealing sections 44-404, 44-408, 44-409, and 44-410, R.C.M. 1947. ....Page 483
143	94		An act to amend section 32-3928, R.C.M. 1947, to provide that the application for relocation assistance be reviewed by the director of highways. ....Page 484
144	133		An act to amend section 53-712, R.C.M. 1947, relating to proportional registration of fleet vehicles. ....Page 484
145	174		An act to provide that a sheriff may qualify nonsheriff membership service in the Public Employees' Retirement System for credit in the sheriffs' retirement system. ....Page 485
146	218		An act to amend section 40-3343, R.C.M. 1947, to establish a fee for examination of insurance consultants. ....Page 486
147	220		An act to amend section 40-3427, R.C.M. 1947, to increase the premium tax on independently procured coverages. ....Page 487
148	272		An act amending sections 69-1601.1 and 69-1607, R.C.M. 1947, relating to the licensing of crane operators, by clarifying the provisions of the licensing requirements and penalty provisions; and repealing section 69-1609. ....Page 488
149	281		An act to further regulate the use of snare traps; amending section 26-504, R.C.M. 1947. ....Page 489
150	288		An act to amend section 15-2011, R.C.M. 1947, to clarify which class of securities is considered to be registered for nonissuer transactions. ....Page 490
151	321		An act amending section 75-7003, R.C.M. 1947, by changing the age limit for drivers of school buses from 21 years to 18 years of age to comply with section 31-127, R.C.M. 1947, and the Montana Constitution. ....Page 491
152	334		An act amending section 69-1501, R.C.M. 1947, by giving the Division of Workers'

Chap. Num.	Senate Bill	House Bill	Title
			Compensation discretion as to whether to accept inspection reports of special boiler inspectors. ....Page 492
153	398		An act to amend section 91A-2-401, R.C.M. 1947, to make uniform the application of the homestead allowance and to remedy certain title problems inherent in the present homestead allowance. ....Page 493
154	414		An act to increase the fees in justice's court in civil actions from $3.50 to $5; amending section 25-301, R.C.M. 1947. ....Page 493
155		19	An act to allocate the duties of conducting administrative tax case hearings between the Department of Revenue and the State Tax Appeal Board; specifying procedures in appeals from county tax appeal board decisions and from department decisions; abolishing procedures inconsistent therewith; amending sections 67-2220, 67-2221, 84-603, 84-709, 84-711, 84-1841, 84-4923.1, 84-5606.24, and 84-5606.25, R.C.M. 1947; repealing sections 84-440, 84-602, 84-609, and 84-710, R.C.M. 1947. ....Page 494
156		26	An act to correct grammar and internal references, and delete redundant matter in the coal severance tax, oil and gas severance tax, metal mines license tax, and resource indemnity trust tax laws, in aid of recodification; amending sections 84-1313, 84-1319, 84-1320, 84-2003, 84-2004, 84-2008.1, 84-2010, 84-2202, 84-2206, 84-2209.1, and 84-7012, R.C.M. 1947; repealing 84-2011, R.C.M. 1947. ....Page 498
157		62	An act to generally revise and clarify the laws relating to firemen's retirement and death and disability benefits. ....Page 504
158		101	An act to repeal conflicting statutes pertaining to income tax deductions for political contributions; repealing sections 84-4906.1 and 84-4906.2, R.C.M. 1947; and providing an immediate effective date. ....Page 522
159		104	An act amending section 84-4914, R.C.M. 1947, by increasing the gross income limitations establishing liability for filing tax returns; providing an immediate effective date. ....Page 523
160		111	An act to change the method of computing the oil producers' severance tax; amending section 84-2202, R.C.M. 1947. ....Page 524
161		221	An act to maintain snowmobile noise standards at the levels prescribed to take effect June 30, 1975; amending section 53-1020, R.C.M. 1947. ....Page 526
162		227	An act to amend section 69-4420, R.C.M. 1947, relating to the procedure for issuance of substitute birth certificates by the Department of Health and Environmental Sciences. ....Page 528
163		230	An act to transfer the administration of the Board of Housing from the Department of Community Affairs to the Department of Administration; amending sections 35-503 an 35-526; and repealing section 82A-907, R.C.M. 1947. ....Page 528
164		237	An act to amend section 84-1314, R.C.M. 1947, to change the coal severance tax exemption from 5,000 tons a quarter to 20,000 tons a year. ....Page 532
165		244	An act to amend section 87-109, R.C.M. 1947, to provide an election of the method of paying the Employment Security Division by governmental entities to be effective January 1, 1977, and to provide for an increase in the taxable wage base to $6,000, effective January 1, 1978. ....Page 533
166		273	An act to provide that unlawful detainer actions filed in justice court be tried within 10 days. ....Page 539
167		291	An act to make the obscuring of the identity of a firearm a crime; amending section 94-6-311, R.C.M. 1947. ....Page 539
168		314	An act to clarify provisions relating to grants-in-aid to counties for geneal relief; requiring a county which receives a grant-in-aid to return any moneys remaining in its general relief accounts at the close of the fiscal year; amending section 71-311, R.C.M. 1947. ....Page 540
169		339	An act to permit persons who will have reached 12 years of age prior to September 15 of the hunting season to apply for and obtain permits for that season; amending section 26-202.1, R.C.M. 1947. ....Page 542
170		343	An act to require names and addresses of injured parties and a statement of injury in a complaint for injunction filed by a citizens group or other public interest association. ....Page 547
171		349	An act to amend section 75-6008, R.C.M. 1947, relating to the term of teacher certification. ....Page 548
172		408	An act requiring that information concerning the competency and conduct of licensed physicians be reported to the State Board of Medical Examiners. ....Page 548

HeinOnline -- 1977 Vol. I xv 1977

Chap. Num.	Senate Bill	House Bill	Title
173		430	An act clarifying and revising the provision dealing with adoption of the state building code, fixing dates by which energy conservation rules must be drafted, heard, adopted, published, and implemented; amending section 69-2111, R.C.M. 1947.....Page 549
174		472	An act amending section 48-328, R.C.M. 1947, to grant name change to all women on request after marriage is dissolved or declared invalid.....Page 551
175		497	An act to define the offense of aiding the avoidance of telecommunications charges; amending section 94-6-304.1, R.C.M. 1947.....Page 551
176		529	An act amending sections 66-603, 66-607, 66-608, and 82A-1602.6, R.C.M. 1947; to remove the secretary of and designee of the Board of Medical Examiners from the Board of Podiatry Examiners; creating a separate earmarked revenue fund for the revenue and expenses; and providing an effective date.....Page 553
177		535	An act amending section 3-208, R.C.M. 1947, relating to charges of public warehousemen for handling, cleaning, and storage of grain, to place applicable regulatory and ratemaking authority in the Department of Agriculture; and providing an immediate effective date.....Page 554
178		540	An act to revise the rate of privilege and license tax assessed to oil and gas operators and producers for support of the Board of Oil and Gas Conservation; amending section 60-145, R.C.M. 1947.....Page 554
179		542	An act amending section 70-806, R.C.M. 1947, providing for the filing of a 1-year notice of intention to file an application for a certificate under the Major Facility Siting Act.....Page 556
180		546	An act to provide notice to the Superintendent of Public Instruction of the year ending fund balances in the county school funds; amending section 75-6805, R.C.M. 1947.....Page 558
181		581	An act to require the installation of speedometers on locomotives; amending section 72-652, R.C.M. 1947.....Page 560
182		591	An act to define the basis of assessment of business inventories.....Page 561
183		656	An act amending sections 53-157 and 53-161, R.C.M. 1947, to allow for a change in the registration period of vehicles subject to anniversary date registration and to provide for the proration of taxes and fees when a registration period is changed.....Page 561
184	30		An act to generally revise and clarify the laws relating to criminal procedure.....Page 562
185	5		An act to generally revise and clarify the laws relating to credit transactions and relationships; amending 18-318, 18-403, 18-510, 18-515, 29-208, 30-106, 30-208, 30-407, 30-504, 30-505, 47-124, 66-1601, 66-1607, 74-604, 74-606, and 74-611, R.C.M. 1947; and repealing 29-207, R.C.M. 1947.....Page 591
186	24		An act to amend sections 82A-112 and 82A-706.1, R.C.M. 1947, to delete requirement that one member of the Highway Commission be an attorney.....Page 597
187	29		An act to generally revise and clarify the laws relating to health and safety; amending sections 27-706, 27-707, 27-722, 27-805, 50-480.7, 54-301, 54-319, 69-1401, 69-1504, 69-1508, 69-1509, 69-1802, 69-1808, 69-1923, 69-1925, 69-2111, 69-2701, 69-2702, 69-4428.1, 69-4504, 69-4508, 69-5201, 69-5207, 69-5502, 69-6701, 69-6704, 69-7102, 69-7103, 69-7105, 69-7107, 69-7108, 69-7110, 82-1201, 82-1202, 82-1215, 82-1226, 82-1229, and 94-5-615, R.C.M. 1947; and repealing sections 41-2101 through 41-2108, 69-1924, and 82-1232, R.C.M. 1947.....Page 599
188	41		An act to provide for approval of attorney fees in connection with claims against governmental entities.....Page 631
189	43		An act to specifically provide the state, counties, towns, and all other local government entities and the officers, agents, and employees of those entities immunity from suit for injury to a person or property in certain cases in accordance with the provisions of Article II, section 18 of the Constitution of the State of Montana; amending section 82-4310, R.C.M. 1947.....Page 632
190	49		An act to permit the Department of Livestock to seek prohibitory or mandatory injunctive relief when necessary to fulfill its duties under animal health and livestock marketing laws.....Page 634
191	73		An act for the general revision of laws relating to a three-day cooling off period on door-to-door sales; amending sections 85-501, and 85-503 through 85-506, R.C.M. 1947; repealing section 85-502, R.C.M. 1947.....Page 635
192	89		An act revising the livestock auction market law to clarify that the transfer of

HeinOnline -- 1977 Vol. I xvi 1977

Chap. Num.	Senate Bill	House Bill	Title
			ownership of a certificate of public convenience and necessity required to operate a livestock market is permitted without a determination and showing of public convenience and necessity; and providing for an immediate effective date..Page 638
193	91		An act to amend sections 6-501 and 82-1133, R.C.M. 1947, relating to bid security on public contracts. ....Page 639
194	108		An act to allow trustees of a school district to establish a bus depreciation reserve fund to facilitate replacement of buses and two-way radios used for school functions or activities; amending section 75-7024, R.C.M. 1947....Page 641
195	115		An act to revise the requirements for listing unclaimed property and to abolish refunds under $10; amending sections 67-2211, and 67-2219, R.C.M. 1947....Page 642
196	169		An act to prohibit the use of recorded or electrically amplified calls as an aid in taking any wildlife, except predatory animals and those birds not protected by state or federal law; amending section 26-301, R.C.M. 1947....Page 644
197	186		An act to amend section 87-135, R.C.M. 1947, which section is a part of the unemployment compensation law, by providing penalties for filing delinquent contribution reports; amending the penalty and interest provisions on past-due contributions; deleting language no longer applicable; and increasing the penalty and interest assessment. ....Page 646
198	191		An act to provide for the filling of vacancies and anticipated vacancies in the legislature; amending sections 43-202, 43-215, and 43-216, R.C.M. 1947; and repealing section 59-604, R.C.M. 1947. ....Page 647
199	215		An act to provide civil remedies for damage caused by trespassing bison. ...Page 649
200	229		An act to clarify the order of priorities for the distribution of the assets of liquidated insurance companies and giving the receiver earlier access to the use of assets of insolvent insurance companies; amending section 40-5127, R.C.M. 1947....Page 649
201	234		An act to amend subsections (2), (c), and (d) of section 87-108 to eliminate the Board of Labor Appeals as a party defendant; to permit the Employment Security Division to appeal decisions of the Board of Labor Appeals; and to provide time for appeal....Page 651
202	250		An act revising representation on the Board of Crime Control; clarifying the functions of the Board of Crime Control; deleting transitional provisions; amending section 82A-1207, R.C.M. 1947....Page 653
203	262		An act to amend sections 79-308 and 81-102, R.C.M. 1947, to authorize the Board of Investments to execute deeds to transfer title of real property obtained through foreclosure of any investments....Page 654
204	314		An act amending section 69-6508, R.C.M. 1947, to change the method of filling vacancies on the Environmental Quality Council. ....Page 655
205	361		An act to permit the chairman of the Public Service Commission or his designee to approve travel expense claims; amending section 70-134, R.C.M. 1947. ..Page 656
206	405		An act to require notification to the Arson Bureau whenever a person convicted of arson or acquitted of arson on the ground of mental disease or defect is admitted or released by a penal or mental facility. ....Page 656
207	415		An act to provide for $7.50 in court costs in justices' courts for each preliminary hearing held and to provide that justice's court costs in criminal actions shall be withheld regardless of the court's finding or the sentence imposed; amending section 25-310, R.C.M. 1947. ....Page 657
208	430		An act for the general clarification and revision of the Occupational Disease Act of Montana....Page 658
209		95	An act to amend sections 84-5902, 84-5906, and 84-5907, R.C.M. 1947, relating to the micaceous mineral mines license tax. ....Page 671
210		373	An act to change the date for renewing aircraft registration; clarifying other provisions related to aircraft registration; correcting obsolete references; amending sections 1-325, 1-326, and 84-4218, R.C.M. 1947. ....Page 673
211		379	An act to permit the assessment of a camper at the time the motor vehicle to which the camper is customarily attached is assessed; amending sections 53-647 and 84-406, R.C.M. 1947....Page 675
212		476	An act to require insurers transacting professional liability insurance to include in their annual statement to the insurance commissioner certain statistics and information....Page 676

HeinOnline -- 1977 Vol. I xvii 1977

Chap. Num.	Senate Bill	House Bill	Title
213		490	An act to allow the Board of Medical Examiners to waive personal appearances before the board prior to issuing a license to practice medicine; amending section 66-1027, R.C.M. 1947.....Page 678
214		514	An act to allow retirees under the statewide police reserve fund, the highway patrolmen's retirement system, the game wardens' retirement system, the public employees' retirement system, the sheriffs' retirement system, and the judges' retirement system who are enrolled in an employee group insurance plan to have the monthly premium deducted from their retirement benefits and paid directly to the carrier; amending sections 11-1845, 31-221, 68-1420, 68-2620, and 93-1126, R.C.M. 1947; providing an immediate effective date.....Page 679
215		709	An act to delete portions of section 40-3909, R.C.M. 1947, relating to dependents' coverage under group life insurance policies.....Page 682
216		736	The Reciprocal Agreement for Collection of Wages Act of 1977.....Page 683
217	207		An act to authorize use of the word "bank" in the name or title of any bank holding company registered with the Federal Reserve System.....Page 684
218	335		An act to amend section 94-5-607, R.C.M. 1947, "endangering welfare of children", to make it clearly applicable to all persons, whether or not they have custody of the children; and to redefine the scope of the offense.....Page 685
219	349		An act to provide for the nonpartisan election of city judges under the commission-manager form of government and to provide for a 4-year term for such city judges; providing for the initial election; providing for qualification of a city judge; providing for filling a vacancy in the office of city judge; amending section 11-3271, R.C.M. 1947; and providing an immediate effective date.....Page 686
220	356		An act to provide for a statute of limitations for legal malpractice actions and to clarify the effect of disabilities on statutes of limitations; amending section 93-2703, R.C.M. 1947.....Page 687
221	395		An act to provide that a highway patrolman receive regular duty pay while responding to a subpoena in a civil or criminal cause when called in connection with his official patrol duties and that the Department of Justice may bill the person or organization requesting the issuance of the subpoena for reimbursement for the patrolman's time.....Page 688
222	396		An act amending section 91A-5-303, R.C.M. 1947, to provide for discretionary rather than mandatory appointment of counsel in a proceeding to determine incapacity and the need to appoint a guardian for a person alleged to be incapacitated.....Page 688
223	397		An act amending section 91A-3-203, R.C.M. 1947, to provide for court appointment of any qualified person as personal representative of a decedent's estate when two or more persons having priority of appointment cannot agree in nominating another to act for them or in applying for appointment.....Page 689
224		63	An act to generally revise and clarify the laws relating to police retirement and death and disability benefits; amending sections 11-1823, 11-1825, 11-1828, 11-1829, 11-1830, 11-1836, 11-1838, 11-1839, 11-1840, 11-1842, 11-1843, 11-1844, 11-1845, 11-1850, 82A-222, and 82A-223, R.C.M. 1947; repealing sections 11-1821.1 and 11-1824, R.C.M. 1947.....Page 690
225		116	An act to amend section 93-601-2 and 93-701-4, R.C.M. 1947, to extend reporter's privilege to information obtained for communication to the public.....Page 697
226		196	An act to create certain exemptions to the inspection and permitting system for enforcement of the state plumbing code; amending section 66-2427, R.C.M. 1947.....Page 699
227		202	An act to raise the limitation on the amount of recovery from parents of children who willfully destroy property from $300 to $1,500; amending sections 61-112.1 and 61-112.2, R.C.M. 1947.....Page 701
228		371	An act to provide for a definition of death.....Page 701
229		414	An act to repeal section 82A-217, R.C.M. 1947, which substitutes the words "Department of Administration" for "State Budget Director" or "budget director" in certain sections of Title 43, Chapter 10, R.C.M. 1947; and providing an immediate effective date.....Page 702
230		623	An act to amend section 82-1919, R.C.M. 1947, to permit the Department of Institutions to purchase clothing items without conforming to bid requirements of section 82-1917, R.C.M. 1947.....Page 702
231		641	An act to revise the procedure relating to alleged violations of youth aftercare agreements; amending section 80-1414.1, R.C.M. 1947.....Page 703

HeinOnline -- 1977 Vol. I xviii 1977

Chap. Num.	Senate Bill	House Bill	Title
232	10		An act for the general revision and clarification of the laws relating to aeronautics; amending sections 1-401, 1-502, 1-701, 1-702, 1-704, 1-903, 1-912, 1-918, and 1-1101, R.C.M. 1947; and repealing sections 1-829 through 1-832 and 1-1001 through 1-1005, R.C.M. 1947.....Page 704
233	22		An act to change the makeup of the Board of Morticians to include a representative of the public; amending section 82A-1602.16, R.C.M. 1947.....Page 712
234	40		An act removing and clarifying statutory references to sovereign or governmental immunity to coordinate those references with Article II, section 18, of The Constitution of the State of Montana or provisions of Title 82, Chapter 43, R.C.M. 1947, as amended; amending sections 1-502, 16-1802, 17-205, 32-4722, 40-4401, 40-4402, 75-8310, and 93-2815, R.C.M. 1947; and repealing sections 11-1305, 11-1306, 16-2731, 16-2732, 16-2733, 31-172, 69-6405, 75-5940, and 46-243, R.C.M. 1947.....Page 712
235	47		An act to provide for the management of the bobcat as a fur-bearing animal; amending sections 26-201, 26-202.1, 26-301, 26-303.5, 46-1902, and 46-1903, R.C.M. 1947.....Page 716
236	79		An act to exempt passenger automobiles from the requirements for a special fuel dealers' license; amending section 84-1833, R.C.M. 1947; and providing an immediate effective date.....Page 725
237	134		An act to repeal the requirement for motor vehicle inspection in Montana; repealing sections 53-1101 through 53-1115, R.C.M. 1947.....Page 728
238	144		An act to authorize county superintendents of schools to request, accept, and disburse moneys available from federal, state, and private sources for purposes of public education in those districts which do not employ a district superintendent or other districts.....Page 729
239	147		An act to amend section 32-1124, R.C.M. 1947, to revise the manner in which excess weight penalties are computed when the operator is found to be driving an overweight vehicle at the first open state scale.....Page 729
240	187		An act to generally revise the administrative and criminal penalties for making false statements or representations or failure to disclose a material fact in order to obtain or increase unemployment compensation benefits and to provide for criminal prosecution for the fraudulent receipt of unemployment compensation benefits.....Page 730
241	260		An act to provide a cost-of-living increase and to change certain allowance provisions in the Public Employees' Retirement System; amending sections 68-2003, 68-2101, 68-2103, 68-2104, 68-2203, and 68-2304, R.C.M. 1947.....Page 732
242	283		An act to amend section 15-2016, R.C.M. 1947, to increase the fees for registration of broker-dealers, investment advisors, and salesmen; allowing the commissioner to retain all fees even if application is withdrawn or denied; creating a fee for requests for exemptions or exceptions to the securities act.....Page 735
243	312		An act to provide that registration fees and the reflectorization fee assessed upon motor vehicles being registered or reregistered do not apply in the event a number plate is transferred to a replacement vehicle; amending sections 53-106, 53-122, 53-146, and 53-147, R.C.M. 1947.....Page 736
244	322		An act to clarify stopping and lighting requirements for school buses; amending sections 32-2193 and 32-2197, R.C.M. 1947.....Page 741
245	373		An act to require testing of milk by the Department of Business Regulation to determine the value of raw milk.....Page 742
246	437		An act to establish a joint underwriting association for medical liability insurance.....Page 743
247		73	An act to exclude income derived from the purchase of or participation in loans secured by mortgages, trust indentures, or other security interests in real or personal property from the application of the corporation income tax; amending section 84-6903, R.C.M. 1947; and providing an effective date.....Page 748
248		96	An act to permit the Department of Revenue to contract with commercial collection agencies for the collection of debts owed the state by debtors residing outside the state and requiring the transfer rather than assignment of debts from state agencies to the Department of Revenue for collection; amending sections 84-7104 through 84-7107, R.C.M. 1947.....Page 749
249		108	An act to amend section 84-709, R.C.M. 1947, relating to appeal to the State Tax Appeal Board and hearing by requiring the county tax appeal boards to mail copies of their decisions to the Property Assessment Division of the Department of Revenue; lengthening the time for appeal of county tax appeal board decisions and

CONTENTS

Chap. Num.	Senate Bill	House Bill	Title
			lengthening the time for notice of hearing; and providing an immediate effective date....Page 750
250		113	An act to provide for a penalty for persons, businesses, or corporations moving mobile homes on which property taxes are delinquent....Page 751
251		308	An act to amend and revise the laws relating to motor vehicle wrecking facilities; amending sections 69-6801 and 69-6805, R.C.M. 1947....Page 752
252		437	An act to revise Title 69, Chapter 68, R.C.M. 1947; authorizing the Department of Health and Environmental Sciences to initiate and maintain actions to collect a civil penalty; clarifying the authority of the department to require the shielding of motor vehicle wrecking facilities and motor vehicle graveyards; clarifying and coordinating the responsibilities of the Department of Health and Environmental Sciences and the Department of Highways under Title 32, Chapter 45, R.C.M. 1947; and amending sections 32-4516, 32-4519, 69-6801, 69-6802, 69-6803, 69-6806, 69-6807, 69-6808, 69-6810, and 69-6812, R.C.M. 1947....Page 753
253		495	An act to enable water users' associations to have input into and appeal from decisions of the Department of Natural Resources and Conservation relating to repair and maintenance in excess of $25,000 on water projects involving an association and to require legislative approval for abandonment of projects whenever there is sufficient protest by an association....Page 758
254		516	An act to amend section 60-145, R.C.M. 1947, to provide for crediting interest and income from oil producers license tax to the Board of Oil and Gas Conservation account....Page 759
255		551	An act to allow business inventories to be reported for property tax purposes as they are reported to the Internal Revenue Service....Page 761
256		553	An act to encourage exploration for natural gas by exempting new gas production consumed in Montana from one-half of the net proceeds tax and all the severance tax for a 3-year period; amending sections 84-2202, 84-2207, 84-6204, and 84-6208, R.C.M. 1947....Page 762
257		583	An act to clarify the accrual characteristics of the corporation license tax; amending section 84-1501, R.C.M. 1947....Page 765
258		637	An act amending section 84-1835, R.C.M. 1947, to provide for a 1% credit to special fuel dealers for shrinkage, spillage, and leakage of special fuels....Page 767
259		645	An act to provide group health insurance coverage for retired public employees and their surviving spouses and children; amending section 11-1024, R.C.M. 1947....Page 770
260		755	An act revising the laws relating to the assessment of livestock; amending sections 84-406, 84-5201.1, 84-6010, 84-6011, 84-6013, and 84-6014, R.C.M. 1947....Page 771
261		757	An act to raise the per capita license fee on sheep; amending sections 46-2102 and 46-2104, R.C.M. 1947....Page 776
262		759	An act to amend section 89-3504, R.C.M. 1947, to clearly authorize a political subdivision to adopt local land-use regulations in designated floodplains and floodways after the statutory 6-month deadline....Page 777
263		764	An act to generally revise the laws relating to auction sales; renumbering and amending sections 66-201 through 66-203, 66-203.1, 66-204 through 66-207, 66-211, 66-213, 66-216, 66-219, and 66-230, R.C.M. 1947; amending section 87A-2-328, R.C.M. 1947; and repealing sections 66-208, 66-209, 66-210, 66-212, 66-214, 66-215, 66-217, 66-218, and 66-220 through 66-229, R.C.M. 1947....Page 779
264		28	An act to amend sections 4-6-104, 94-5-609, and 94-5-610, R.C.M. 1947, to raise the legal age for consuming or possessing alcoholic beverages to nineteen and providing that the proposed act be submitted to the electors of the state of Montana....Page 782
265	4		An act for the general revision and clarification of laws relating to trade and commerce; amending sections 15-2006, 66-209, 66-212, 66-221, 66-229, 84-2412, 85-105, 85-107, 85-407, 85-408, 85-409, 85-410, 87A-1-101, 87A-9-302, 87A-9-302.2, 87A-9-401, 87A-9-405, 87A-9-406, and 93-2830, R.C.M. 1947; and repealing sections 66-214, 66-215, 66-217, and 66-218, R.C.M. 1947....Page 784
266	17		An act for the general revision and clarification of laws relating to education....Page 793
267	58		An act to amend section 66-1052, R.C.M. 1947, relating to liability of professional utilization, peer review, and professional standards committees so that the statute will apply to all health care professionals on such committees and providing an evidential privilege for committee records and member testimony....Page 818

Chap. Num.	Senate Bill	House Bill	Title
268	138		An act authorizing the Board of Public Education to employ a professional assistant and secretary; amending section 75-5612, R.C.M. 1947. ....Page 819
269	178		An act to amend section 32-1123.2, R.C.M. 1947, to define the term "axle"....Page 820
270	181		An act amending the courtesy permit for special fuel vehicles; amending section 84-1833, R.C.M. 1947; and providing an immediate effective date. ....Page 821
271	231		An act to permit establishment of common trust funds for collective investment of funds by affiliated banks or trust companies....Page 824
272	241		An act to extend and further describe the requirements for plugging and reclaiming "shot holes"; establishing additional filing requirements; providing for enforcement by the Board of Oil and Gas Conservation; providing for information to be given to the surface user; establishing additional penalties for failure to comply with those requirements; amending sections 69-3304 and 69-3308, R.C.M. 1947....Page 824
273	254		An act to amend section 71-226, R.C.M. 1947, treating welfare fraud as theft....Page 826
274	258		An act to include the sale of distillates on any basis other than gross volume delivered to be void; amending section 13-812, R.C.M. 1947....Page 826
275	287		An act to amend section 15-2006, R.C.M. 1947, to allow the Commissioner of Investments to waive the residency requirement for securities salesmen....Page 827
276	290		An act to amend section 79-108, R.C.M. 1947, to establish a stale-dated warrant account and to provide for disposition of stale-dated warrants....Page 830
277	300		An act to eliminate the county boards of school budget supervisors and transfer their duties to the boards of trustees; amending sections 75-5707, 75-5806, 75-6106, 75-6513, 75-6709, 75-6713, 75-6714, 75-6716, 75-6717, 75-6719, 75-6720, 75-6721, 75-6727, 75-6803, and 75-7203, R.C.M. 1947; and repealing sections 75-6703, 75-6715, and 75-6728, R.C.M. 1947....Page 830
278	301		An act to amend the Uniform Commercial Code with respect to the manner of holding and transferring investment securities and to authorize the deposit of investment securities with clearing corporations and federal reserve banks under certain conditions; amending sections 87A-8-102, 87A-8-320, and 82A-401.1, R.c.M. 1947....Page 839
279	326		An act to clarify the invalidation of marriages; amending section 48-311, R.C.M. 1947....Page 844
280	327		An act to authorize employees of the Department of Highways who enforce motor transport weight and safety laws, and officers of the highway patrol, to also enforce provisions of the Public Service Commission law regarding types of commodities carried, etc.; requiring the Public Service Commission, the Highway Patrol Bureau, and Department of Highways to cooperate to reduce duplication of enforcement effort; and amending sections 31-110 and 32-1126, R.C.M. 1947. ....Page 845
281	358		An act amending section 92-411, R.C.M. 1947, concerning the definition of employee under the Workers' Compensation Act, by removing superfluous language, clarifying the coverage of casual employees, and clarifying the coverage of students enrolled in vocational rehabilitation or other on-the-job training courses....Page 847
282	366		An act to amend section 8-119, R.C.M. 1947, to conform the penalty for violations by a motor carrier with the jurisdiction of justice courts. ....Page 848
283	420		An act amending section 32-2406, R.C.M. 1947, to authorize the Department of Highways to review local government projects on state right-of-way and to authorize the local government unit to let contracts for construction of the same..Page 849
284		71	An act to amend sections 74-608, 74-610, and 74-611, R.C.M. 1947, to apply the specified interest rate in the case of retail installment sales to the end of the month balance as well as the average daily balance and to change the penalty for certain violations of the Retail Installment Sales Act from a criminal to a civil classification....Page 849
285		77	An act for the general revision of the laws relating to administrative procedure, amending sections 82-4201 through 82-4208, 82-4212, 82-4213, 82-4215, 82-4216, 82-4217, 82-4220 through 82-4223, 82-4227 through 82-4229, and 82A-107, R.C.M. 1947....Page 852
286		175	An act to amend sections 4-1-407, 32-3403, 68-1901, 79-306, 79-1401, 84-5606.6, and 84-723, R.C.M. 1947, relating to the deposit of moneys in the state treasury....Page 868

HeinOnline -- 1977 Vol. I xxi 1977

Chap. Num.	Senate Bill	House Bill	Title
287		226	An act to amend section 32-2143, R.C.M. 1947, to redefine reckless driving and to amend the penalties therefor. ....Page 871
288		236	An act to amend Title 69, Chapter 41, R.C.M. 1947, conferring general powers and duties upon the board and Department of Health and Environmental Sciences; authorizing the department to adopt rules for the assessment of fees in performing laboratory services; authorizing the department to bring an action for injunctive relief when a public health law, rule, or order adopted or issued as authorized by law has been violated; amending sections 69-4110 and 69-4111, R.C.M. 1947. ....Page 872
289		260	An act to provide for a mandatory minimum sentence of imprisonment of 10 days, the imposition or execution of which may not be deferred or suspended, for persons convicted of a third or subsequent offense of driving under the influence of intoxicating liquor or drugs; amending section 32-2142, R.C.M. 1947. ....Page 873
290		305	An act to establish a state policy for adult basic education, allowing a state fund administered by the Superintendent of Public Instruction for its support; amending section 75-7512, R.C.M. 1947. ....Page 875
291		404	An act to not require the registering of warrants of a school district as long as there are moneys available in any district fund; amending section 75-6805, R.C.M. 1947. ....Page 876
292		468	An act amending section 40-3520, R.C.M. 1947, to provide that workers' compensation insurers are excepted from fictitious group provisions. ....Page 878
293		523	An act to amend section 10-806, R.C.M. 1947, to allow the Department of Social and Rehabilitation Services to receive applications for day care licenses from Indians residing on an Indian reservation. ....Page 878
294		533	An act to define the offense of careless driving and to make it punishable as provided in section 32-21-157, R.C.M. 1947. ....Page 880
295		607	An act to allow bond in the case of traffic violations to be made by check in lieu of cash. ....Page 880
296		677	An act to change publication of notice requirements for county water and sewer districts; amending sections 16-4503, 16-4505, 16-4507, 16-4520, 16-4527, and 16-4533, R.C.M. 1947. ....Page 881
297		685	An act to amend laws relating to tenants' security deposits to allow deductions for cleaning expenses and to delete requirement for verification of the list of damages; amending sections 42-301, 42-303 through 42-305, and 42-308, R.C.M. 1947. ....Page 889
298		742	An act to revise laws relating to cooperative marketing associations, providing for perpetual existence, changing provisions relating to amendment and filing of articles of incorporation and amendment of bylaws, providing for reserves and distribution of net earnings, and providing for merger of such associations; amending sections 14-408, 14-409, and 14-410, R.C.M. 1947. ....Page 892
299		763	An act to revise the attachment law; providing for judicial supervision of the issuance of a writ of attachment and providing for preseizure notice and hearing or in certain cases for immediate postseizure hearing; amending sections 93-4301, 93-4304, and 93-6908, R.C.M. 1947; and repealing section 93-4302, R.C.M. 1947. ....Page 896
300		815	An act to allow public employees who are absent from work because of employment-related injury to continue payments to the retirement system and to provide for payment of employer retirement contributions during the absence; amending section 68-1606, R.C.M. 1947. ....Page 899
301	128		An act to amend section 81-1404, R.C.M. 1947, to provide that timber from state forests may be sold on an accelerated advertising schedule in emergency cases. ....Page 899
302	131		An act to change the date of election for commissioners of irrigation districts from the first Saturday in April to the first Tuesday in April; amending section 89-1303, R.C.M. 1947. ....Page 900
303	219		An act requiring an agreement of bulk reinsurance by a foreign or alien insurer to be approved by the Commissioner of Insurance and allowing the commissioner to require a deposit. ....Page 901
304	261		An act to authorize the Board of Land Commissioners to issue agricultural and grazing leases for other than 10-year terms in order to achieve uniformity in the number of lease renewals per year; and to provide for a termination date...Page 902
305	270		An act to provide for deletion of price agreements and approval by the Board of Cosmetologists; to provide for a temporary license for a cosmetological establish-

HeinOnline -- 1977 Vol. I xxii 1977

Chap. Num.	Senate Bill	House Bill	Title
			ment for a limited period and until inspection is made; to provide that the Board of Cosmetologists may provide for a 2- or 3-year renewal and that the renewal date may be changed by rule for the manager-operator and salon owner category and placing limits on the renewal fee; and to provide for increased late renewal fees; amending sections 66-806, 66-813.1, and 66-816, R.C.M. 1947.....Page 902
306	277		An act to revise the horse racing law to provide authority for the Board of Horse Racing to deny an application for relicensure for up to 2 years for violation of the law or rules and orders of the board; and to provide that a race meet licensee shall pay to Montana-bred winners 10% of only that part of the winner's purse that the race meet licensee has contributed; amending sections 62-508 and 62-509, R.C.M. 1947; and providing an immediate effective date.....Page 904
307	316		An act to provide for the use of water that is now unappropriated but may not be available at all times and for all uses; amending section 89-885, R.C.M. 1947.....Page 905
308	393		An act to provide for enforcement of the state air and water pollution laws by the Department of Health and Environmental Sciences against persons resident in Canada and persons who cannot be located in Montana; amending sections 69-3906, 69-3921.1, 69-4802, and 69-4820.1, R.C.M. 1947.....Page 905
309		43	An act for the general revision and clarification of the laws relating to the legislature and the laws.....Page 909
310		300	An act to generally revise the laws relating to licensure of radiologic technologists and providing an immediate effective date; amending sections 66-3701, 66-3705, 66-3706, 66-3707, 66-3708, and 66-3709, R.C.M. 1947.....Page 922
311		526	An act to require the Board of Land Commissioners to lease state land to the highest bidder except under certain conditions; amending section 81-405, R.C.M. 1947.....Page 925
312		669	An act allowing the movement of cattle to an adjacent county for grazing purposes under a transportation permit used in lieu of a county line brand inspection; amending sections 46-801.2 and 46-802, R.C.M. 1947.....Page 926
313		80	The Montana Residential Landlord and Tenant Act of 1977; repealing sections 42-201 and 42-204, R.C.M. 1947.....Page 930
314	132		An act to amend section 89-1607, R.C.M. 1947, by deleting the provision which permits sale or assignment of excess water by an owner of water in an irrigation district; providing an effective date.....Page 946
315	194		An act for the general revisions of laws relating to seed warehouses; amending sections 3-310, 3-311, 3-313, 3-316, 3-802.4, 3-1902, 3-1907, and 3-1908, R.C.M. 1947.....Page 947
316	223		An act to authorize the Board of Investments to purchase mortgages insured by a qualified private mortgage insurer, and first mortgage participations; revising down payment and insurance requirements for eligible mortgage paper; amending section 79-310, R.C.M. 1947.....Page 953
317	265		An act providing that a quorum of the Board of Professional Engineers and Land Surveyors is four members; allowing the board to establish a fee for furnishing the roster to the public; revising and clarifying provisions relating to application for registration and fees; and providing that no municipality or political subdivision of the state may impose an additional registration, license fee, or tax on a registrant of this board; amending sections 66-2352, 66-2356, and 66-2358, R.C.M. 1947; repealing section 66-2364, R.C.M. 1947.....Page 955
318	289		An act to amend section 79-109, R.C.M. 1947, to revise the provisions for issuing a duplicate warrant.....Page 957
319	291		An act to amend section 40-2807, R.C.M. 1947, to increase the capital and surplus requirements for insurance companies transacting business in Montana and to provide a 3-year saving clause.....Page 958
320	292		An act to generally revise the laws on unfair insurance claim settlement, favored agent practices, and enforcement procedures and penalties; amending sections 40-3501, 40-3512, and 40-3514, R.C.M. 1947; repealing section 40-3516, R.C.M. 1947.....Page 960
321	293		An act to increase the fee charged by the Commissioner of Insurance when served with copies of legal process; amending section 40-2819, R.C.M. 1947.....Page 964
322	294		An act to amend section 40-2726, R.C.M. 1947, to provide for a nonresident insurance agent's license fee and increase the fee required for the insurance commissioner's certificate under seal.....Page 965
323	298		An act to amend sections 89-3602, 89-3604, 89-3605, 89-3606, and 89-3608, R.C.M.

HeinOnline -- 1977 Vol. I xxiii 1977

Chap. Num.	Senate Bill	House Bill	Title
			1947, to transfer certain administrative duties from the Department of Administration to the Department of Natural Resources and Conservation under the Renewable Resource Development Program. ....Page 967
324	357		An act amending section 92-1002, R.C.M. 1947, regarding the election of an employer to be bound by compensation plan No. 2, by requiring that workers' compensation policies written by private insurance carriers be written on a continuous basis until prior notice has been submitted to the division that the policy will be terminated; and repealing sections 92-1006 and 92-1009, R.C.M. 1947....Page 972
325	443		An act to amend section 34-302, R.C.M. 1947, to clarify the definition of rooming houses and other similar accommodations; to prohibit such accommodations from providing nursing service on a full-time basis; and to provide for compliance. ....Page 972
326		307	An act to remove the statutory qualifications for the Director of Health and Environmental Sciences; amending sections 82A-601 and 82A-608, R.C.M. 1947....Page 974
327		338	An act to amend section 71-1520, R.C.M. 1947, to allow county determination of eligibility for medicaid....Page 974
328		348	An act entering into the Interstate Agreement on Qualification of Educational Personnel and for related purposes; and providing an effective date....Page 975
329		596	An act to restore the spending authority of a school district upon the deposit of a refund or rebate....Page 979
330		741	An act to revise the law regarding the Game Wardens' Retirement System to clarify funding for that system, to amend the provisions regarding continuation in that system or in the Public Employees' Retirement System, and to clarify the nomination of a beneficiary; amending sections 68-1401, 68-1402, 68-1405, 68-1407, 68-1410, 68-1421, and 68-1429, R.C.M. 1947. ....Page 979
331		765	An act to generally revise the laws relating to the Teachers' Retirement System and to ensure favorable advance determination from the United States Internal Revenue Service with respect to qualified tax status; amending sections 75-6201, 75-6205, 75-6206, 75-6207, 75-6208, 75-6209, 75-6212, 75-6214, and 75-6216, R.C.M. 1947; and providing an immediate effective date. ....Page 982
332		794	An act defining the trustee and fiduciary responsibilities of the retirement boards of the Highway Patrolmen's Retirement System, the Game Wardens' Retirement System, the Public Employees' Retirement System, the Sheriffs' Retirement System, and the Judges' Retirement System; revising and clarifying the law pertaining to these trustee and fiduciary responsibilities and the calculation and payment of retirement allowances; amending sections 31-201, 31-206, 31-220, 68-1401, 68-1405, 68-1406, 68-1419, 68-1503, 68-1803, 68-1901, 68-2002, 68-2003, 68-2004, 68-2104, 68-2203, 68-2501, 68-2602, 68-2604, 68-2619, 93-1112, and 93-1125, R.C.M. 1947; and repealing section 68-1425, R.C.M. 1947....Page 995
333		804	An act to permit legislators to continue to participate in public retirement systems while serving in the Montana Legislature; providing an immediate effective date and retroactive application to January 1, 1977....Page 1008
334	33		An act to generally and substantively revise, repeal, and recodify the election laws relating to the criminal provisions for election and campaign practices.....Page 1009
335	83		An act relating to civil defense, disaster, and emergency services; providing powers, duties, and authority for preparedness and assistance in emergencies and disasters; amending sections 77-2301, 77-2302, 77-2303, 77-2304, 77-2306, 77-2309, 77-2310, and 77-2311, R.C.M. 1947; and repealing sections 77-2305 and 77-2307, R.C.M. 1947; and providing an immediate effective date. ....Page 1024
336	111		An act to define the term enhanced recovery; to substitute the term enhanced recovery for the terms pressure maintenance and secondary recovery; and to provide for recovery of costs of an enhanced recovery program initiated subsequent to a secondary recovery program; amending sections 60-126, 60-131.1, and 60-131.3, R.C.M. 1947....Page 1037
337	119		An act to enable peace officers to retain all privileges and immunities from liability, and all pension, insurance, salary, and other benefits to which they are normally entitled when responding to or providing assistance to any other peace officer who has called for assistance and providing guidelines for reimbursement of entities whose employees assist other entities under this act. ....Page 1040
338	149		An act to provide for the imposition of the death penalty in certain cases; to provide procedures and requirements for the authorization of such penalty; to provide for a separate sentencing hearing to determine the existence or nonexistence of aggravating or mitigating circumstances; to provide that the death penalty may not be imposed unless the court finds one or more of the aggravating circumstances

HeinOnline -- 1977 Vol. I xxiv 1977

Chap. Num.	Senate Bill	House Bill	Title
			and finds that there are no mitigating circumstances sufficiently substantial to call for leniency; to provide that the determination of the court shall be supported by specific written findings of fact; to provide for automatic review of a judgment of conviction and sentence of death; amending sections 94-5-102, 94-5-303, 94-5-617, and 94-5-622, R.C.M. 1947; repealing sections 94-5-105, 94-5-304, and 95-2206.1, R.C.M. 1947. ....Page 1041
339	228		An act to provide an efficient centralized records retention and destruction program for all state agencies; repealing sections 82-3311, 82-3312, and 82-3313, R.C.M. 1947. ....Page 1046
340	385		An act to revise the law regarding eligibility for parole and the merger of sentences when a second crime is committed while in prison or on parole or furlough; amending sections 95-2213, 95-3214, and 95-3215, R.C.M. 1947; repealing section 95-2206.5, R.C.M. 1947. ....Page 1050
341	389		An act to repeal the sections establishing the Educational Broadcasting Commission and its duties; to provide that the Department of Administration shall foster the development of new communication systems; amending section 82-3325, R.C.M. 1947; repealing sections 75-9001 through 75-9004 and 82A-511, R.C.M. 1947; providing an immediate effective date. ....Page 1052
342	403		An act to generally revise the laws implementing the constitutional right of the people to petition for initiative and referendum on statewide issues; amending sections 23-2704, 23-2802, 23-3326, and 89-2330.3, R.C.M. 1947; and repealing sections 37-101 through 37-104, 37-104.1, 37-104.2, 37-104.3, 37-104.4, 37-104.5, 37-104.6, 37-104.7, 37-104.8, 37-104.9, 37-104.10, 37-105 through 37-110, and 37-201 through 37-203, R.C.M. 1947. ....Page 1054
343	429		An act to generally revise and clarify the laws relating to the Board of Examiners; amending sections 3-2605, 5-1117, 31-104, 31-105, 41-908, 41-1603, 53-101, 75-8427, 75-8605, 75-8801, 79-901, 82-401, 82-1519, 82A-207, 83-606, 83-704, 87-130, and 95-3124, R.C.M. 1947; amending section 82A-207, R.C.M. 1947, to delete provision enabling board to hire its own personnel; and repealing sections 75-8802 and 79-305, R.C.M. 1947. ....Page 1068
344		46	An act to generally revise and clarify the laws relating to the judiciary and the courts of the State of Montana. ....Page 1080
345		100	An act to change the amount allowed for delinquent taxes when computing levies for state purposes from 12% to 6%; amending sections 84-713 and 84-3803, R.C.M. 1947. ....Page 1100
346		157	An act to amend section 84-4931, R.C.M. 1947, providing specifically that the divulging of federal return information contained on a state tax return is unlawful. ....Page 1100
347		186	An act to place time limits on the holding of a county bond election, and to require the county clerk to deliver the petition to the county commissioners; amending sections 16-2021 and 16-2022, R.C.M. 1947. ....Page 1102
348		309	An act to require that protest of any tax or license shall be made only on those portions of the tax or license that are deemed unlawful; only that portion of the tax or license deemed unlawful shall be deposited in the protest fund; amending section 84-4502, R.C.M. 1947. ....Page 1103
349		321	An act to limit the Department of Revenue's obligation to compute or levy a tax on any new taxing jurisdiction created after January 1 of each year. ....Page 1104
350		351	An act to declare that persons may serve as assistant athletic coaches in private or parochial high schools without being regular faculty members. ....Page 1105
351		537	An act to provide in the alternative forms of local government for the election of local government commissioners by a plan involving election at large and nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside; amending sections 47A-3-203, 47A-3-204, 47A-3-205, 47A-3-206, and 47A-3-208, R.C.M. 1947. ....Page 1105
352		558	An act to convert the 1-year operating permits under the Montana Strip and Underground Mine Reclamation Act and Coal Conservation Act into 5-year permits with annual reporting requirements; amending sections 50-1039, 50-1040, 50-1044, and 50-1404, R.C.M. 1947; and repealing section 50-1049, R.C.M. 1947. ....Page 1119
353		584	An act to authorize the Director of Revenue to enter into closing agreements relating to taxes imposed by Chapters 15, 49, and 69, of Title 84, R.C.M. 1947. ....Page 1124
354		620	An act to coordinate the requirements for public hearings contained in the Taxpayers Information Act and the school budget system; amending sections 75-6709 and 84-7204, R.C.M. 1947. ....Page 1126

HeinOnline -- 1977 Vol. I xxv 1977

Chap. Num.	Senate Bill	House Bill	Title
355	118		An act to change the first and last meeting date for county tax appeal boards, changing the terms of appointment of county tax appeal board members, adding a special provision for an extended hearing session, and changing the date for transmitting records from county tax appeal boards to the State Tax Appeal Board; amending sections 84-601, 84-603, and 84-604, R.C.M. 1947; and providing an effective date. ....Page 1127
356		283	An act to increase the percentage of moneys received under the Federal Mineral Lands Leasing Act which is paid into the earmarked revenue fund for state equalization aid to public schools of the state and to change certain terminology; amending section 75-6916, R.C.M. 1947. ....Page 1129
357		284	An act to reduce the percentage of moneys received under the Federal Mineral Lands Leasing Act which is paid into the state highway account in the earmarked revenue fund, and to change certain terminology; amending section 79-211, R.C.M. 1947. ....Page 1129
358	179		An act to submit to the qualified electors of Montana an amendment to Article V, section 9, of the Montana Constitution to provide that a member of the Legislature may run for public office during his term. ....Page 1130
359	34		An act for the general revision of the laws concerning crimes. ....Page 1130
360	53		An act to authorize establishment of self-insurance programs for state and local governmental entities with certain guidelines; to clarify the means by which claims against governmental entities may be settled; to clarify the means by which judgments against governmental entities may be satisfied; amending sections 82-4303, 82-4305, 82-4306, 82-4309, 82-4311, 82-4312, 82-4318, and 82-4319, R.C.M. 1947; and repealing sections 82-4313 through 82-4317, 82-4326, 83-701 through 83-706, 83-706.1, and 83-707, R.C.M. 1947. ....Page 1172
361	105		An act to include the use of drugs for diagnostic purposes within the definition of the practice of optometry and to require a course in pharmacology by optometrists for the use of diagnostic agents; amending section 66-1301, R.C.M. 1947. ....Page 1175
362	165		An act for the general revision of the cropland spraying program for insect control relating to definitions; cropland spraying program—powers of department; cropland spraying program—duties of department; financing of cropland spraying program; computation and collection of assessments on landowners; rangeland spraying programs—powers of department; amending sections 3-3501 through 3-3506, and 16-1152, R.C.M. 1947. ....Page 1176
363	202		An act to authorize only Montana-chartered building and loan associations to consolidate or merge and to prohibit branching de novo; amending section 7-113.2, R.C.M. 1947; and providing an immediate effective date. ....Page 1179
364		795	An act amending the Montana Recall and Advisory Recall Act, Initiative No. 73, to clarify the scope of its application, to specify grounds for recall, to establish more defined responsibilities on the part of petitioners, to correct and clarify certain administrative provisions of the act, to remove advisory recall procedures for U.S. district judges, to remove the application of the act to representatives in Congress, to correct certain errors in form, and to repeal conflicting statutes; amending sections 1, 2, 4, 7, 8, 10, 11, 13, 15, 16, 17, and 19 of the Montana Recall and Advisory Recall Act; and repealing sections 11-721.1, 11-3132, 11-3220, and 11-3540, R.C.M. 1947, and sections 20, 21, 22, 23, and 24 of the Montana Recall and Advisory Recall Act. ....Page 1180
365	27		An act to generally revise and clarify the laws relating to elections and to repeal sections 23-3021, 23-3030, and 23-4404, R.C.M. 1947. ....Page 1186
366	72		An act to create an historic records network between the Montana Historical Society and the Montana University System; amending sections 44-517 and 44-523, R.C.M. 1947. ....Page 1224
367	182		An act concerning piracy of sound recordings and live performances and the transfer of recorded sound without permission of the lawful owner; providing penalties for violations and an immediate effective date. ....Page 1226
368	336		An act providing for qualification of military service for police retirement purposes. ....Page 1229
369		447	An act to delete the requirement that a registrar must notify electors whose voting registration is being cancelled; amending section 23-3013, R.C.M. 1947....Page 1229
370		455	An act providing for the duties of personal representatives or special administrators in estates involving alien heirs and providing an immediate effective date. ....Page 1230
371		488	An act to authorize the Department of Administration to practice architecture on

Chap. Num.	Senate Bill	House Bill	Title
			all state building projects up to $25,000 in value; amending section 82-3320, R.C.M. 1947.....Page 1231
372		635	An act to increase the amount of money deposited to the state park account in the earmarked revenue fund from the gasoline dealers' license tax; amending section 32-2601, R.C.M. 1947.....Page 1231
373	11		An act providing for the editing and publishing of the proceedings of the 1972 Constitutional Convention and creating a three-member committee to supervise the editing and publishing; and providing an effective date.....Page 1232
374	100		An act to amend sections 84-4939 and 84-4940, R.C.M. 1947, relating to estimated tax by specifying no penalty provisions.....Page 1234
375	112		An act to repeal sections 84-6301 through 84-6308, R.C.M. 1947, relating to the importer's tax on gasoline purchased outside the state and used in the state.....Page 1236
376	129		An act to provide financial support for the Montana University System. ..Page 1237
377	137		An act to allow waiver of filing of a monthly special fuel user's tax return for a user who establishes that his annual tax liability will be $100 or less; amending section 84-1835, R.C.M. 1947.....Page 1237
378	237		An act to revise the makeup of the Board of Real Estate; amending section 82A-1602.23, R.C.M. 1947.....Page 1240
379	365		An act subrogating the Department of Social and Rehabilitation Services to the rights of recipients of medical assistance; amending sections 71-235, 71-308, 71-511, 71-1524, and 93-2601-51, R.C.M. 1947.....Page 1241
380	386		An act to regulate the relationship between new motor vehicle dealers and new motor vehicle manufacturers, distributors, and importers; providing for the licensing of new motor vehicle manufacturers, distributors, and importers; providing for administration by the Department of Business Regulation; providing for the regulation and review of transactions between new motor vehicle dealers and new motor vehicle manufacturers, distributors, and importers; providing for the limitation of new motor vehicle dealer's products liability; providing for notice, hearing, and appeal in disputes between new motor vehicle dealers and new motor vehicle manufacturers, distributors, and importers; prohibiting coercion of new motor vehicle dealers; and providing for civil and criminal penalties; and providing an effective date.....Page 1246
381	426		An act providing for the succession of interest by designated family members to the ownership interests of a motor vehicle dealership upon the death or incompetency of the dealer; providing a method of protest by manufacturers, distributors, or importers; providing notice and opportunity for hearing before the Department of Business Regulation; providing for appeal to the district court; providing penalties and damages; and providing an effective date.....Page 1254
382		340	An act to provide a portion of the fuel tax for development and maintenance of snowmobile facilities; amending section 32-2601, R.C.M. 1947.....Page 1256
383		360	An act providing for the licensing and regulation of home health agencies in Montana by the Department of Health and Environmental Sciences. .....Page 1258
384		363	An act to authorize the use of videotape equipment to record the testimony of the victim in a case arising under section 94-5-503, R.C.M. 1947, sexual intercourse without consent.....Page 1261
385		384	An act to exempt managers of low income, government-subsidized housing complexes from the Real Estate License Act of 1963; amending section 66-1926, R.C.M. 1947.....Page 1262
386		402	An act to provide for collection of delinquent taxes owed by corporations delinquent in filing their annual corporate report; amending section 87-136, R.C.M. 1947.....Page 1263
387		415	An act to exempt from taxation buildings owned by a public entity and located upon public airports and leased to private interests; amending section 84-207, R.C.M. 1947.....Page 1265
388		485	An act regarding the use and administration of corporal punishment in public schools; amending section 75-6109, R.C.M. 1947.....Page 1265
389		547	An act to change the deposit of surplus property income from the federal and private grant clearance fund to the revolving fund.....Page 1266
390		769	An act to designate a state maintenance system for public highways and to provide additional funding therefor by increasing the tax on gasoline and special fuels by ¼ cent per gallon; amending sections 84-1832.1 and 84-1847, R.C.M. 1947.....Page 1267

HeinOnline -- 1977 Vol. I xxvii 1977

Chap. Num.	Senate Bill	House Bill	Title
391		805	An act prohibiting the showing by movie theaters of offensive violent previews when minors are permitted to attend the movie then being featured; amending section 94-8-110.1, R.C.M. 1947. ....Page 1268
392		217	An act to submit to the qualified electors of Montana an amendment to Article VIII, section 12, of the Montana Constitution to add a section authorizing establishment of an interim legislative committee to approve or disapprove budget amendments to spend funds not appropriated at the preceding session.....Page 1269
393	102		An act establishing the method of assessing swine after 1976; enacting a new R.C.M. section and amending section 84-202, R.C.M. 1947. ....Page 1270
394	150		An act to provide for the payment of interest for recovery of taxes paid under protest; and amending section 84-4502, R.C.M. 1947. ....Page 1272
395	209		An act to empower conservation districts to deal with saline seep and other soil and water quality problems; amending section 76-108, R.C.M. 1947.....Page 1274
396		5	An act to establish the office of court administrator. ....Page 1276
397		68	An act removing barriers to more efficient delivery of forest fire protection services to Montana's forest and farm resources by simplifying the forest fire assessment system, expanding the responsibility and authority of counties in providing protection for forest and farm resources, and clarifying statutes relating to firewardens; amending sections 28-103, 28-105, 28-106, 28-109, 28-110, 28-111, 28-114, 28-117, 28-118, 28-122, 28-129, 28-601, 28-602, 28-603, 81-1411, 81-1412, and 81-1415, R.C.M. 1947; and repealing sections 28-125, 28-128, and 28-604, R.C.M. 1947. ....Page 1277
398		105	An act to permit the Department of Revenue to pay administrative expenses of the Liquor Division from the revolving fund appropriated by the Legislature; amending section 4-1-406, R.C.M. 1947....Page 1284
399		125	An act to change the grace period for the registration of motor vehicles from 10 to 20 days; to extend the time allowed for a dealer to forward registration papers; and to change the fine for failure to complete registration during the grace period from a graduated scale to a fixed fine of $10; amending sections 53-109, 53-109.1, 53-109.4, and 53-147, R.C.M. 1947....Page 1284
400		126	An act to amend section 26-301 by providing for the destruction of dogs attacking or killing hooved game animals. ....Page 1288
401		151	An act to change the rate and method of computing the electrical energy producers' license tax and to provide for quarterly reporting; amending sections 84-1601 through 84-1603 and 84-1605, R.C.M. 1947; and repealing sections 84-1606 and 70-805, R.C.M. 1947. ....Page 1291
402		159	An act to extend the grace period for obtaining a tax-paid decal for a snowmobile from 10 to 20 days; amending sections 53-1014 and 53-1026, R.C.M. 1947....Page 1292
403		286	An act to be called the Montana Drug Product Selection Act, allowing for product selection of certain prescribed drugs; amending sections 27-703 and 66-1523, R.C.M. 1947....Page 1294
404		324	An act to provide for an equitable method for assessments levied against corner lot property in a special improvement district. ....Page 1299
405		422	An act to incorporate the federal changes of subchapter S corporations and corporation loss carryovers contained in the Tax Reform Act of 1976; amending sections 84-1501.1, 84-1501.2, and 84-1502, R.C.M. 1947. ....Page 1300
406		428	An act to provide for minimum payments to police officers, spouses, and minor children who were receiving payments from police reserve funds prior to July 1, 1975, and to the spouses and minor children of such police officers; to provide for the means of making the additional payments required to meet the minimum; amending section 11-1849, R.C.M. 1947; providing an immediate effective date....Page 1306
407		457	An act clarifying the powers of the attorney general and county attorneys under the Montana Unfair Trade Practices and Consumer Protection Act; amending section 85-416, R.C.M. 1947; and providing an immediate effective date...Page 1308
408		484	An act, which shall be known as the "Montana Rangeland Resources Act", to be administered by the Department of Natural Resources and Conservation; establishing the Montana Rangeland Resources Committee to promote the coordination of activities intended to maintain and enhance the rangeland resources of the State of Montana....Page 1309
409		492	An act to provide for the determination of inheritance tax and termination of inter-

HeinOnline -- 1977 Vol. I xxviii 1977

Chap. Num.	Senate Bill	House Bill	Title
			est in life estates, joint tenancies, and other interests; repealing sections 91-4321.1, 91-4469, and 91A-3-1205, R.C.M. 1947.....Page 1312
410		494	An act providing for the disposition of former state institutions no longer used for institutional purposes; providing an immediate effective date.....Page 1314
411		513	An act relating to the carrying of concealed weapons; amending section 94-8-210; and repealing section 94-8-211, R.C.M. 1947.....Page 1314
412		599	An act to allow an investment credit against individual income tax and corporation license tax; providing an effective date.....Page 1315
413		617	An act clarifying the tax-exempt status of the property of any nonprofit cemetery association incorporated and operated pursuant to Title 9, Chapter 1, Revised Codes of Montana.....Page 1315
414		627	An act to amend certain provisions of the Uniform Alcoholism Intoxication Act; increasing the tax on alcoholic beverages to create funding for authorized programs; establishing certain requirements for programs receiving state funding support; amending sections 4-1-401, 4-1-404, 80-2709, 80-2710, 80-2712, 80-2714, 80-2716, and 80-2717, R.C.M. 1947.....Page 1317
415		644	An act establishing a "Montana State Golden Years Pass" which allows senior citizens to enter state parks and recreational areas for a nominal administrative fee; amending section 62-305, R.C.M. 1947.....Page 1324
416		664	An act to amend sections 89-867, 89-875, 89-877, 89-880, 89-884, 89-885, 89-890, 89-892, 89-8-100, and 89-8-107, R.C.M. 1947, of the Montana Water Use Act to clarify definitions; to reduce the cost of serving copies of preliminary decrees; to clarify the findings to be made by the court in the final decree; to provide for the priority date of certain refiled applications; to terminate certain uncorrected applications; to clarify the refiling of notices of completion of small wells; to provide for the extension of time to act upon applications in extraordinary cases; to provide that an applicant for an appropriation of 10,000 acre-feet a year or more must prove by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected; to clarify the periodic review by the board of reservations of water; to provide that the department may approve changes in appropriation rights with conditions to protect other appropriators; to eliminate the right to appeal a final decision of the department to the board; to allow the United States to apply for reservations of water; to provide that attorney fees shall be awarded to the prevailing party in any court litigation on an application for a permit; and providing for an immediate effective date.....Page 1324
417		791	An act to make the department head of the Department of Fish and Game a director appointed by the governor in accordance with section 82A-106, R.C.M. 1947; to remove certain qualifications for the director of the Department of Fish and Game; to reallocate certain functions of the State Fish and Game Commission to the Department of Fish and Game; to state the powers of the State Fish and Game Commission; to provide a grievance procedure for employees of the Department of Fish and Game; and to change the name of the State Fish and Game Commission; amending sections 26-101.1, 26-104, 26-104.4 through 26-104.7, 26-107 through 26-110, 26-110.3, 26-114, 26-118, 26-119, 26-121, 26-123, 26-126 through 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1, 26-202.4 through 26-202.8, 26-204, 26-210, 26-212, 26-212.1, 26-215, 26-220, 26-222, 26-225, 26-226, 26-228, 26-230, 26-233, 26-301, 26-301.1, 26-302, 26-303.5, 26-306, 26-307, 26-307.1, 26-319, 26-320, 26-324, 26-331, 26-332, 26-334, 26-335, 26-344, 26-402, 26-501, 26-501.1, 26-510, 26-813, 26-814, 26-909, 26-911 through 26-915, 26-918 through 26-920, 26-1120, 26-1121, 26-1123, 26-1124, 26-1201, 26-1206 through 26-1208, 26-1210, 26-1402, 26-1403, 26-1502 through 26-1505, 26-1508, 26-1509, 26-1601 through 26-1603, 26-1605, 26-1607 through 26-1610, 26-1612 through 26-1614, 26-1701, 26-1702, 26-1704, 26-1802, 26-1804 through 26-1808, 46-1903, 53-1012, 53-1020, 53-1022, 53-1025, 53-1028, 62-301, 62-304 through 62-306, 62-308, 62-310, 62-311, 62-314, 62-401 through 62-403, 68-1402, 69-3502, 69-3505, 69-3517, 69-3518, 75-5205, 82A-2001, 82A-2004, 89-3405, 89-3407, and 89-3449, R.C.M. 1947; repealing sections 26-106, 26-124, and 82A-2003, R.C.M. 1947; and providing an immediate effective date.....Page 1331
418		810	An act to provide for the selection and acquisition of off-stream storage sites and the construction of reservoirs by conservation districts and to provide for the sale of water from such reservoirs in excess of the needs of prior appropriators according to an ordering of certain beneficial uses.....Page 1340
419		837	An act to change the penalty for failure to make timely application for renewal of a retail license amending section 84-2404, R.C.M. 1947.....Page 1342
420		567	An act to submit to the qualified electors of Montana an amendment to Article VII, section 2, of the Montana Constitution to allow the Legislature to disapprove rules for admission to the bar promulgated by the Supreme Court.....Page 1342
421	177		An act for the general revision of laws relating to snowmobiles; amending sections 26-220, 26-221, 26-222, 26-223 and Title 53, Chapter 10, R.C.M. 1947; and adding

HeinOnline -- 1977 Vol. I xxix 1977

Chap. Num.	Senate Bill	House Bill	Title
			authorization for nonresident temporary-use permits; and repealing section 53-1024, R.C.M. 1947.....Page 1343
422	311		An act to clarify the procedures for the termination of the parental rights of children proposed to be released for adoption; repealing sections 61-317, 61-325, and 61-326, R.C.M. 1947; and providing an effective date.....Page 1353
423	442		An act to amend section 50-1203, R.C.M. 1947, as it defines small miners.....Page 1359
424		147	An act to extend to 99 years the term for which school district trustees may lease buildings or land from the county, municipality, another district, or any person if prior approval of the qualified electors of the district is obtained; allowing such trustees to use rental money collected for any proper school purpose; amending sections 75-6801, 75-7214, 75-8209, and 75-8211, R.C.M. 1947.....Page 1362
425		164	An act revising the law regarding public assistance records; repealing section 71-231.1, R.C.M. 1947.....Page 1363
426		177	An act to amend section 16-2714, R.C.M. 1947, to require that a bond be furnished by a party requesting service of a writ of execution or attachment when the sheriff will incur substantial costs.....Page 1364
427		197	An act extending the time for acting on operating permit applications under the hard-rock mine reclamation law; defining terms; providing for notice; amending sections 50-1210 and 50-1216, R.C.M. 1947; and providing an immediate effective date.....Page 1364
428		239	An act to provide for denial of unemployment benefits in the case of athletes and illegal aliens as provided for in Public Law 94-566; amending section 87-105, R.C.M. 1947.....Page 1366
429		247	An act to generally revise and clarify the laws relating to municipal courts; to change the population requirement for cities adopting municipal courts from 20,000 to 10,000; to provide that municipal court judges be elected every four years; to provide qualifications for and restrictions on municipal court judges; to provide that the city provide the facilities for the court; to prescribe the sessions of the court; and to prescribe the amount and disposition of fines in the court; amending sections 11-1701, 11-1703, 11-1704, 11-1705, 11-1708, 11-1710, 11-1711, 11-1717, 11-1718, and 93-102, R.C.M. 1947; repealing section 11-1709, R.C.M. 1947; and providing an immediate effective date.....Page 1368
430		251	An act to revise the penalties for driving while under the influence of alcohol or drugs; to clarify that habitual users who drive are not subject to criminal penalties unless they are under the influence when they drive; to provide for suspended execution of sentence conditioned upon education or treatment; amending sections 31-145, 31-146, 31-149, and 32-2142, R.C.M. 1947.....Page 1370
431		280	An act to provide for a specific time period in which a criminal charge may be amended by the prosecution without leave of the district court as to matters of substance and to limit such amendments to one occasion; amending section 95-1505, R.C.M. 1947.....Page 1374
432		318	An act to provide that the Board of Chiropractors are no longer required to hold a regular meeting on the first Tuesday of each October; to provide for a temporary permit under board guidelines; to require that chiropractic applications be presented 21 days before a board meeting and that full application fee must accompany the application; and to allow the use of name instead of number on a clinical proficiency examination; amending sections 66-503, 66-504, 66-505, and 66-506, R.C.M. 1947.....Page 1374
433		320	An act to provide that multiple defendants in negligence actions contribute to payment of the judgment in proportion to their comparative negligence and to specify the applicability of that provision.....Page 1376
434		330	An act to establish a program of subsidies for the adoption of hard-to-place children; and repealing sections 71-1801 through 71-1805, R.C.M. 1947.....Page 1377
435		352	An act to amend section 70-113, R.C.M. 1947, to make effective rates in schedules or contracts filed with the Public Service Commission 9 months after filing or upon commission action, whichever occurs first; and providing an immediate effective date.....Page 1379
436		356	An act to amend section 95-2206 to provide that a sentence for driving under the influence of alcohol or drugs is not deferrable.....Page 1380
437		389	An act to impose a gross receipts assessment on all passenger tramway operators in Montana; amending section 69-6609, R.C.M. 1947; and providing an immediate effective date.....Page 1382
438		407	An act adding to the treasury fund structure those funds needed to properly manage

HeinOnline -- 1977 Vol. I xxx 1977

Chap. Num.	Senate Bill	House Bill	Title
			the financial affairs of Montana's colleges and universities and to provide the conditions under which expenditures may be made from those funds; amending section 79-410, R.C.M. 1947; and providing an immediate effective date...Page 1383
439		487	An act requiring continuing education for licensed pharmacists and allowing the Board of Pharmacists to charge an additional fee for license renewal, amending sections 66-1502 and 66-1507, R.C.M. 1947; and providing a delayed effective date.....Page 1386
440		493	An act to amend sections 81-2503 through 81-2513, R.C.M. 1947, to reflect administrative changes in state historic preservation program; substituting Montana Historical Society for Fish and Game Department; adding "architectural" to definition of site and object; and providing an immediate effective date.....Page 1388
441		512	An act to provide an efficient centralized records retention and destruction program within the Historical Society for all official records.....Page 1391
442		560	An act to require the Department of Natural Resources and Conservation to study Cooney Dam, the dam spillway, and associated structures and to develop and carry out a program of repair and financing; and providing an effective date.....Page 1393
443		565	An act to provide for an increase in retirement allowances received under the Teachers' Retirement System by beneficiaries who were receiving such allowances prior to July 1, 1971; providing funding for the increase; amending section 75-6207 and 75-6208, R.C.M. 1947.....Page 1394
444		585	An act generally revising Title 69, Chapter 48; amending the definition of pollution; authorizing the Board of Health and Environmental Sciences to change a stream classification when a stream has been improperly classified; authorizing the service of compliance orders by mail; and amending sections 69-4802, 69-4806, 69-4808.2, 69-4809.1, and 69-4820.1, R.C.M. 1947.....Page 1401
445		587	An act to permit members of the National Guard to file applications to become members of the Public Employees' Retirement System and to receive credit for prior service; amending section 68-2510, R.C.M. 1947.....Page 1406
446		589	An act to give justice, municipal, and city courts concurrent jurisdiction with the youth court over all traffic and alcoholic beverage violations; amending section 10-1206, R.C.M. 1947.....Page 1407
447		634	An act amending sections 16-216 and 16-234, R.C.M. 1947, to expand Gallatin and Park Counties to include contiguous portions of Yellowstone National Park that are within the State of Montana but that are not within a county; providing for approval of the voters as required by the Constitution; and providing an effective date for the boundary change if approved.....Page 1407
448		638	An act to renumber section 11-1932, R.C.M. 1947; providing for the minimum wages of firemen in cities of first and second class and overtime requirements; and providing an immediate effective date.....Page 1411
449		647	An act to establish a mandatory pretrial review panel for medical malpractice claims; providing an immediate effective date.....Page 1411
450		658	An act relating to the payments for care of residents of institutions, district youth guidance homes, and custodial agencies; amending sections 10-1238, 10-1249, and 80-1601 through 80-1606, R.C.M. 1947; repealing section 38-210; and providing an immediate effective date.....Page 1418
451		659	An act to provide that municipalities of the first or second class shall continue to pay the salaries of police officers injured in the performance of their duties and to provide for assignment of such an officer to light duty or, with his consent, to another agency.....Page 1423
452		718	An act revising definitions and duties under the citizen participation law; amending sections 82-4227 and 82-4228, R.C.M. 1947.....Page 1425
453		719	An act to revise, limit, and standardize travel expense reimbursements paid from public funds by state governmental entities, not including the legislative branch; amending sections 5-609, 16-5119, 26-108, 26-1505, 27-238, 44-128, 59-801, 59-1402, 62-503, 66-409, 66-2805, 66-3205, 66-3703, 66-3905, 68-1802, 69-3414, 75-8408, 79-1016, 82-301, 82-1208, 82-4402, 82A-210, 82A-507, 82A-1602.30, 84-601, 84-702, 84-6704, 92-116.1, 93-716, 93-721, and 95-3124.1, R.C.M. 1947.....Page 1426
454		760	An act to provide for the protection of persons dealing with cemetery or mausoleum-columbarium corporations and to insure the performance of contractual obligations by those corporations; amending section 86-701, R.C.M. 1947; and providing an immediate effective date.....Page 1441
455		787	An act to authorize the Secretary of State to order the involuntary dissolution of corporations without court decree; amending sections 15-2287, 15-2290, and 15-2354, R.C.M. 1947; and repealing sections 15-2288, 15-2289, 15-2351, 15-2352, and 15-2353, R.C.M. 1947.....Page 1442

HeinOnline -- 1977 Vol. I xxxi 1977

Chap. Num.	Senate Bill	House Bill	Title
456		801	An act creating a Municipal Police Officers' Retirement System and providing for its administration; amending sections 11-1823, 11-1825, 11-1826, 11-1834, 11-1836, and 11-1844, R.C.M. 1947; and repealing sections 11-1821.1, 11-1824, 11-1838, 11-1839, 11-1840, 11-1841, 11-1842, 11-1848, 11-1850, 82A-222, and 82A-223, R.C.M. 1947. ....Page 1447
457		141	An act to amend the State Funded Homestead Tax Relief Act and to provide for an effective date. ....Page 1461
458		773	An act to create a legislative revenue oversight committee and prescribing its functions; providing an immediate effective date. ....Page 1463
459		29	An act to submit to the qualified electors of Montana an amendment to Article II, section 14, of the Montana Constitution to allow the Legislature or the people by initiative to establish the legal age for consuming or possessing alcoholic beverages. ....Page 1464
460	26		An act to generally revise and clarify the laws relating to water use; repealing sections 89-128, 89-1901, and 89-2818, R.C.M. 1947. ....Page 1465
461	71		An act amending sections 23-4785, 25-501, and 93-303, R.C.M. 1947, relating to salaries of certain state officials. ....Page 1496
462	124		An act to amend the pesticide law relating to definitions; registration and embargo of products; licensing of applicators, dealers, and retailers; certification of farm applicators; revocation of licenses and permits; rule making and administrative procedures; advisory council; agency cooperation; enforcement and violations; amending sections 27-216, 27-217, 27-220, 27-221, 27-222, 27-225, 27-227, 27-228, 27-230, 27-231, 27-232, 27-234, 27-235, 27-240, 27-242, 27-243, and 27-245, R.C.M. 1947; repealing sections 27-236, 27-237, and 27-238, R.C.M. 1947; and providing and immediate effective date. ....Page 1498
463	130		An act to continue the funding of public educational institutions subject to Board of Regents' supervision by a levy of not to exceed 6 mills on all taxable property each year for 10 years and providing that the proposed act be submitted to the electors of the State of Montana. ....Page 1513
464	135		An act to repeal section 28-701, R.C.M. 1947, relating to transportation of coniferous trees without a bill of sale; sections 45-419 through 45-421, R.C.M. 1947, relating to a lien for driving logs; section 81-1604, R.C.M. 1947, relating to a state brand to be placed upon seized logs; and sections 89-3201 through 89-3207, R.C.M. 1947, the Columbia Interstate Compact. ....Page 1514
465	203		An act to generally revise the penalties for fish and game violations; amending sections 26-315, 26-319, 26-324, 26-812, 26-1211, and 95-302, R.C.M. 1947. ....Page 1514
466	239		An act enabling the Department of Agriculture to provide technical and financial assistance for noxious plant management and to obtain funds to financially assist local governments managing noxious plants on state and federal lands. ....Page 1516
467	245		An act to amend section 70-113, R.C.M. 1947, relating to judicial review of temporary rate orders; and providing that a temporary rate increase may be approved pending a hearing or final order; and providing an immediate effective date. ....Page 1518
468	286		An act to abolish the office of State Treasurer and transfer the functions and duties of that office to the Department of Administration and membership on the Board of Hail Insurance to the State Auditor; amending sections 82A-214 and 82-1501, R.C.M. 1947. ....Page 1519
469	306		An act to amend section 40-3654, R.C.M. 1947, to require rates to be filed with the insurance commissioner; and to amend section 40-4410, R.C.M. 1947, to require retention by insurers for 3 years of a notice of cancellation, intention not to renew, or reasons for cancellation of certain insurance policies. ....Page 1521
470	333		An act to amend section 89-880, R.C.M. 1947, to permit the construction of stock water impoundments or pits of less than 15 acre-feet without first securing a water use permit. ....Page 1522
471	363		An act concerning the amount of retroactive pay awarded under a classification appeal; amending section 59-907, R.C.M. 1947; and to provide for an immediate effective date. ....Page 1523
472	367		An act to require the Public Service Commission to investigate only major accidents involving public utilities and to delete the requirement that the commission report such accidents to the governor; and relating to reporting of accidents by public utilities; amending section 70-129, R.C.M. 1947. ....Page 1524
473	375		An act to revive the prohibition against discriminatory charges for transportation along portions of railroad routes. ....Page 1525

HeinOnline -- 1977 Vol. I xxxii 1977

Chap. Num.	Senate Bill	House Bill	Title
474	382		An act to clarify the respective roles of the Consumer Counsel and the Public Service Commission in adversary utility rate cases being conducted by the Public Service Commission.....Page 1525
475	391		An act to amend section 70-128, R.C.M. 1947, to shorten the time allowed for an appeal from a decision of the Public Service Commission and to shorten the time for answering that appeal; repealing section 70-123, R.C.M. 1947, relating to records kept by the commission for appeals.....Page 1526
476	392		An act to amend sections 8-108, 8-109, and 8-110, R.C.M. 1947, to raise the filing fee for a motor carrier certificate and to delete provisions permitting the passing on of publication of notice of hearing costs to the applicant; to amend section 8-118, R.C.M. 1947, to require the Public Service Commission to provide standard forms and the submission by motor carriers of Interstate Commerce Commission annual reports; and to amend section 8-126, R.C.M. 1947, to require that notice costs be passed on to motor carriers.....Page 1528
477	445		An act to provide for nonpartisan elections, to provide for the amendment of self-government charters or adopted alternative forms of local government, to provide for enactment of ordinances and resolutions, to provide for local government initiative and referendum, to provide for the operation of consolidated units of local government, and to otherwise revise and clarify local government laws; amending section 23 of Chapter 513 of Laws, 1975; and providing an effective date.....Page 1532
478	448		An act to revise Title 82, Chapter 31, R.C.M. 1947, regarding surplus property to incorporate changes in federal law, to transfer the surplus property function from the Superintendent of Public Instruction to the Department of Administration, and to change the deposit of surplus property income from the federal and private grant clearance fund to the revolving fund.....Page 1539
479	449		An act to amend section 59-1001, R.C.M. 1947, to provide that military service be counted as state employment for purposes of earning vacation leave credits.....Page 1541
480	450		An act to clarify the relationship between Chapter 95 of Laws, 1977, and sections 19, 21, and 29 of Chapter 157 of Laws, 1977, regarding the agency fund and the volunteer firemen's fund.....Page 1542
481		123	An act to prepare for providing fire protection services for certain state-owned buildings and authorizing payments for such protection.....Page 1545
482		148	An act to amend sections 46-801.2, 46-801.4, 46-803, 46-804, and 46-806, R.C.M. 1947, to remove the requirement that livestock be individually inspected prior to removal from a livestock market, to establish a requirement that livestock cannot be removed from a livestock market until released by the Department of Livestock, and raising the removal from market fee to 20 cents.....Page 1545
483		182	An act to revise and clarify the laws pertaining to travel expenses of state officers and employees; amending sections 59-538 and 59-539, R.C.M. 1947.....Page 1550
484		263	An act to provide a partial service pension for paid firemen with 10 years or more of active duty and clarifying eligibility for full service pension; amending sections 11-1911 and 11-1925, R.C.M. 1947; providing an immediate effective date.....Page 1551
485		299	An act to prohibit the use of aircraft, including helicopters, for transporting hunters, hunting equipment, or wildlife and harassing certain wildlife; providing exceptions; amending section 26-301, R.C.M. 1947.....Page 1554
486		498	An act providing for investigative subpoenas for county attorneys and the attorney general; providing for procedures in relation to such subpoenas and the investigative inquiries; and providing an immediate effective date.....Page 1557
487		508	An act to amend sections 82-1133 and 82-3317, R.C.M. 1947, to abolish the minimum number of bids required for state construction projects and to clarify the laws related to bid security.....Page 1559
488		612	An act to clarify the meaning of personal staff exempted from the state classification and compensation plan; amending sections 59-903 and 59-904, R.C.M. 1947.....Page 1560
489		745	An act relating to the terminology in the laws relating to firemen and police retirement and death and disability benefits.....Page 1561
490	31		An act to implement the recommendations of the interim subcommittee on taxation, revising and updating the Montana inheritance tax with regard to joint estates and exemptions; amending sections 91-4405, 91-4409, 91-4410, 91-4414, 91-4416, 91-4419, and 91-4453, R.C.M. 1947.....Page 1562

HeinOnline -- 1977 Vol. I xxxiii 1977

Chap. Num.	Senate Bill	House Bill	Title
491	65		An act to exempt the building and appurtenant land of certain community service organizations from property taxation. ....Page 1567
492	155		An act to amend section 84-202, R.C.M. 1947, to exempt property of irrigation districts from taxation and to amend section 89-1702, R.C.M. 1947, to exempt equipment, machinery, motor vehicles, and other personal property belonging to irrigation districts from state, county, or municipal taxation; amending section 53-106, R.C.M. 1947. ....Page 1568
493	192		An act to amend sections 25-605 and 16-912, R.C.M. 1947, to increase the salaries of certain county officers and to include county assessor in salary schedule. ....Page 1572
494	252		An act to change the date for filing railroad assessment statements; amending section 84-801, R.C.M. 1947, and section 3, Chapter 98, Laws of 1977. ....Page 1574
495	309		An act to provide that royalty interests may be required to share the burden of the resource indemnity trust tax on a pro rata basis; amending section 84-7006, R.C.M. 1947. ....Page 1576
496		41	An act to revise and clarify the Montana Alcoholic Beverage Code in support of recodification; amending sections 4-1-304, 4-2-102, 4-2-204, 4-4-105, 4-4-201, 4-4-202, 4-4-301, 4-4-302, 4-4-303, 4-4-401, 4-4-403, 4-4-404, 4-5-105, 4-6-102, 4-6-205, and 4-6-401; repealing sections 4-1-305, 4-1-307, 4-4-106, and 4-6-206, R.C.M. 1947. ....Page 1577
497		85	An act to lower the tax assessment on livestock by changing the classification of livestock from class three to class two; amending section 84-301, R.C.M. 1947. ....Page 1586
498		198	An act providing for the ad valorem taxation of the gross proceeds of metal mines at a percentage of the merchantable value; deleting metals from net proceeds taxation; amending sections 84-101, 84-301, 84-302, 84-401, and 84-5402, R.C.M. 1947; coordinating this act with other pending legislation; and providing an effective date. ....Page 1590
499		215	An act to revise the eligibility criteria for class eight property tax classification; amending section 84-301, R.C.M. 1947; coordinating this amendment with other pending legislation; and providing an effective date. ....Page 1599
500		728	An act to provide for an income tax exemption for parents of a dependent child with a handicap. ....Page 1605
501		735	An act to provide a deduction for United States obligations for bank share tax purposes; providing a period of effectiveness; amending section 84-307, R.C.M. 1947. ....Page 1605
502		737	An act to amend sections 84-301 and 84-302, R.C.M. 1947, to provide for classification and basis for taxation of recreational vehicles owned by certain senior citizens. ....Page 1606
503	170		An act authorizing the use of electronic banking facilities and electronic transfers of funds by banks, savings and loan associations, and credit unions; amending section 5-1028, R.C.M. 1947; and providing an effective date. ....Page 1611
504	401		An act providing for the consolidation of administrative functions regarding building codes; providing for promulgation of codes by the Department of Administration; amending sections 66-2416, 66-2417, 66-2427, 66-2802, 66-2805.1, 69-2105, 69-2111, 69-2212, 69-2124, 75-8206, 75-8207, and 82A-1607, R.C.M. 1947; and repealing sections 69-4117 and 69-5507, R.C.M. 1947. ....Page 1622
505		365	An act relating to the school foundation program; providing for changes in the financial schedules for the maximum general fund budgets for elementary and high school districts; amending section 75-6905, R.C.M. 1947. ....Page 1629
506		569	An act establishing pilot service programs for displaced homemakers; providing an appropriation of $30,000 for the biennium; providing a 2-year period of effectiveness. ....Page 1633
507		818	An act authorizing the Board of Examiners to issue and sell long-range building bonds for a physical education facility at Montana College of Mineral Science and Technology and appropriating $2,275,000 for that purpose from the proceeds of the sale of those bonds. ....Page 1636
508	9		An act for the general revision of laws relating to gambling. ....Page 1637
509	107		An act to increase fees which local governments may charge the holder of a license under the Alcoholic Beverage Code to the level of such fees prior to 1975; amending section 4-4-406, R.C.M. 1947. ....Page 1643
510	199		An act to amend section 11-403, R.C.M. 1947, by requiring that notice be given

HeinOnline -- 1977 Vol. I xxxiv 1977

Chap. Num.	Senate Bill	House Bill	Title
			to all freeholders prior to annexation of platted or unplatted tracts to a city or town of the first class. ..... Page 1644
511	307		An act to amend section 82A-1602.8, R.C.M. 1947, to provide for the reduction of members on the Board of Cosmetologists; providing qualifications for board membership. ..... Page 1646
512	331		An act to allow an optician to perform mechanical work on an ophthalmic lens ordered on a prescription signed by a registered optometrist, regardless of who employs the optician; amending section 66-1316, R.C.M. 1947. ..... Page 1646
513	384		An act to provide funding by voted bond issues for county hospital purposes, amending sections 16-1045 and 16-1047, R.C.M. 1947. ..... Page 1647
514	419		An act amending the definition of an incapacitated person in the Montana Uniform Probate code; amending sections 91A-5-101 and 91A-5-303, R.C.M. 1947..Page 1649
515	421		An act to establish a resident student financial assistance program. ..... Page 1650
516	425		An act to revise license renewal and disciplinary provisions relating to the practice of chiropractic; prohibiting municipalities and other political subdivisions of the state from imposing license fees or taxes for the practice of chiropractic; amending section 66-512, R.C.M. 1947; and repealing section 66-510, R.C.M. 1947...Page 1652
517		4	An act to create a new judicial district, alter certain judicial district boundaries, and change the number of judges in certain judicial districts; amending sections 93-301 and 93-302, R.C.M. 1947 ..... Page 1655
518		31	An act for the recodification and general revision of Chapters 1 and 4 of Title 51, R.C.M. 1947, relating to unfair trade practices, and to amend sections 8-103.4, 82A-401.1, 82A-404, and 84-2412, R.C.M. 1947, to strike the reference to the Unfair Practices Act. ..... Page 1656
519		90	An act to revise and clarify certain laws governing the Fire Marshal Bureau; directing establishment of a Fire Marshal Advisory Council; amending sections 82-1201 and 82-1202, R.C.M. 1947; and repealing section 82A-1208, R.C.M. 1947..Page 1669
520		150	An act to revise the membership of the board of trustees of the Montana Historical Society; amending section 44-520, R.C.M. 1947. ..... Page 1670
521		169	An act to include motor vehicles used in state-approved traffic education programs by school districts under the definition of new motor vehicles for purposes of imposition of the new motor vehicle sales tax; amending section 53-114, R.C.M. 1947. ..... Page 1671
522		178	An act requiring the Department of Justice to compile and make available in pamphlet form all Montana statutes relating to fire protection and to revise and republish the same within 90 days after the end of each legislative session. ..... Page 1673
523		245	An act to provide for unemployment insurance coverage of employees of certain agriculture, domestic, and nonprofit employers as required by Public Law 94-566 of October 20, 1976. ..... Page 1673
524		301	An act amending section 82A-605 to require that a veterinarian actively engaged in food animal medicine be placed on the Board of Health. ..... Page 1682
525		334	An act concerning the pleading of damages in actions for personal injury or wrongful death. ..... Page 1682
526		355	An act providing for a driver rehabilitation program in the Department of Justice; and providing for procedures to contribute toward improving drivers' driving attitudes, habits, and techniques. ..... Page 1683
527		357	An act to establish a state-financed program of compensation to persons who suffer bodily injury and to dependents of those who are killed by criminally injurious conduct or in attempts to prevent criminal conduct or apprehend criminals; and to appropriate money therefor. ..... Page 1685
528		370	An act to amend sections 87-103 and 87-104, R.C.M. 1947, to provide for noncharging for benefits paid to newly covered workers during the transition and provide for federal reimbursement to states for the cost of regular benefits and the 50% of extended benefits paid to these newly covered workers as provided for in Public Law 94-566, as well as to change the duration of benefits, the method of determining on and off indicators for extended benefits, and the benefit schedule and to revise the order in which the law is written. ..... Page 1694
529		378	An act amending section 75-7018, R.C.M. 1947; to increase the schedule of reimbursement for school buses. ..... Page 1699
530		461	An act creating the Division of Forensic Science in the Department of Justice; pro-

HeinOnline -- 1977 Vol. I xxxv 1977

Chap. Num.	Senate Bill	House Bill	Title
			viding for its administration, duties, and functions; providing for a Laboratory of Criminalistics; altering the duties of the coroner; amending sections 16-3401, 16-3409, 95-801, and 95-802 and repealing sections 16-3402, 16-3403, 95-810, and 95-814, R.C.M. 1947.....Page 1700
531		491	An act to provide for compensation, increased compensation, or when compensation is paid to members of the Boards of Cosmetologists, Dentists, Veterinarians, Morticians, and Speech Pathologists and Audiologists of the Department of Professional and Occupational Licensing; amending sections 66-809, 66-909, 66-2203, 66-2703, and 66-3905, R.C.M. 1947.....Page 1706
532		595	An act relating to urban renewal projects and authorizing means of financing costs thereof through issuance of bonds and segregation and application of tax increment; amending sections 11-3910 and 11-3921, R.C.M. 1947; repealing sections 11-3922, 11-3923, 11-3924, and 11-3925, R.C.M. 1947; and providing an immediate effective date.....Page 1709
533		610	An act to provide for or change fees for application, license, examination, renewal, late renewal, reciprocity, certification, and registration for applicants, licensees, or registrants of the Boards of Horse Racing, Barbers, Podiatry Examiners, Cosmetologists, Medical Examiners, Pharmacists, Public Accountants, Real Estate and Sanitarians of the Department of Professional and Occupational Licensing; to define reciprocity eligibility for Board of Cosmetologists applicants and impose a fee; to provide that no license fee or tax may be imposed on real estate brokers or salesmen by a municipality or other subdivision of the state; limiting travel authority of the Board of Real Estate; specifying the director's authority over contracts and expenditures; providing for an immediate effective date; amending sections 62-505, 66-411, 66-605, 66-815, 66-1042, 66-1506, 66-1508, 66-1826, 66-1934, 66-2909, 66-3608, 69-3416, and 82A-1604, R.C.M. 1947.....Page 1713
534		649	An act to provide additional reimbursement in certain cases for parents driving their children to a bus stop or to school; amending section 75-7019, R.C.M. 1947.....Page 1721
535		650	An act amending section 53-118, R.C.M. 1947, to provide for regulation of motor vehicle and trailer dealers; defining the acquisition and use of dealer license plates.....Page 1723
536		721	An act to amend section 94-5-610, R.C.M. 1947, to provide that unlawful possession of an intoxicating substance by a child be treated as provided in the Youth Court Act when proceedings are held in the youth court.....Page 1727
537		758	An act to avoid jurisdictional conflict between states in child custody proceedings; providing interstate judicial assistance in custody cases to discourage illegal schemes to gain possession of a child in contested custody proceedings; amending sections 48-315 and 48-331, R.C.M. 1947.....Page 1727
538		808	An act making the election campaign fund permanent and providing a short title for Chapter 49 of Title 23, R.C.M. 1947; amending sections 23-4901, 23-4902, 23-4904, and 23-4906, R.C.M. 1947; and repealing section 7, Chapter 263, Laws of 1974.....Page 1738
539		816	An act for the general revision of laws relating to special education; amending sections 75-7801, 75-7802, 75-7803, 75-7804, 75-7805, 75-7806, 75-7807, 75-7808, 75-7809, 75-7811, 75-7813.1, 75-7814, and 75-7816, R.C.M. 1947; repealing section 75-7812, R.C.M. 1947.....Page 1740
540	44		An act to bring the coal tax distribution formula into compliance with the Montana Constitution as amended in 1976 by creating a trust fund; revising the percentages distributed to local governments and state programs and the programs funded thereunder; amending sections 50-1803, 50-1804, 50-1806, 79-309, 82-3710, 84-1319, and 89-3607, R.C.M. 1947.....Page 1750
541	125		An act to eliminate bond requirements for certain professions and occupations; amending sections 66-1940, 66-2115, and 66-2405, R.C.M. 1947; and repealing sections 66-2113, 66-3322, 66-3323, 66-3324, 66-3325, 66-3326, and 66-3510, R.C.M. 1947.....Page 1755
542	200		An act revising Title 69, Chapter 40; providing a short title for purposes of citing the chapter; authorizing the Department of Health and Environmental Sciences to license solid waste management systems; authorizing the department to initiate and maintain actions to collect civil penalties; providing control over the storage, treatment, and disposal of hazardous wastes; and amending sections 69-4001, 69-4002, 69-4003, 69-4004, 69-4005, 69-4006, 69-4007, and 69-4008, R.C.M. 1947.....Page 1757
543	268		An act to further suspend action on solution extraction of uranium from in place deposits until April 1, 1978, unless the Board of Health and Environmental Sciences adopts rules regulating this process before that date; amending section 50-1704, R.C.M. 1947; and repealing section 50-1703, R.C.M. 1947.....Page 1762

HeinOnline -- 1977 Vol. I xxxvi 1977

Chap. Num.	Senate Bill	House Bill	Title
544	329		An act to describe the purpose of architecture licensing laws, define public building, provide for injunction of violations of such laws, revise the exemption provisions, prohibit other state agencies or political subdivisions from charging architect license fees, make clear that any person rendering professional services on a public building must be licensed to practice architecture, and revise the requirement for errors and omissions insurance; amending sections 66-103, 66-106, 66-107, 66-110, 66-113, and 66-114, R.C.M. 1947; and repealing section 66-115, R.C.M. 1947.....Page 1762
545	380		An act to prohibit any agency of state government from interfering, restraining, coercing, or retaliating against a state employee who exercises the right of appeal under the Classification and Wage Act; amending section 82A-1014, R.C.M. 1947; and providing an immediate effective date.....Page 1766
546	413		An act to generally revise and clarify the laws relating to the commitment of mentally ill persons and to amend sections 38-1232, 38-1301 through 38-1310, 38-1313, 38-1322, 38-1324, 38-1325, 38-1328, 38-1330, and 38-1331, R.C.M. 1947; repealing section 80-1908, R.C.M. 1947.....Page 1767
547		298	An act to require state departments, institutions and agencies to procure products and services from sheltered workshops and work activity centers.....Page 1785
548		499	An act to revise the fees of the clerk of the district court; amending sections 25-232 and 93-1116, R.C.M. 1947; repealing section 25-233, R.C.M. 1947.....Page 1787
549		799	An act appropriating $50,000 to the Department of Administration for the protection of works of art in the state capitol; amending section 84-1319, R.C.M. 1947.....Page 1788
550	799		An act amending sections 92-202.1, 92-204.1, 92-435, and 92-614, R.C.M. 1947; creating an uninsured employers' fund to grant to all employees in this state workers' compensation benefits even if their employers are not properly insured; providing for funding of the fund; defining insurer; and repealing sections 92-201, 92-203, 92-205, 92-207.1, 92-209, 92-210, 92-211, and 92-1102, R.C.M. 1947.....Page 1790
551	198		An act requiring local governing bodies to adopt noise, height, and land use regulations for airport influence areas and to identify airport influence areas and establish criteria for the regulation of noise, height, and land use within these areas.....Page 1795
552	224		An act to amend sections 11-3860 and 11-3862, R.C.M. 1947, to allow a simplified procedure for subdivisions within master plan areas.....Page 1800
553	225		An act amending sections 11-3867 and 11-3876, R.C.M. 1947, to allow contracts for sale before a final subdivision plat is filed of record.....Page 1803
554	226		An act to amend section 69-5003, R.C.M. 1947, to shorten the time period for processing petitions for removal of sanitary restrictions and to exempt subdivisions within master planning areas which will be provided with municipal facilities for the supply of water or disposal of sewage for the subdivision.....Page 1804
555	227		An act to amend section 11-3866, R.C.M. 1947, relative to the imposition of conditions after approval of a preliminary plat and the review of minor subdivisions.....Page 1807
556	269		An act to revise Title 69, Chapter 49, to give the state primary enforcement responsibility under the Federal Safe Drinking Water Act; authorizing the Board of Health and Environmental Sciences to establish safe drinking water standards; authorizing the Department of Health and Environmental Sciences to administer and enforce the provisions of Title 69, Chapter 49; providing for the issuance of variances; requiring that laboratories performing analysis of public water supplies be licensed; providing for the collection of civil penalties; amending sections 69-4902, 69-4903, 69-4904, and 69-4907, R.C.M. 1947; and repealing section 69-4908, R.C.M. 1947.....Page 1809
557	310		An act to generally revise Title 69, Chapter 50, and to give the Department of Health and Environmental Sciences the power to inspect and monitor water supply and sewage disposal systems; to add a definition of public water supply or public sewage disposal system; to provide for local government review in certain cases; amending sections 69-5002 and 69-5005, R.C.M. 1947.....Page 1813
558	345		An act to encourage competition among workers' compensation insurers by authorizing competitive rating pursuant to the provisions of Title 40, Chapter 36, R.C.M. 1947; amending sections 40-3639, 40-3643, 40-5601, 40-5602, 40-5616, and 40-5618, R.C.M. 1947; and repealing sections 40-5607 through 40-5615, R.C.M. 1947.....Page 1816
559		772	An act to generally revise the Montana Developmental Disabilities Services and Facilities Act of 1974; to bring the definition of "developmental disabilities" into conformity with federal guidelines; to change the advisory council to a planning and advisory council, to delineate the terms of its members, and to authorize it

HeinOnline -- 1977 Vol. I xxxvii 1977

Chap. Num.	Senate Bill	House Bill	Title
			to elect its own officers; to broaden the duties of the Department of Social and Rehabilitation Services, the Planning and Advisory Council, and the regional councils; to extend the provisions for interdepartmental cooperation and transfer of funds with respect to developmental disability programs; to amend sections 71-2402, 71-2403, 71-2404, 71-2406, 71-2407, and 71-2414, R.C.M. 1947; to repeal section 9, Chapter 239, Laws of 1975; and to provide effective dates.....Page 1818
560	37		An act requiring administrative rules to conform to legislative intent; providing for the documentation of some legislative intent; amending section 82-4219, R.C.M. 1947.....Page 1824
561	120		An act to provide for the approval of an administrative rule during the interim between legislative sessions by mail ballot of all members of the Legislature; amending sections 82-4203.5 and 82-4205, R.C.M. 1947.....Page 1825
562	162		An act relating to legislative review of agencies which regulate a profession, occupation, business, industry, or other endeavor; providing for abolishment of agencies; and providing for periodic legislative review, modification, and reestablishment of agencies.....Page 1827
563		834	An act to establish and fund a compensation plan for state employees for the 1979 biennium; amending section 11-1024, R.C.M. 1947.....Page 1833
564	93		An act validating, ratifying, approving, and confirming bonds and other instruments or obligations issued by public bodies of this state, and all proceedings taken by such public bodies to authorize and issue such bonds, instruments, and other obligations, however described; amending sections 79-2001, 79-2002, 79-2003, and 79-2004, R.C.M. 1947; providing that such sections may be cited as the "Bond Validating Act"; providing for the extension of the application of such act. .....Page 1840
565	233		An act to exempt teachers at state institutions from the State Classification and Pay Plan; amending section 59-904, R.C.M. 1947.....Page 1841
566		70	An act to clarify the property tax system by generally revising and recodifying sections relating to property classification and taxation and by establishing market value as the basis of taxation, except for certain cases, and adjusting the taxable percentage accordingly; amending sections 11-988, 11-1011, 11-1019, 11-1301, 11-1909, 11-1919, 11-2201, 11-2205, 11-2303, 11-3921, 11-4111, 14-307, 16-502, 16-807, 16-808, 16-1152, 16-1412, 16-2010.1, 16-4020, 32-3107, 46-1914, 53-114, 53-1025, 69-3504, 75-7104, 75-8104, 84-101, 84-401, 84-402, 84-404, 84-406, 84-602, 84-708.1, 84-728, 84-4605, 84-4701, 84-4701.2, 84-4713, 84-5103, 84-5211, 84-5214, 84-5216, 84-5406, 84-6008, 84-6102, 84-6103, 84-6205, 84-6407, 84-7513, and 89-3403, R.C.M. 1947; and repealing sections 69-3923, 84-301, and 84-302, R.C.M. 1947.....Page 1842
567		302	An act revising the open meetings law; allowing closed meetings for discussions of collective bargaining or litigation; defining appropriate minutes and meetings; permitting tape recordings of open meetings; providing for voidability; amending sections 82-3402 and 82-3403, R.C.M. 1947. .....Page 1886
568		411	An act to permit the court to provide for treatment of persons who lack fitness to be tried for a criminal offense in an institution to be selected by the Department of Institutions; amending sections 38-1202, 38-1208, 38-1209, 38-1215, 38-1216, and 95-506, R.C.M. 1947.....Page 1887
569		462	An act implementing Article XIII, section 4, of the 1972 Montana Constitution to provide a code of ethics prohibiting conflict between public duty and private interest for legislators and all state and local officers and employees except members of the judiciary. .....Page 1893
570		724	An act prohibiting the use of asbestos-containing spray materials in construction; providing procedures for the demolition of buildings or structures containing asbestos insulation or fireproofing; providing procedure for use of other fibrated product or compound; and providing penalties. .....Page 1898
571		738	An act to generally revise the laws relating to the detention and shelter care of youth; amending sections 10-1203, 10-1209, 10-1210, 10-1212, 10-1213, 10-1214, 10-1215, 10-1216, 10-1218, 10-1222, 10-1235, 10-1236, 10-1237, 10-1242, and 10-1243, R.C.M. 1947.....Page 1900
572		800	An act to establish small claims procedures for justices' courts in the State of Montana. .....Page 1912
573		839	An act to amend section 7, Chapter 310, Laws of 1977, to correct an error in engrossing.....Page 1918
574		167	An act relating to the taxation of income; providing incentives for the installation or acquisition of solar or other recognized nonfossil forms of energy generation by taxpayers by providing income tax credit for the costs of the systems; amending section 84-4906, R.C.M. 1947. .....Page 1918

HeinOnline -- 1977 Vol. I xxxviii 1977

Chap. Num.	Senate Bill	House Bill	Title
575	175		An act creating a solid waste management program in the state of Montana; authorizing the Department of Health and Environmental Sciences to create a local government grant fund for the creation of a solid waste management program; specifying the powers of a local government to secure grants and loans for the creation of a resource recovery program; and specifying the duties of the department in administering provisions of the act. ....Page 1919
576		292	An act transferring the energy conservation and alternative energy tax incentives from the property tax to the income and corporation license taxes, as deductions; amending sections 84-202, 84-301, 84-1502, 84-4906, 84-7401, and 84-7403, R.C.M. 1947, and providing and effective date....Page 1926
577		762	An act to establish necessary energy supply alert and energy emergency powers for the governor; establishing an Energy Policy Committee; defining conditions under which such powers are to be exercised; providing penalties; providing a period of effectiveness; and amending section 79-2501, R.C.M. 1947....Page 1935
578	354		An act to provide for an increase in the state's contribution to the Montana Game Wardens' Retirement System; to revise the procedure for paying the expenses of administering such system; and to increase the duration of benefits paid to a beneficiary following a member's employment-related death; amending sections 68-1410 and 68-1417, R.C.M. 1947....Page 1940
579	399		An act redefining chiropractic and providing that no member of the board may be appointed for more than two consecutive terms; amending sections 66-507 and 82A-1602.7, R.C.M. 1947. ....Page 1942
580		79	An act to permit district judges to sentence persons convicted of felonies to imprisonment with no possibility of parole or participation in the prisoner furlough program; amending sections 95-2206, 95-2220, and 95-3214, R.C.M. 1947....Page 1943
581		242	An act to provide for a pilot project of expanded day-care assistance. ....Page 1946
582		630	An act to revise and clarify the Montana Economic Land Development Act, repealing sections 84-7502 through 84-7526, R.C.M. 1947; enacting new sections in lieu thereof; and providing an effective date....Page 1947
583		701	An act to expand the existing weatherization program administered by the Department of Community Affairs. ....Page 1956
584		261	An act to require mandatory minimum prison sentences for certain violent and drug-related crimes and for any crime committed with a dangerous weapon without the option of deferred imposition or suspension of execution of the sentence; to provide for limited exceptions to mandatory sentences and restrictions on deferred imposition and suspended execution of sentence; and to require a hearing to determine the applicability of the exceptions; amending sections 54-132, 54-133, 54-133.1, 94-5-102, 94-5-103, 94-5-202, 94-5-302, 94-5-303, 94-5-401, 94-5-503, 95-1507, and 95-2206, R.C.M. 1947; and providing an effective date....Page 1958

APPROPRIATIONS

HB	1	An act appropriating money for the operation of the Forty-Fifth Legislature and providing an immediate effective date....Page 1969
HB	55	An act to reappropriate $15,000 from the Coal Board to the Legislative Council for the expenses of the Coal Tax Oversight Committee; and providing an effective date. ....Page 1969
HB	64	An act to appropriate moneys to the Legislative Council for the purchase of the rights to all R.C.M. 1947 materials copyrighted by the Allen Smith Company and for recodification expenses for the biennium ending June 30, 1977; providing an immediate effective date....Page 1970
HB	143	An act to appropriate moneys to various state agencies for the fiscal year ending June 30, 1977; providing for other matters relating to the appropriations; and providing an effective date....Page 1970
HB	144	An act to appropriate money for capital projects for the biennium ending June 30, 1979; providing for other matters relating to the appropriations; and providing an effective date for House Bill 143; and providing an effective date....Page 1975
HB	145	An act appropriating moneys to various state agencies for the biennium ending June 30, 1979....Page 1981
HB	160	An act appropriating money to the Legislative council for the expenses of editing and publishing the proceedings of the 1972 Constitutional Convention, and providing an effective date..Page 2005
HB	250	An act to appropriate $1,070,000 to the Department of Health and Environmental Sciences for tha health effects and monitoring study of ambient air pollution concentrations in the Butte-

HeinOnline -- 1977 Vol. I xxxix 1977

Anaconda, Missoula, Billings, Columbia Falls, Hardin, Colstrip—coal development area and the East Helena area. ....Page 2005

HB 282 An act appropriating funds for the establishment of a satellite agricultural experiment station to serve the general area of Glacier, Toole, Pondera, and Teton Counties. ....Page 2006

HB 295 An act to appropriate money for the purpose of publishing 3 unpublished legislative journals. ....Page 2006

HB 502 An act to appropriate funds for the purpose of Montana's participation in the Medal of Honor Grove Program at Freedom Foundation, Valley Forge. ....Page 2006

HB 504 An act to appropriate supplemental moneys for capital projects for the biennium ending June 30, 1977; and providing an immediate effective date. ....Page 2007

HB 554 An act to appropriate moneys to the State Board of Examiners to satisfy various court judgments against the state and providing an immediate effective date. ....Page 2008

HB 693 An act to appropriate money from the general fund to the Legislative Council for the payment of dues to the National Conference of State Legislatures. ....Page 2008

HB 708 An act to appropriate money to the Department of Natural Resources and Conservation from the renewable resource development clearance fund account for various projects under the renewable resource development program, and specifying certain conditions upon the appropriations. ....Page 2009

HB 826 An act appropriating funds for the acquisition, restoration, and protection of Charles M. Russell paintings. ....Page 2010

HB 828 An act appropriating moneys to the Department of Revenue from the general fund to carry out the provisions of the State Funded Homestead Tax Relief Act. ....Page 2010

HB 832 An act appropriating funds to the Department of Social and Rehabilitation Services for the purpose of establishing a program of subsidies for the adoption of hard-to-place children. ....Page 2011

HB 835 An act to appropriate funds to the office of the Superintendent of Public Instruction for the purpose of conducting adult basic education programs. ....Page 2011

HB 836 An act to appropriate money for the public acquisition of Wild Horse Island, located on Flathead Lake; and providing an immediate effective date. ....Page 2012

HB 838 An act to appropriate moneys for the operation of the 45th Legislature. ....Page 2012

HB 842 An act to appropriate $60,000 to the Legislative Council for additional interim research studies. ....Page 2012

SENATE JOINT RESOLUTIONS

SJR 1 A Joint Resolution of the Senate and the House of Representatives of the State of Montana to adopt joint rules to govern its proceedings. ....Page 2017

SJR 2 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the legislative committee on priorities to appoint the appropriate standing committee to conduct an interim study of the best means to promote good quality middle and lower income housing and other Montana investments through the investment of the various trust funds and to present recommendations and proposed legislation to the 46th Legislature. ....Page 2038

SJR 3 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the committee on priorities to assign an interim select committee to consider problems concerning the use of public and privately owned lands for hunting and fishing and for access to other hunting and fishing areas, all for the purpose of developing better understanding and relationships between landowners and sportsmen for their mutual benefit. ....Page 2039

SJR 8 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing an amendment to rule 40-3.54(14)-S54050 of the Montana Administrative Code to permit a licensed acupuncturist to treat a patient with acupuncture without the requirement that a person licensed to practice medicine and surgery in the state of Montana first have prescribed acupuncture treatment for the patient. ....Page 2040

SJR 11 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the committee on priorities to assign the appropriate standing committees to study the laws relating to community college districts for the purpose of generally clarifying, updating, supplementing, and revising such laws. ....Page 2041

SJR 14 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing those state agencies required to prepare environmental impact statements and assessments to minimize duplication of effort, expense, and time spent in their preparation. ....Page 2042

HeinOnline -- 1977 Vol. I xl 1977

SJR 15 A Joint Resolution of the Senate and the House of Representatives of the State of Montana expressing the Legislature's intent to adequately maintain funding for community-based facilities for developmentally disabled persons in Montana and for community mental health centers located in Montana.....Page 2042

SJR 16 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Supreme Court to rescind its rule requiring aspirants to the Montana Bar to hold a degree from an accredited college of law.....Page 2043

SJR 17 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging public authorities to seek a distribution point for Montana along any arctic gas pipeline which may be constructed and urging the construction of the arctic gas project pipeline along the inland route through Montana.....Page 2044

SJR 18 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Congress of the United States to refrain from weakening the application of Montana's surface mining statutes and thereby usurping the authority of the state of Montana regarding regulation of surface mining.....Page 2045

SJR 19 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the legislative committee on priorities to assign to the appropriate standing committee a study of legislation to compensate victims of crime and to have the committee report its findings and recommendations together with any proposed legislation to the 46th Legislature.....Page 2046

SJR 20 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging that the reregulating dam on the Kootenai River be designed and built to regulate river flows.....Page 2047

SJR 22 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Congress of the United States to deregulate the price of new natural gas.....Page 2047

SJR 23 A Joint Resolution of the Senate and the House of Representatives of the State of Montana to send delegates to the Western States Forestry Task Force.....Page 2048

SJR 24 A Joint Resolution of the Senate and the House of Representatives of the State of Montana expressing support for the construction of additional hydroelectric generation capacity at the Fort Peck Project.....Page 2049

SJR 25 A Joint Resolution of the Senate and the House of Representatives of the State of Montana to honor the fighting Bobcats of Montana State University, this year's national champions of Division II football.....Page 2049

SJR 27 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging amendment of the act authorizing the Fort Peck Project to include recreation and conservation of fish and wildlife as a purpose.....Page 2052

SJR 28 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting a study of the sentencing provisions of the Montana Criminal Code of 1973 and of possible alternative provisions which would provide for more uniform sentencing of criminals and for mandatory sentences for dangerous criminals.....Page 2052

SJR 29 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing that an interim committee of the Legislature study the taxation of forest lands in the state of Montana and fully consider alternative systems, including a timber yield tax, as a possible replacement for the present ad valorem system of taxing forest lands.....Page 2053

SJR 32 A Joint Resolution of the Senate and the House of Representatives of the State of Montana consenting to the construction, improvement, and equipment of physical education, athletic, and recreational facilities at Montana State University.....Page 2054

SJR 33 A Joint Resolution of the Senate and the House of Representatives of the State of Montana consenting to the construction of an auto repair shop at Montana State University.....Page 2054

SJR 34 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing that a bust of the late Senator Burton K. Wheeler commissioned by the Greater Montana Foundation be accepted for placement in the capitol rotunda or elsewhere.....Page 2055

SJR 35 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging Congress and the President to enact legislation granting states jurisdiction over non-Indians on Indian reservations within their boundaries and providing increased law enforcement on Indian reservations.....Page 2056

SJR 36 A Joint Resolution of the Senate and the House of Representatives of the State of Montana calling for a joint federal-state-local committee to formulate a plan for a bridge across the Missouri River in the vicinity of Winifred, Montana.....Page 2057

SJR 38 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing the Department of Labor and Industry, Employment Security Division, to provide the Legislative Auditor with quarterly reports as to the numbers and results of reviews and investigations of unemployment compensation claims.....Page 2058

HeinOnline -- 1977 Vol. I xli 1977

SJR 39 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim legislative study of the proposed Local Government Code.....Page 2058

SJR 40 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the committee on priorities to assign a study on the child labor laws of Montana.....Page 2059

SJR 41 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging Congress and the United States Fish and Wildlife Service to recognize the importance of livestock in the Charles M. Russell Game Range.....Page 2060

SJR 42 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing research of the feasibility of the conversion of wheat and barley into alcohol, creating both a new use for Montana wheat and barley and a viable alternative energy source.....Page 2061

SJR 43 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the committee on priorities to assign an appropriate committee to study all of Montana's laws relating to subdivisions for the purpose of generally clarifying, updating, supplementing, and revising such laws.....Page 2061

SJR 44 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the committee on priorities to expand the scope of the interim study on coal tax trust fund investments to include an investigation of the feasibility of using such funds, through loans or otherwise, to help people get a start in agriculture or business.....Page 2063

SJR 45 A Joint Resolution of the Senate and the House of Representatives of the State of Montana for a study by a select interim committee of the feasibility of controlling the introduction of bills in legislative sessions.....Page 2063

SJR 46 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the committee on priorities to designate the appropriate standing committee to study the makeup of the agencies delivering services to and protecting through advocacy and appeal processes the rights of persons and recommend alternatives structured to alleviate the deficiencies found.....Page 2064

SJR 48 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing the Department of Natural Resources and Conservation to do everything possible administratively to speed up the initial compilation of existing water rights and to expedite the adjudication of water rights, particularly agricultural rights.....Page 2066

SJR 49 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the raising of the federal loan price of wheat to $3.50 per bushel under certain conditions.....Page 2067

SJR 50 A Joint Resolution of the Senate and the House of Representatives of the State of Montana honoring academic excellence achieved by students in the University System.....Page 2067

HOUSE JOINT RESOLUTIONS

HJR 3 A Joint Resolution of the Senate and the House of Representatives of the State of Montana expressing a request that the use of law clerk and secretarial assistance to district judges be explored before bills creating additional judgeships are introduced and enacted in subsequent legislative sessions.....Page 2068

HJR 5 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Attorney General to revise and update the Model Rules of Administrative Practice and Procedure.....Page 2069

HJR 6 A Joint Resolution of the Senate and the House of Representatives of the State of Montana placing legislative employees and attaches under the direction of the respective legislative administration committees using the statewide pay plan as a guide.....Page 2070

HJR 7 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing an amendment to rule 16-2.14(1)-S1490 of the Montana Administrative Code, to provide that no permit shall be issued for an open fire or open burning without the prior notification of a fire chief or other appropriate official.....Page 2072

HJR 8 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing the construction and maintenance division of the Department of Administration to prepare a plan for creating permanent, adequate facilities for hearing rooms and offices of the Legislature.....Page 2072

HJR 9 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing the Department of Administration to publicize and encourage the use and maintenance of smoke detectors in buildings constructed in Montana.....Page 2073

HeinOnline -- 1977 Vol. I xlii 1977

HJR 10 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Department of Highways to recognize the importance of construction of a suitable U.S. Highway 93 from its intersection with Interstate 90 west of Missoula to its intersection with Flathead County line north of Polson. ..... Page 2074

HJR 11 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Congress of the United States to allow a maximum speed of sixty-five miles per hour in certain cases. ..... Page 2075

HJR 13 A Joint Resolution of the Senate and the House of Representatives of the State of Montana expressing the firm opposition of the Legislature of Montana to the proposed closing of the Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education, and Welfare, Billings, Montana, social security office and requesting reversal of any decision to close that office. ..... Page 2075

HJR 14 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting that the committee on priorities give high priority to a study and revision by the Legislative Council of the laws relating to elections in the state of Montana. ..... Page 2076

HJR 15 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the director and the state Fish and Game Commission to take into consideration the input of the local rod and gun clubs and allied organizations and landowners as well as the recommendations of the local game wardens in setting seasons and limits of fish and game harvest. ..... Page 2077

HJR 18 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the creation of a committee to study the collection, preservation, and dissemination of Montana's historical and cultural record ..... Page 2078

HJR 19 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the United States Department of Interior to allocate any new power generated on dams in Montana to Montanans first. ..... Page 2079

HJR 21 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Bureau of Reclamation and the Energy Research and Development Administration to study the Sun-Teton unit of the Missouri River Basin Project in light of present economic, social, and technological conditions. ..... Page 2079

HJR 22 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Department of Natural Resources and Conservation to discuss with the state of Wyoming and the Crow and Northern Cheyenne Indians the possibility of joint studies of water supply projects in the Tongue and Powder River basins, to investigate water marketing possibilities in those basins and to conduct a special study on water quality and saline seep potential as a result of increased storage and irrigation in the two river basins, and, should it be determined that the projects be beneficial to Montana, to pursue a feasibility (Level C) study on the recommended project(s) ..... Page 2081

HJR 24 A Joint Resolution of the Senate and the House of Representatives of the State of Montana commending the Great Falls Gas Company for helping homeowners to insulate their homes to conserve energy; encouraging other utilities to emulate this example. ..... Page 2082

HJR 25 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging Congress to review OSHA ..... Page 2083

HJR 26 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting that the Congress of the United States take into consideration climatic and soil conditions and raise the general 160-acre limitation on lands under single ownership which may be irrigated from federal reclamation projects to reflect varying climatic and soil conditions. ..... Page 2084

HJR 27 A Joint Resolution of the Senate and the House of Representatives of the State of Montana declaring the Montana state Legislature's unalterable opposition to registration and confiscation of firearms. ..... Page 2085

HJR 29 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Congress of the United States and the Secretary of Defense to provide for the conduct of political campaigns on the grounds of Malmstrom Air Force Base. ..... Page 2086

HJR 32 A Joint Resolution of the Senate and the House of Representatives of the State of Montana to preserve and perpetuate Indian culture and traditions in Montana and to recognize the freedom of Indian religious practices as a bona fide religion. ..... Page 2087

HJR 36 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging all Montana elected officials and others with appointive authority to increase the representation of American Indians in Montana on boards and in agencies which affect Indian people. ..Page 2088

HJR 38 A Joint Resolution of the Senate and the House of Representatives of the State of Montana commending housewives and mothers and expressing the Legislature's intention to support legislation reaffirming and strengthening the solidarity of the home ..... Page 2089

HJR 40 A Joint Resolution of the Senate and the House of Representatives of the State of Montana supporting federal coal strip mine reclamation legislation upon certain conditions ..... Page 2089

HeinOnline -- 1977 Vol. I xliii 1977

HJR 41 A Joint Resolution of the Senate and the House of Representatives of the State of Montana commending the efforts of the American Council of Spotted Asses. ....Page 2090

HJR 43 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging repeal of section 404 of the Federal Water Pollution Control Act. ....Page 2090

HJR 45 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing the Montana Arts Council to undertake a cultural resources study within the state and to report the findings of the study to the Legislature. ....Page 2091

HJR 47 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the governor's office and the Department of Labor and Industry to investigate methods of putting more unemployed Montanans to work improving the condition of our agricultural and forestland resources. ....Page 2093

HJR 48 A Joint Resolution of the Senate and the House of Representatives of the State of Montana establishing a position on the province of Saskatchewan's coal-fired power plant complex now under construction 4 miles north of the Montana border. ....Page 2094

HJR 49 A Joint Resolution of the Senate and the House of Representatives of the State of Montana protesting the federal grain inspection supervisory fee. ....Page 2095

HJR 51 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging Montana's congressional delegation to vote funding for well stocked and maintained civil defense shelters and trained individuals to handle national emergencies, whether nuclear or natural disaster. ....Page 2096

HJR 52 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Apprenticeship Bureau, joint apprenticeship training committees, and individual employers to train more apprentices. ....Page 2097

HJR 53 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the national rail passenger corporation to inaugurate an experimental train to connect from Helena through Butte to Pocatello and all points served by the train known as the Portland Rose. ....Page 2098

HJR 54 A Joint Resolution of the Senate and the House of Representatives of the State of Montana expressing recognition and support for the National High School Rodeo finals to be held August 15-21, 1977, at the Lewis and Clark County Fairgrounds in Helena. ....Page 2099

HJR 55 A Joint Resolution of the Senate and the House of Representatives of the State of Montana recognizing the value of America's system of free enterprise and encouraging the vigorous support of business by the people, the public school system, and the government of the great state of Montana. ....Page 2100

HJR 58 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing state executive departments to divert as much state work as possible to the private sector in order to avoid unwarranted growth of state government. ....Page 2101

HJR 59 A Joint Resolution of the Senate and the House of Representatives of the State of Montana for an interim study of the organization of legal services within the executive branch of the state government. ....Page 2102

HJR 60 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing the Department of Administration to make energy efficiency a primary consideration in procuring vehicles for the state. ....Page 2103

HJR 61 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Butte Technical Advisory Council and the Montana Highway Commission to take immediate steps to cooperate to correct hazardous conditions at the Harrison Avenue interchange on Interstate Highway 15-90 in Butte, Silver Bow County, Montana. ....Page 2104

HJR 64 A Joint Resolution of the Senate and the House of Representatives of the State of Montana to encourage the Congress to take necessary steps to release funds for improving the safety of rail-highway grade crossings for off-system roads. ....Page 2105

HJR 65 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing the Board of Land Commissioners to transfer the old prison site to the city of Deer Lodge. ....Page 2105

HJR 66 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing that all possible assistance under existing law be provided to victims of catastrophic illness and that the Department of Social and Rehabilitation Services study the feasibility of a Montana catastrophic illness insurance program. ....Page 2106

HJR 67 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Department of Highways to avoid inadvertently discriminating against any locality in the operation of stationary weigh scales. ....Page 2107

HJR 68 A Joint Resolution of the Senate and the House of Representatives of the State of Montana

HeinOnline -- 1977 Vol. I xliv 1977

requesting that the Federal Fish and Wildlife Service not designate certain new areas in Montana as grizzly bear habitat.....Page 2108

HJR 70 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the United States Congress and the President of the United States to initiate negotiations with Canada for a boundary treaty for air quality protection.....Page 2109

HJR 71 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing the Bureau of Mines to conduct a study on the regulation of solution mining of principally potash and to present recommendations and legislation for such regulation to the 46th Legislature.....Page 2110

HJR 72 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting that the governor and the Superintendent of Public Instruction provide leadership to obtain the interagency cooperation and coordination necessary to adequately meet the needs of children who by reason of physical, mental, emotional, or social handicap require special care and services.....Page 2110

HJR 73 A Joint Resolution of the Senate and the House of Representatives of the State of Montana censuring theater owners who display offensive previews when minors are permitted to attend the then-featured motion picture, urging theater owners to use decency and care to avoid such displays, and urging county attorneys to prosecute under the applicable statute.....Page 2110

HJR 74 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the congress and Department of Health, Education, and Welfare to take necessary steps to establish a medicaid system more responsive to individual needs.....Page 2112

HJR 75 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging local school districts to implement energy conservation programs to better educate students in the classroom to the relationship of diminishing nonrenewable energy supplies to man's present lifestyle, to enforce energy-saving measures in public school transportation, and to construct and maintain buildings in such a manner that a minimum amount of energy is consumed during the lifetime of the buildings.....Page 2112

HJR 76 A Joint Resolution of the Senate and the House of Representatives of the State of Montana recognizing the significance of the problem created because the road between Ekalaka and Alzada is not paved and requesting the Department of Highways to explore the means available to assure completion of paving on that road at as early a date as possible without undue disruption of existing programs.....Page 2114

HJR 78 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the federal timber agencies to increase the timber sales on over-mature stands of timber within the state of Montana, thereby improving the timber growing potential on such stands, and requesting the Congress of the United States to hold field hearings on wilderness proposals.....Page 2115

HJR 79 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing the Commissioner of Campaign Finances and Practices to provide a simplified reporting form to candidates for public office.....Page 2116

HJR 80 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Department of Natural Resources and Conservation to study the feasibility of off-stream storage on the upper Big Hole River.....Page 2119

HJR 81 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the committee on priorities to assign to the appropriate committee a study of the methods and progress in the determination of existing water rights in Montana.....Page 2120

HJR 82 A Joint Resolution of the Senate and the House of Representatives of the State of Montana endorsing the reduction of coyotes by aerial hunting on Fort Peck Reservoir.....Page 2121

HJR 83 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Congress of the United States to appropriate moneys for the complete reconstruction of Fort Union Trading Post.....Page 2121

HJR 84 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the committee on priorities to assign the appropriate standing committee to study the feasibility of establishing an intermediate school district structure for the state of Montana.....Page 2122

HJR 85 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting a study of economy and reform measures relating to legislative budgeting and spending.....Page 2123

HJR 88 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the committee on priorities to appoint a select committee to study the current human services delivery system and the possibility of implementing an integrated system for the delivery of human services.....Page 2124

HJR 90 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the Legislature and executive department of the state of Washington to encourage

HeinOnline -- 1977 Vol. I xlv 1977

and permit the construction of appropriate port facilities for unloading crude oil for shipment by pipeline to the northern states, including the state of Montana.....Page 2125

HJR 91 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the appointment of a committee of livestock industry people to make an interim study of laws affecting the movement and marketing of livestock and to make recommendations for change to the 46th session of the Legislature.....Page 2126

HJR 92 A Joint Resolution of the Senate and the House of Representatives of the State of Montana protesting the Food and Drug Administration's announced ban on the sale of saccharin and products containing saccharin.....Page 2127

HJR 93 A Joint Resolution of the Senate and the House of Representatives of the State of Montana recognizing Law Day.....Page 2128

HJR 94 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting federal funding in the amount of $86 million for the national magnetohydrodynamic energy extraction program.....Page 2129

HJR 95 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting an interim legislative study of requiring a certificate of need for new or expanded mental health facilities.....Page 2129

HJR 96 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Congress of the United States to enact legislation requiring the labeling of all beef as either "domestic beef" or "imported beef".....Page 2130

HJR 97 A Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the federal power commission to withdraw its limitation on the number of new natural gas connections which can be made in 1977 by the Montana-Dakota Utilities.....Page 2131

HJR 98 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the legislative committee on priorities to appoint a joint committee to conduct an interim study of the property tax classification system and to present recommendations and proposed legislation to the 46th Legislature.....Page 2132

HJR 99 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the committee on priorities to assign a joint committee to undertake a study of alternative methods of taxing financial institutions.....Page 2133

HJR 100 A Joint Resolution of the Senate and the House of Representatives of the State of Montana requesting the legislative committee on priorities to appoint the appropriate standing committee to conduct an interim study of the governance of Montana's vocational education program.....Page 2133

HJR 103 A Joint Resolution of the Senate and the House of Representatives of the State of Montana the committee on priorities to assign to the appropriate standing committee a study of the problems and needs of battered spouses and their families in Montana and to have the committee make recommendations to meet identified problems and needs.....Page 2134

HJR 105 A Joint Resolution of the Senate and the House of Representatives of the State of Montana directing the Legislative Auditor to conduct an annual audit of selected special education programs in school districts throughout Montana.....Page 2135

HJR 106 A Joint Resolution of the Senate and the House of Representatives of the State of Montana honoring former govenor J. Hugo Aronson.....Page 2136

SENATE RESOLUTIONS

SR 1 A Resolution of the Senate of the State of Montana to adopt rules to govern its proceedings in addition to the joint rules.....Page 2137

SR 2 A Resolution of the Senate of the State of Montana authorizing pay for certain legislative officers and employees who prepared for the business of the Forty-Fifth Legislature.....Page 2140

SR 4 A Resolution of the Senate of the State of Montana requesting the Legislature and executive department of the state of Washington to encourage and permit the construction of appropriate port facilities for unloading crude oil for shipment by pipeline to the northern states, including the state of Montana.....Page 2141

SR 5 A Resolution of the Senate of the State of Montana urging the U.S. Congress to stop treaty negotiations to transfer control, administration and ownership of our canal to the present government of Panama.....Page 2143

SR 6 A Resolution of the Senate of the State of Montana urging that public lands not be closed by any blanket edict but should be open to all forms of recreational use, including snowmobiles, unless closed for a specific reason on an individual area basis.....Page 2144

HeinOnline -- 1977 Vol. I xlvi 1977

SR 7 A Resolution of the Senate of the State of Montana authorizing the establishment of a bank account for donations to the state to purchase the Charles M. Russell painting, "When the Land Belonged to God". ..... Page 2145

SR 8 A Resolution of the Senate of the State of Montana requesting the Carter administration and Congress to fully fund forest fire protection assistance ..... Page 2146

SR 9 A Resolution of the Senate of the State of Montana welcoming the Wally Byam Caravan Club International to its June 28th through July 4th rally to be held in Bozeman, Montana; extending a cordial invitation to all its members to stay and enjoy all of the recreational opportunities to be found throughout Montana for as long as they like; and expressing the hope that all of its members will find their stay in Montana to be very enjoyable. ..... Page 2147

SR 11 A Resolution of the Senate of the State of Montana authorizing the President of the Senate to approve the employment of Senate officers and employees necessary to complete the business of the regular session of the 45th Legislature and to provide compensation for employees to prepare any business of any special session of the 45th Legislature. ..... Page 2148

HOUSE RESOLUTIONS

HR 1 A Resolution of the House of Representatives of the State of Montana to adopt rules to govern its proceedings in addition to the joint rules. ..... Page 2148

HR 3 A Resolution of the House of Representatives of the State of Montana requesting the Carter administration and Congress to fully fund forest fire protection assistance. ..... Page 2150

HR 5 A Resolution of the House of Representatives of the State of Montana to authorize certain legislative officers and employees to complete the business of the regular session of the Forty-Fifth Legislature and to provide compensation for employees to prepare any business of any special session of the Forty-Fifth Legislature and to prepare the business of the Forty-Sixth Legislature... Page 2151

HeinOnline -- 1977 Vol. I xlvii 1977

SESSION LAWS

ENACTED BY THE

Forty-Fifth Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1977

EXPLANATORY NOTE:

Portions of statutes included herein are printed in ITALICS by virtue of Section 82-2210, R.C.M., 1947. They are thus printed to make instantly recognizable the new part of existing statutes as added or changed by the Forty-Fifth Legislature.

HeinOnline -- 1977 Vol. I xlviii 1977

SESSION LAWS

CHAPTER NO. 1

AN ACT TO AMEND THE LAWS RELATING TO THE RECODIFICATION OF THE REVISED CODES OF MONTANA, 1947; AMENDING SECTIONS 12-501, 12-505, 12-506, 12-507, 12-509, AND 12-510, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 12-501, R.C.M. 1947, is amended to read as follows:

"**12-501. Definitions.** As used in this act *the following definitions apply:*

(1) *"Code" or "codes"* means the Revised Codes of Montana, 1947, the pocket supplements thereto, and the replacement volumes.

(2) "Recodify" means to compile, arrange, rearrange, and prepare for publication. It includes, without changing the meaning, effect, or intent of any law:

(a) *correcting or changing* punctuation, capitalization, *spelling, grammatical construction,* and numbering *as required by uniform literary and bill drafting practice;*

(b) substituting the appropriate *new* code *division* reference for reference to a section of, *to a part of, or to an entire* "act";

(c) substituting calendar date for "effective date", *"hereafter", and similar terms;*

(d) creating new titles, chapters, *parts,* sections, or other divisions of the code;

(e) changing or inserting language made necessary because of rearrangement;

(f) eliminating redundant words;

(g) when given direction or authority by another statute, correcting inaccurate or obsolete references to:

(i) titles of officers or agencies, such as those changed by executive reorganization statutes;

(ii) other code sections, such as those which have been repealed or repealed and replaced;

(h) changing inaccurate terminology to comply with statutory definitions or short form amendments, such as those found in 19-122 or 93-411;

HeinOnline -- 1977 Vol. I 1 1977

(i) whether originally written by the legislature or by the code publisher, changing or creating section captions (catch lines) to clearly reflect the content of the section."

Section 2. Section 12-505, R.C.M. 1947, is amended to read as follows:

"12-505. Code commissioner duties. *(1) The code commissioner is subject* to the general supervision and policy of the legislative council.

(2) Prior to January 1, 1979, *the code commissioner shall* recodify all the laws of a general and permanent nature appearing in the codes and session laws and prepare *them* for publication;

(3) Prior to January 1, 1979, *the commissioner shall* prepare and submit to the legislature a report which is certified by the commissioner as the "Official Report of the Montana Code Commissioner", together with a bill enacting the Montana Code Annotated. A copy of the report and bill shall be deposited with the secretary of state. The report shall explain and indicate, in tabular or other form, all changes made during recodification, other than punctuation and capitalization, to clearly indicate the character of each change;

(4) Prior to November 1, 1976, and prior to November 1 of each year thereafter, *the commissioner shall* prepare and submit to the legislative council a report, in tabular or other form, indicating the commissioner's recommendations for legislation which will:

(a) eliminate archaic or outdated laws;

(b) eliminate obsolete or redundant wording of laws;

(c) eliminate any duplications in law and any laws repealed directly or by implication;

(d) clarify existing laws;

(e) correct errors and inconsistencies within the laws.

(5) The commissioner shall cause to be prepared for *publication with the Montana Code Annotated* the following material:

(a) *Statutory* history of *each code* section;

(b) *Annotations* of state and federal court decisions relating to the subject matter of the *code*;

(c) *Such* editorial notes, cross-references, and other matter as the commissioner considers desirable or advantageous;

(d) The Declaration of Independence;

(e) The Constitution of the United States of America and amendments thereto;

(f) Acts of *congress* relating to the authentication of laws and records;

(g) The Organic Act of the Territory of Montana;

(h) The Enabling Act;

HeinOnline -- 1977 Vol. I 2 1977

(i) The 1972 Constitution of the state of Montana and any amendments thereto;

(j) The Ordinances relating to federal relations and elections;

(k) Rules of civil, criminal, *and* appellate procedure and such other rules of procedure as the Montana supreme court may adopt; and

(l) A complete subject index, *a* popular name index, *and* comparative disposition tables or cross reference *indexes* relating sections of the Montana Code Annotated to prior compilations and session laws.

(6) After publication of the Montana Code Annotated *the code commissioner shall*:

(a) annotate, arrange, and prepare for publication all laws of a general and permanent nature enacted at each legislative session *and assign catch lines and code section numbers to each new section*;

(b) continue to codify, index, arrange, rearrange, and generally update the Montana Code Annotated to maintain an orderly and logical arrangement of the laws in order to avoid future need for bulk revision;

(c) prepare and submit to each legislature a report which is certified as the "Official Report of the Montana Code Commissioner — (year)" which indicates, in tabular or other *form,* all changes made during the continuous recodification, other than punctuation and capitalization, to clearly indicate the character of each change made since the first publication of the Montana Code Annotated.

(7) *From* time to time *the commissioner shall* confer with members of the judiciary and the state bar relative to recodification procedures."

Section 3. There is a new R.C.M. section numbered 12-505.1 that reads as follows:

12-505.1. Notice of effective date. Within 10 days after the bill enacting the Montana Code Annotated becomes effective, the secretary of state shall publish a notice thereof once in a newspaper of general circulation in each judicial district within the state, specifying in the notice the effective date of the code and the cost of a copy of the code.

Section 4. Section 12-506, R.C.M. 1947, is amended to read as follows:

"**12-506. Effect of Montana Code Annotated.** (1) The Montana Code Annotated shall be enacted as a reenactment of the Revised Codes of Montana, 1947, and the supplements thereto.

(2) The enactment of the Montana Code Annotated shall *not*:

(a) revive a law repealed or superseded before the effective date of *the* Montana Code Annotated;

(b) affect an act done, right accrued, or obligation incurred or imposed by law prior to the effective date of *the* Montana Code Annotated;

(c) affect any action, suit, or proceeding pending on such effective date;

HeinOnline -- 1977 Vol. I 3 1977

(d) repeal statutes of a nongeneral, nonpermanent nature such as severability, construction, validating, repealing, or similar statutes omitted from the Montana Code Annotated.

(3) The Montana Code Annotated shall be given effect as a continuation of the Revised Codes of Montana and not as a new enactment. A defect in title of any act set out in prior laws and reenacted by the Montana Code Annotated is cured by such enactment.

(4) No implication or presumption of legislative construction is to be drawn from the classification *or* arrangement of the Montana Code Annotated.

(5) *Unless specifically adopted as such by the legislature, annotations,* code commissioner notes, *catch lines, or* other editorial material *included in* the Montana Code Annotated may not be construed *as* part of the legislative text but *are* only for the purpose of convenience, orderly arrangement, and information.

(6) In case of any inconsistency in meaning arising through omission or otherwise between the provisions of the Montana Code Annotated and the corresponding portion of the official enrolled bill on file with the secretary of state, effect shall be given to the official enrolled bill."

Section 5. Section 12-507, R.C.M. 1947, is amended to read as follows:

"12-507. Publications. (1) The legislative council with the advice of the code commissioner shall decide on the quantity, quality, style, format, and grade of all publications prior to having the department of administration contract for their publication.

(2) The methods of sale to the public of the Montana Code Annotated and supplements or other subsequent and ancillary publications thereto may be included as an alternative specification and bid and as a part of a contract to be let by bids by the department of administration.

(3) The sales price to the public shall be fixed by the legislative council but shall not exceed the cost price plus 20%. All revenues generated from the sale to the public of the Montana Code Annotated shall be remitted to the state treasurer for the purpose of reimbursing the general fund for appropriations made for the use of the office and facilities of the legislative council under this act.

(4) Sets of the Montana Code Annotated purchased by the state *or local governmental agencies that are supported by public funds* shall be for the cost price of the sets."

Section 6. Section 12-509, R.C.M. 1947, is amended to read as follows:

"12-509. Deposit of code — certification. (1) Upon completion of the printing and binding of the Montana Code Annotated, the code commissioner shall deposit a complete set with the secretary of state, along with a certification that the set comprises the Montana Code Annotated as authorized by this act and enacted by the legislature.

(2) Within 10 days after that deposit, the secretary of state shall publish a notice thereof once in a newspaper of general circulation in each

HeinOnline -- 1977 Vol. I 4 1977

judicial district within the state, specifying in the notice the date on which the Montana Code Annotated *became* effective, *how the code may be purchased, and the cost thereof.*

(3) The secretary of state or the code commissioner may further publicize the effective date of the Montana Code Annotated to the extent considered necessary or desirable by the commissioner."

Section 7. Section 12-510, R.C.M. 1947, is amended to read as follows:

"**12-510. Format as approved by legislative council.** (1) The publication of updates to the Montana Code Annotated may be as a cumulative supplement, replacement volume, or in any other format approved by the legislative council.

(2) The supplements or replacements shall be certified and reported to the legislature by the legislative council; approved and enacted by the legislature as *prima facie* the official laws of Montana; published, copyrighted, and deposited with the secretary of state; and referred to as the Montana Code Annotated. The supplements and replacements shall become effective on the date deposited with and certified to the secretary of state.

(3) The legislative council may issue such supplementary and ancillary publications as it considers necessary or desirable in aid of the general use and purposes of the Montana Code Annotated and the supplements or replacements thereto."

Section 8. This act is effective on its passage and approval.

Approved February 8, 1977.

CHAPTER NO. 2

AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO STATE PARKS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 62-301, R.C.M. 1947, is amended to read as follows:

"**62-301. Purpose.** *For* the purpose of conserving the scenic, historic, archaeologic, scientific, and recreational resources of the state and providing for their use and enjoyment, thereby contributing to the cultural, recreational, and economic life of the people and their health, the state fish and game commission (hereinafter referred to as commission) is hereby vested with the duties and powers hereinafter set forth."

Section 2. Section 62-306, R.C.M. 1947, is amended to read as follows:

"**62-306. Rules.** The commission *may* make rules governing the use, occupancy, and protection of the lands and property under its control."

Section 3. Section 62-310, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 5 1977

"**62-310. Establishment of state scientific and recreational park.** *In* order to preserve and protect the biological station grounds hereafter referred to and to remove fire hazards and the danger of other encroachments tending to detract from the scientific values and uses thereof, the state fish and game commission is authorized to maintain a state scientific and recreational park on a suitable area to be designated by it not exceeding 15 acres at the southeast portion of the lands granted by the United States of America to the state of Montana for the use of the university of Montana for biological station purposes."

Section 4. Section 62-311, R.C.M. 1947, is amended to read as follows:

"**62-311. Rules governing use.** The commission shall make such rules governing the park's use, occupancy, and the protection of the remaining lands of *the* grant *as necessary to promote and continue* the use of all of *the* lands for biological station purposes. *The* park itself shall be so maintained as to develop and encourage public interest in the scientific and biological resources of the area. *Nothing* herein contained *prevents* the use of the area within the park for biological station purposes whenever it becomes useful or necessary for such purposes."

Section 5. Section 62-314, R.C.M. 1947, is amended to read as follows:

"**62-314. Penalties for violation of state park rules.** Any person who *injures* or *damages* any *land or property under control of the commission* or private property thereon or therein or *violates* any of the *rules* made by the commission relating to *these areas is* guilty of a misdemeanor and shall be fined not more than $500 or be imprisoned in the county jail for not more than 6 months."

Approved February 8, 1977.

CHAPTER NO. 3

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO LIBRARIES, ARTS, AND ANTIQUITIES; ENACTING THREE NEW SECTIONS; AMENDING SECTIONS 44-139, 44-219.2, 44-517, 44-518, 44-520, 81-2508, 81-2510, 82-3607, AND 82A-218, R.C.M. 1947; AND REPEALING SECTIONS 44-522, 44-529, 78-302, 82-3205, AND 82-3206, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 44-126.1 that reads as follows:

44-126.1. State library authorized. The state library commission shall maintain and operate a state library to be located in Helena.

Section 2. Section 44-139, R.C.M. 1947, is amended to read as follows:

"**44-139. Exemptions.** This act shall not apply to *officers of or* affect the duties concerning publications distributed by:

HeinOnline -- 1977 Vol. I 6 1977

(1) *the* state law library;

(2) *the* secretary of state in connection with his duties under 82-2202*(16), as amended;*

(3) the code commissioner in connection with his duties under Title 12, chapter 5, as amended; and

(4) the legislative services division of the legislative council in connection with its duties under 43-711.2, as amended."

Section 3. Section 44-219.2, R.C.M. 1947, is amended to read as follows:

"**44-219.2. City-county library — board of trustees.** *(1)* A joint city-county library shall be governed by a board of trustees composed of five members chosen as specified in the contract, with terms not to exceed 5 years.

(2) Trustees shall serve no more than two full terms in succession.

(3) Trustees shall serve without compensation, but their actual and necessary expenses incurred in the performance of their official duties may be paid from library funds.

(4) Trustees shall meet and elect a chairman and such other officers as they *consider* necessary for *1*-year terms.

(5) The board of trustees shall have the *same powers* and duties as *the board of trustees of a city library or a county library.*"

Section 4. There is a new R.C.M. section numbered 44-515.1 that reads as follows:

44-515.1. Historical library authorized. There is a historical library, to be maintained and operated by the Montana historical society.

Section 5. Section 44-517, R.C.M. 1947, is amended to read as follows:

"**44-517. Definitions.** As used in this act*:*

(1) "*society*" means the Montana historical society and includes*:*

(a) *the* historical *library* and *its* contents;

(b) museums and art galleries and their contents, acquired by the trustees;

(c) historical places, sites, or monuments acquired or developed by the society;

(d) divisions, departments, and activities operated in conjunction with the historical library as are established by the trustees; and

(e) books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture, or fixtures acquired by the trustees*;*

(2) "*trustees*" means the board of trustees of the Montana historical society*;*

HeinOnline -- 1977 Vol. I 7 1977

(3) "*committee*" means the executive committee of the board of trustees of the Montana historical society."

Section 6. Section 44-518, R.C.M. 1947, is amended to read as follows:

"**44-518. Historical library and museum independent of other state libraries, museums, or galleries.** *The* historical library *and any historical* museum administered by the society in accordance with the provisions of this act shall be independent of any other library, museum, or gallery owned, maintained, or operated by the state of Montana."

Section 7. Section 44-520, R.C.M. 1947, is amended to read as follows:

"**44-520. Qualifications of trustees.** Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest. The governor, *insofar* as possible, *shall* appoint trustees from the various geographical areas of the state."

Section 8. There is a new R.C.M. section numbered 78-201.1 that reads as follows:

78-201.1. Veterans' and pioneers' memorial building. There is a veterans' and pioneers' memorial building located in Helena.

Section 9. Section 81-2508, R.C.M. 1947, is amended to read as follows:

"**81-2508. Agreements with private owners.** The department *may* enter into cooperative agreements with private landowners or the owners of objects to preserve, mark, maintain, excavate, or otherwise deal with such sites and objects upon such terms as may be agreed upon by the department and *the* private owners. The agreements may contain a clause that the sites and objects shall be registered under this act and also a provision that the state of Montana shall *indemnify* the owner for any liability, *including court costs and attorney's fees, incurred* while the property is under the control of the state of Montana."

Section 10. Section 81-2510, R.C.M. 1947, is amended to read as follows:

"**81-2510. Prevention of waste, destruction or removal.** The department *shall* apply to any district court of the state of Montana for a writ of injunction to prevent the waste, removal, *or* destruction of any registered site or registered object. The department *may* not be required to give any bond in *the* application. Upon hearing of the petition for injunction, the court may restrain waste, removal, or destruction upon *the* site or of *the* object for a period of 1 year. The court may also provide in its order that during *that* period the department shall present to the parties involved a program for the protection, preservation, restoration, and maintenance of the registered site or registered objects."

Section 11. Section 82-3607, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 8 1977

"82-3607. **Gifts and donations.** The council may acquire, accept, receive, dispose *of,* and administer in the name of the council any gifts, donations, properties, securities, bequests, and legacies that may be made to it. Moneys received by donation, gift, bequest, or legacy, unless otherwise provided by the donor, shall be deposited in the earmarked revenue fund of the state treasury and used for the general operation of the council. The council is the official agency of the state to receive and disburse any funds made available by the *national foundation on the arts.*"

Section 12. Section 82A-218, R.C.M. 1947, is amended to read as follows:

"82A-218. **Name changes.** Wherever the words "state controller" or "controller" appear in sections 6-105, 6-107, 6-108, 10-1004, 16-2723, 43-218, 59-701, 59-701.1, 59-701.2, 59-1105, 75-6206, 78-910, 78-1203, 79-101, 79-104, 79-202, 79-414, 79-415, 79-602, 79-2308, 82-1312, 82-1313, 82-1314, 82-3307, 82-3308, 82-3309, 82-3317, and 82-3319, the words "department of administration" are substituted therefor."

Section 13. **Repealer.** Sections 44-522, 44-529, 78-302, 82-3205, and 82-3206, R.C.M. 1947, are repealed.

Approved February 10, 1977.

CHAPTER NO. 4

AN ACT TO REPEAL CHAPTER 434, LAWS OF 1975, WHICH WAS DECLARED UNCONSTITUTIONAL BY THE MONTANA SUPREME COURT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Chapter 434, Laws of 1975, is repealed.

Approved February 10, 1977.

CHAPTER NO. 5

AN ACT TO AMEND SECTION 82-303 TO CLARIFY THE REQUIREMENT OF LICENSURE OF ALL BOXING, SPARRING, OR WRESTLING EXHIBITIONS NOT OTHERWISE EXCEPTED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-303, R.C.M. 1947, is amended to read as follows:

"82-303. **Jurisdiction over boxing, sparring, and wrestling matches — licenses — application for license.** *(1)* The board has the sole direction, management, control, and jurisdiction over boxing, sparring, and wrestling matches and exhibitions conducted, held, or given within this state by a club, corporation, or association. No boxing, spar-

ring, or wrestling match or exhibition may be conducted, held, or given within this state except *when licensed* in accordance with this act.

(2) The board may *grant or* revoke, subject to 82A-1603 and 82A-1604, a license to conduct, hold, or give boxing, sparring, and wrestling matches and exhibitions to a club, corporation, or association which, if it is an amateur athletic association, may be incorporated or organized under rules adopted by the board.

(3) This act does not apply to or prohibit amateur boxing or wrestling exhibitions conducted in or by organized amateur clubs, schools, and gymnasiums.

(4) A license is subject to rules the board makes.

(5) An application for a license shall be in writing and addressed to the department and verified by an officer of the club, corporation, or association on whose behalf the application is made. It shall contain facts which show the applicant entitled to receive a license and other facts and recitals the board by rule requires to be shown."

Approved February 10, 1977.

CHAPTER NO. 6

AN ACT NAMING THE BLACKSPOTTED CUTTHROAT TROUT AS THE STATE FISH.

Be it enacted by the Legislature of the State of Montana:

Section 1. **State fish.** The blackspotted cutthroat trout (Salmo clarki) is the official Montana state fish.

Approved February 10, 1977.

CHAPTER NO. 7

AN ACT AUTHORIZING COUNTIES TO CONVEY TRACTS OF COUNTY-OWNED LAND TO OTHER GOVERNMENTAL UNITS FOR CEMETERY PURPOSES; AMENDING SECTION 16-1131, R.C.M. 1947; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1131, R.C.M. 1947, is amended to read as follows:

"**16-1131. Counties authorized to deed land for park to state, city, town, or United States — reversion of title.** The county commissioners of any county in the state of Montana are hereby authorized to convey to the state of Montana or to any city or town in Montana or to the United

HeinOnline -- 1977 Vol. I 10 1977

States of America any tract of county-owned land not exceeding *1,280* acres, to be used for the establishment and maintenance of a park, *recreational grounds, or cemetery* and to be maintained by the state, city, town, or federal government as a public park, recreational grounds, *or cemetery.* Said land shall be deeded to the state, city, town, or federal government without charge but upon the condition that the same shall be devoted and maintained by the state, city, town, or federal government for the purpose specified in this act, and in the event that *the* land shall cease to be used for such purposes for a period of 5 years in succession, the title thereto shall revert to the county making such grant."

Section 2. **Effective date.** This act is effective upon passage and approval.

Approved February 10, 1977.

CHAPTER NO. 8

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATIVE TO GAME WARDENS' RETIREMENT AND DEATH AND DISABILITY BENEFITS; AMENDING SECTIONS 68-1401, 68-1402, 68-1405, 68-1406, 68-1407, 68-1409, 68-1410, 68-1413, 68-1415, 68-1417, 68-1421, 68-1422, 68-1425, 68-1427, AND 68-1429; AND ENACTING A NEW SECTION 68-1402.1 TO OFFICIALLY RECOGNIZE AND NAME THE MONTANA STATE GAME WARDENS' RETIREMENT SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-1401, R.C.M. 1947, is amended to read as follows:

"**68-1401. Definitions.** Unless the context requires otherwise, *the following definitions apply* in this act:

(1) "Accumulated deductions" means the total of the amount deducted from the salary of a contributor, paid into the account, and standing to his credit in the account, together with the regular interest thereon.

(2) "Beneficiary" means a person *nominated to receive benefits under this chapter* by *a member's* written designation, duly acknowledged and filed with the board.

(3) "Retired state game warden" means any person in receipt of a retirement allowance under this act.

(4) "Board" means the Montana state game wardens' retirement board.

(5) "Contributor" means any person who has accumulated deductions in the account standing to his credit.

(6) "Final salary" means the average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous

HeinOnline -- 1977 Vol. I 11 1977

service upon which contributions have been made or, in the event a member has not served 3 years, the total retirement compensation earned divided by the number of years served.

(7) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(8) "Account" means the Montana state game wardens' retirement account in the agency fund.

(9) "Involuntary retirement" means a retirement not for cause and before retirement age.

(10) "Member's annuity" means payments for life derived from contributions made by the contributor.

(11) "Optional retirement age" means the age at which a contributor may retire after 20 years service or more, provided that the contributor has reached the age of 55 years.

(12) "Retirement age" means the age at which a member retires *as prescribed in 68-1411.*

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "State annuity" means payments for life derived from contributions made by the state *from department of* fish and game moneys in the earmarked revenue fund."

Section 2. Section 68-1402, R.C.M. 1947, is amended to read as follows:

"68-1402. State game warden defined. Whenever used in this act, state game warden means all state fish and game wardens hired by the state fish and game commission and *includes* all warden supervisory personnel whose salaries or compensation is paid out of the *department of* fish and game moneys in the earmarked revenue fund."

Section 3. There is a new R.C.M. section numbered 68-1402.1 that reads as follows:

68-1402.1. Retirement system. There is a retirement system known as the Montana state game wardens' retirement system, which is governed by the provisions of this chapter.

Section 4. Section 68-1405, R.C.M. 1947, is amended to read as follows:

"68-1405. Retirement account. *(1) The following shall be paid to the board and shall be credited by the board to the account:*

(a) all contributions by the state *from department of* fish and game moneys in the earmarked revenue fund;

(b) all contributions by the state game wardens; and

(c) all interest on and increase of the investments and moneys *in the* account.

HeinOnline -- 1977 Vol. I 12 1977

(2) The board *has* exclusive control of the administration of *the* account. The state treasurer *is* custodian of the account, subject to the exclusive control of the board as to the administration thereof and the board of investments as to the investment thereof.

(3) Whenever there is on deposit in the account a sum in excess of $25,000, such excess *shall* be invested by the board of investments as part of the long-term investment fund. *The part* of the account *not in excess of* $25,000 shall be invested by the board of investments as part of the short-term investment fund when so directed by the board."

Section 5. Section 68-1406, R.C.M. 1947, is amended to read as follows:

"**68-1406. Board to make rules — actuarial data.** *(1)* The board is charged *with the* proper administration, operation, and enforcement *of this act. The board may make such rules as it considers necessary* and shall *determine* the conditions under which persons may *become members of* and receive benefits under the retirement system.

(2) The board shall keep such data as *is* necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors *and* the beneficiaries and shall adopt for the retirement system one or more mortality tables."

Section 6. Section 68-1407, R.C.M. 1947, is amended to read as follows:

"**68-1407. Membership.** *Each* state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid wholly out of the *department of* fish and game moneys in the earmarked revenue fund and who is assigned to law enforcement in the department of fish and game shall become a member of the retirement system when first becoming a state game warden. If a person becomes a state game warden after July 1, 1963, who was at any time before July 1, 1963, a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this act. All state game wardens shall be members of the retirement system so long as actively employed in that capacity."

Section 7. Section 68-1409, R.C.M. 1947, is amended to read as follows:

"**68-1409. Member's contribution.** Every member *is* required to contribute into the account a sum equal to 7% of his monthly salary, which sum shall be deducted from his salary and deposited to his credit in the account. *The retirement allowance of any member* who contributes after 25 years of service shall be increased *by* an amount *which is the* actuarial equivalent of *an annuity based on* the *member's contributions and the state contributions made after 25 years of service and* standing to *the member's* credit at the time of his retirement."

Section 8. Section 68-1410, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 13 1977

"**68-1410. State's contribution.** *(1) Each month the state treasurer shall pay to the account,* out of the *department of* fish and game moneys in the earmarked revenue fund, a sum equal to 7% of the total of *all members' salaries.*

(2) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits, shall be paid by the state of Montana out of the *department of* fish and game moneys in the earmarked revenue fund. *The payments shall be* made on the basis of budgets submitted by the board."

Section 9. Section 68-1413, R.C.M. 1947, is amended to read as follows:

"**68-1413. Service retirement allowance.** Upon retirement from service, *the* service retirement allowance *consists* of the state annuity plus the member's annuity. The member's annuity *is* the actuarial equivalent of his *accumulated deductions* at the time of his retirement. *The* state annuity *is* an amount which, when added to the member's annuity, will provide a total retirement allowance of one-half of his final salary with 25 *years of* service."

Section 10. Section 68-1415, R.C.M. 1947, is amended to read as follows:

"**68-1415. Involuntary retirement allowance.** *If* a contributor *is involuntarily* discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing *a written* application *with the board,* be paid *whichever of the following allowances that he elects:*

(1) the full amount of *his* accumulated deductions; or

(2) a member's annuity *which is the actuarial equivalent of* his accumulated deductions plus *an annuity which is* the actuarial equivalent of the present value of *the* state annuity."

Section 11. Section 68-1417, R.C.M. 1947, is amended to read as follows:

"**68-1417. Payments upon employment-related death.** *(1)* If the board *finds* that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary, *consisting* of:

(a) a member's annuity which *is* the actuarial equivalent of the contributor's accumulated deductions; and

(b) a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the contributor, less the amount which is paid to *the* beneficiary under the *Workers'* Compensation Act of the state of Montana during the period such compensation is paid or payable.

(2) The beneficiary's retirement allowance shall cease after 15 years or *after he reaches* the age of 65, whichever is *later.*"

HeinOnline -- 1977 Vol. I 14 1977

Section 12. Section 68-1421, R.C.M. 1947, is amended to read as follows:

"**68-1421. Nomination of beneficiary.** *Each* contributor *may* name his beneficiary by written designation, duly acknowledged and filed with the board, and *may* change the beneficiary in like manner. *The* designation and all changes *may* be filed with the board up until, but not after, the time of retirement."

Section 13. Section 68-1422, R.C.M. 1947, is amended to read as follows:

"**68-1422. Military service.** *(1) A* state game warden inducted into the armed forces of the United States *has* the option *to*:

(a) continue his payments into the account; or

(b) allow the board to make his payments for him during *his* military service, in which event he *must* repay the account the full amount of *the* payments *within 2 years after* his return to *active* state game warden status.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall receive credit for his service in the armed forces of the United States *as if it were service as a state game warden.*"

Section 14. Section 68-1425, R.C.M. 1947, is amended to read as follows:

"**68-1425. Subrogation.** *When* a third person is liable to the member or any of his dependents for injury or death, the state *is* subrogated to the right of the dependents against *the* third person but only to the extent of the state annuity payable under this act by the state. Any recovery against *the* third person in excess of the state annuity theretofore paid or thereafter to be paid by the state shall be paid forthwith to the contributor or the person designated by *the* contributor."

Section 15. Section 68-1427, R.C.M. 1947, is amended to read as follows:

"**68-1427. Optional retirement allowance.** *(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before* the first payment on account of any retirement allowance is made. *If a member dies* after retirement and within 30 days from the date upon which his election or changed election *was* received *by* the board, *the* election is void and the death *will* be considered as that of a member before retirement.

(2) A member or beneficiary may elect or, *prior to the approval of a previous election,* revoke or change a previous election *and elect* to receive the actuarial equivalent of his retirement allowance as of the date of retirement, in a lesser retirement allowance, payable throughout life with one of the following options:

(a) Option 1 — *upon* his death, his lesser retirement allowance *will* be continued throughout the life of and paid to *the* person *that* he *nomi-*

HeinOnline -- 1977 Vol. I 15 1977

nated by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 2 — *upon* his death, one-half of his lesser retirement allowance *will* be continued throughout the life of and paid to *the* person *that* he *nominated* by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 3 — *such* other benefits *will* be paid, either to the beneficiary or to *any* other person *that* he *nominated*, as, together with *the* lesser retirement allowance, are the actuarial equivalent of his retirement allowance and *have been* approved by the board."

Section 16. Section 68-1429, R.C.M. 1947, is amended to read as follows:

"**68-1429. Ineligibility for public employees' retirement system.** *After July 1, 1963, each* state game warden *must* become a member of this retirement system, and thereafter no state game warden *will* be eligible *for* membership *in* the public employees' retirement system, and the provisions of *The Public Employees' Retirement System Act will* not apply to state game wardens."

Approved February 18, 1977.

CHAPTER NO. 9

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO FISH AND GAME; REPEALING SECTIONS 26-303.4, 26-307.1, 26-502, 26-909, AND 26-922, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-110.3, R.C.M. 1947, is amended to read as follows:

"**26-110.3. Enforcement powers of wardens.** A warden may:

(1) *serve* a subpoena issued by a court for the trial of a violator of the fish and game laws;

(2) *search*, without a warrant, any tent not used as a residence, *any* boat, vehicle, box, locker, basket, creel, crate, game bag, *or* package, or their contents, upon probable cause to believe that any fish and game law or commission rule for the protection, conservation, or propagation of game, fish, birds, or fur-bearing animals has been violated;

(3) *search*, with a search warrant, any dwelling house or other building;

(4) *seize* game, fish, game birds, and fur-bearing animals and any parts of them, taken or possessed in violation of the law or the rules of the commission;

(5) *seize* and hold, subject to law or the orders of the commission,

HeinOnline -- 1977 Vol. I 16 1977

devices which have been used to unlawfully take game, fish, birds, or fur-bearing animals;

(6) *arrest*, in accordance with *Title* 95, chapter 6, a violator of a fish and game law or rule of the commission, violation of which is a misdemeanor;

(7) *exercise* the other powers of peace officers in the enforcement of the fish and game laws, the rules of the commission, and judgments obtained for violation of those laws or rules."

Section 2. Section 26-132, R.C.M. 1947, is amended to read as follows:

"**26-132. Authority for commission to make agreement with Indians concerning hunting and fishing.** *The* commission *may* negotiate and conclude an agreement with the council of the Confederated Salish and Kootenai tribes of the Flathead Indian reservation for the purpose of obtaining and establishing for the citizens of Montana, regularly licensed to hunt and fish in the state, the privileges of hunting and fishing on Indian lands on the Flathead Indian reservation; for the purpose of the conservation and protection of fish *and* game and fur-bearing animals on such Indian lands and on lands adjacent thereto; and for the purposes of setting dates for the opening and closing of seasons for hunting and fishing on such lands for Indians and *non-Indians* alike, opening and closing of streams and land areas for hunting and fishing, doing what in its judgment is necessary by way of granting to such tribal Indians state permits to hunt and fish, to be issued without charge to such Indians, stocking streams and land areas of such Indian lands for the common benefit, policing such Indian lands for the protection of fish and game, and in general *carrying* out the purposes of this *section. If* any part of such *agreement provides* for the payment of money to *the* tribes, *that* part *must* first have the approval of the state legislature."

Section 3. Section 26-134, R.C.M. 1947, is amended to read as follows:

"**26-134. Allocation of funds to school districts.** The county commissioners of any county receiving funds, *as provided in 26-133, may* allocate, *in such amounts as they determine,* any portion of *the* funds to any school district in *the* county *whenever the* school district *contains* any *department* lands. *Any* balance remaining after allocations have been made to school districts shall be credited to the general fund of *the* county."

Section 4. Section 26-202.5, R.C.M. 1947, is amended to read as follows:

"**26-202.5. Nonresident bear license.** *(1)* The commission may issue special licenses, *as provided in 26-104.3,* to nonresidents to hunt black or brown bear, including any color phase of black bear. *The* special nonresident license shall be valid only for the area designated on the license and shall expire on August *31* of each year. The fee for *the* special nonresident license shall be $35. There shall be a permit included with *the* special nonresident license to authorize the holder thereof to ship, transport, or remove out of state any bear or part thereof taken under authority of *the* license.

HeinOnline -- 1977 Vol. I 17 1977

(2) The commission is authorized to promulgate rules relative to tagging, possession, or transportation of bear within or without the state."

Section 5. Section 26-204, R.C.M. 1947, is amended to read as follows:

"**26-204. Application for license.** *(1) A* license *may* be procured from the director, any warden, or any authorized agent of the director. The applicant shall state his name, age, occupation, place of residence, post-office address, the length of time in the state of Montana, whether a citizen of the United States or an alien, and such other facts, data, or descriptions as may be required by the commission. The statements made by the applicant shall be subscribed to before the officer or agent issuing *the* license.

(2) It is unlawful to subscribe to any application containing a material false statement. Any material false statement contained in an application renders it and any license issued pursuant to it void. Any person violating any provision of this statute is guilty of a misdemeanor."

Section 6. Section 26-215, R.C.M. 1947, is amended to read as follows:

"**26-215. Spotlighting unlawful — exemptions for minors from license requirements.** (1) It *is* unlawful for any person or one or more of a group of persons together to throw or cast the rays of a spotlight having a luminance of greater than .75 candlepower attached to or cast from a motorized vehicle into any field, pasture, woodland, forest, or prairie wherein wildlife or domestic livestock may be or may be reasonably expected to be, while having in his possession or their possession or under control a firearm or other implement whereby any wildlife or domestic animal could be killed by aid of an artificial light; *except* that all officers authorized to enforce the game and livestock laws of the state of Montana and all landowners, lessees, or their agents, while on their own lands in connection with their legitimate activities, and employees of such landowners, lessees, and agents *are* exempt from the provisions of this *section.*

(2) *The* provisions of this section *do* not apply where the headlights of a motor vehicle, operating and proceeding in a normal manner on any highway or roadway, cast a light upon such animal on or adjacent to the highway or roadway and there is no intent or attempt to locate that animal.

(3) Minors under 15 years of age may fish for and take fish during the open season without a license. *However,* no nonresident person under the age of 15 years *may* fish in or on any Montana waters without first having obtained a Class B, B-2, or B-3 fishing license unless *the* nonresident person under the age of 15 years *is* in the company of an adult in possession of a valid Montana fishing license. *The* limit of fish for *the* nonresident person and the accompanying adult, combined, *may* not exceed the limit for one adult as established by law or by *rule* of the commission.

(4) A person convicted of violating subsection *(1)* of this section shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months or both."

HeinOnline -- 1977 Vol. I 18 1977

Section 7. Section 26-217, R.C.M. 1947, is amended to read as follows:

"**26-217. Alteration or transfer of license.** No person *may* at any time alter or change in any material manner or loan or transfer to another any license, nor *may* any person other than the person to whom it is issued use *it.*"

Section 8. Section 26-230, R.C.M. 1947, is amended to read as follows:

"**26-230. Application — stamp attachment — fee — expiration.** *(1)* A wildlife conservation license shall be sold upon written application. *The application shall contain the applicant's* name, age, occupation, place of residence, post-office address, *and* length of time in the state of Montana*; state* whether *the applicant is* a citizen of the United States or an alien*; and* be subscribed by the applicant. *The applicant shall present a driver's license or other identification to substantiate the information.*

(2) Hunting, fishing, or trapping licenses in the form of tags or stamps issued to a holder of a wildlife conservation license must be affixed to or recorded on the wildlife conservation license according to such *rules* as the commission may prescribe.

(3) Resident and nonresident wildlife conservation licenses may be purchased for a fee of $1.

(4) Licenses issued shall be void after April *30* next succeeding their issuance."

Section 9. Section 26-301, R.C.M. 1947, is amended to read as follows:

"**26-301. Restrictions on manner of taking and possessing fish and game and powers of commission relating thereto.** (1) It *is* unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot, or kill any game animal or game bird from any *self-propelled* or drawn vehicle or on or from any public highway in the state of Montana or by the aid or with the use of any set gun, *jacklight,* or other artificial light, trap, snare, *or* salt lick*;* nor *may* any such set gun, *jacklight,* or other artificial light, trap, snare, salt lick, or other device to entrap or entice game animals or game birds be used, made, or set. *Rifles may not* be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission. *This* does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number 10 gauge, fired from the shoulder, nor *may* any game fish be caught, captured, or taken or attempted to be caught, captured, or taken by the aid or with the use of any gun or trap, nor *may* any such set gun, trap, or other device to entrap game fish be used, made, or set.

(2) (a) No game birds or game or fur-bearing animals *may* be killed, taken, or shot at from any aircraft*;* nor *may* any aircraft be used for the purpose of concentrating, pursuing, driving, rallying, or stirring up any game or migratory birds *or* game or fur-bearing animals*;* nor *may* any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving, or stirring up any upland game birds or game or fur-bearing animals.

HeinOnline -- 1977 Vol. I 19 1977

(b) No person in an aircraft in the air *may* spot or locate any game or migratory bird *or* game or fur-bearing *animal* and communicate the location or approximate location thereof by any signals whatsoever, whether radio, visual, or otherwise, to any person or persons then on the ground.

(3) No person *may* take into a field or forest or have in his possession while out hunting any device or mechanism devised to silence, muffle, or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) No person may use a shotgun to hunt, kill, or shoot deer except with loads as specified by the commission.

(5) No person *may* chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; however, livestock owners *or* employees of the commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears and stock-killing mountain lions or *may use* other means of taking stock-killing bears and stock-killing mountain lions, except the use of the *deadfall. Traps* used in capturing *bears* shall be inspected twice each day, which *inspections are to* be 12 hours apart. *A* person may take game birds during the open season with the aid of a dog or dogs. *Any* person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(6) The commission shall have the power to designate certain waters where *setlines* may be used to fish for certain species of game or nongame fish, and the commission may designate the number of hooks and lines and the length of line or lines which may be used as *setlines.*

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand or within immediate control. *This* does not prevent, however:

(a) the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission *declares* an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging;

(b) the taking of paddlefish with long bow and arrow when the commission *declares* an open season when paddlefish may be taken by long bow and arrow;

(c) the taking of walleyed pike, sauger, northern pike, and nongame fish with spear or gig when the commission *declares* an open season for taking walleyed pike, sauger, northern pike, and nongame fish with spear or gig;

(d) the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified; *or*

(e) the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width in such waters as may be designated by the commission.

HeinOnline -- 1977 Vol. I 20 1977

(8) No person, while hunting game animals or game birds, *may* use a motor-driven vehicle other than *on* an established road or trail unless he has reduced a big game animal to possession and cannot easily retrieve *the* big game animal. *In that* case a motor-driven vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted such permission. *After the* retrieval, *the* motor-driven vehicle is *to be* returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to *a* road or trail. No person, while hunting game animals or game birds, *may* drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game animal or game bird with the use or aid of any motor-driven vehicle. No person, while hunting game animals or game birds, *may* drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the *landowner* and *is* in possession of the hunter. The restrictions in this subsection on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.

(9) The provisions of this section relating to methods of herding, driving, capturing, taking, locating, or concentrating of fish, game animals, game birds, or fur-bearing animals do not apply to the department or *to* any employee thereof while acting within the scope and course of the powers and duties of the department."

Section 10. Section 26-302, R.C.M. 1947, is amended to read as follows:

"**26-302. Big game hunters to wear colored garments.** (1) It *is* unlawful for any person to hunt any of the big game animals in this state or to accompany any hunter as an outfitter or guide under any of the provisions of the laws of this state without *the* person wearing as exterior garments above the waist a total of not less than 400 square inches of hunter orange material visible at all times while hunting.

(2) "Hunter orange" means a daylight fluorescent orange color.

(3) This section *does* not apply to any person hunting with a bow and arrow during the special archery season.

(4) The commission shall make *rules* to implement this section."

Section 11. Section 26-330, R.C.M. 1947, is amended to read as follows:

"**26-330. Federal fish-hatching operations.** The government of the United States, the United States commissioner of fisheries, and its or his duly authorized agent or agents *may* conduct fish-hatching and all operations connected therewith (in any manner and at any time that may be considered necessary and proper *by them)* at any United *States* fish cultural station that may be established by the United States government in the state of Montana."

HeinOnline -- 1977 Vol. I 21 1977

Section 12. Section 26-507, R.C.M. 1947, is amended to read as follows:

"**26-507. Certificate of sale.** Upon the sale of property *as provided in 26-506*, the officer shall issue a certificate to the *purchasing* party, certifying that the purchaser has the legal right to be in possession of the *property* and *that* anyone so acquiring *this* property from the state is prohibited from reselling *or* using the same for any commercial purpose. During an auction only one carcass of either deer, moose, or elk *may* be purchased per person. At *its* discretion, the department may donate unsold carcasses to welfare departments, public institutions, or charitable institutions."

Section 13. Section 26-801, R.C.M. 1947, is amended to read as follows:

"**26-801. Possession of game by merchants or hotel or restaurant keepers.** It *is* lawful for any merchant, *hotelkeeper*, or restaurant keeper to have in his possession, offer for sale, *or* sell game and game birds, provided *the* game *or* game birds are not killed *in* Montana."

Section 14. Section 26-802, R.C.M. 1947, is amended to read as follows:

"**26-802. Evidence of lawful possession of game.** *Each* merchant, *hotelkeeper, or* restaurant keeper, having in his possession and offering for sale any game or game birds, *shall* produce upon demand, for the inspection of any game warden, deputy game warden, or sheriff, the receipt or record and shipping and transportation receipts required *in 26-803* to be kept by him. *A* failure or refusal to produce the same upon demand, coupled with the possession and offering for sale of game or game birds, *is* prima facie evidence of the violation of *26-801 through 26-805 and 26-808.*"

Section 15. Section 26-805, R.C.M. 1947, is amended to read as follows:

"**26-805. Definitions.** *The* words "game" and "game birds" or "parts of the same", mean the game animals and game birds, the killing of which is restricted or forbidden by the laws of Montana. *The* words "merchant", "*hotelkeeper*", *or* "restaurant keeper" *mean* each manager, servant, agent, *or* employer of such person."

Section 16. Section 26-904, R.C.M. 1947, is amended to read as follows:

"**26-904. Who considered outfitter.** *(1)* For the *purposes* of *26-904, 26-906, 26-908, and 26-911 through 26-921*, the word "outfitter" *means* any person, persons, company, or corporation who:

(a) engages in the business of outfitting for hunting or fishing parties, as the term is commonly understood;

(b) for consideration *provides* any saddle or pack animal or personal service for hunting or fishing parties *or* camping equipment, vehicles, or other conveyance, except boats, for any person to hunt, trap, capture, take, or kill any game;

HeinOnline -- 1977 Vol. I 22 1977

(c) for consideration *furnishes* a boat or other floating craft and *accompanies* any person for the purpose of catching fish; or

(d) aids or assists any person in locating or pursuing any game animal.

(2) The providing of the *above-mentioned* services, property, or equipment shall be conclusively presumed to have been for consideration for *the purposes of 26-904, 26-906, 26-908, and 26-911 through 26-921* if the same or any thereof are provided by any person, company, or corporation for more than two parties or two other persons during any calendar year or on more than two occasions during any such calendar year."

Section 17. Section 26-908, R.C.M. 1947, is amended to read as follows:

"26-908. Definitions. As used in *26-904, 26-906, 26-908, and 26-911 through 26-921*, unless the context requires otherwise, *the following definitions apply:*

(1) "Outfitter" has the definition given it in 26-904;

(2) "Professional guide" means a person who is an employee of an outfitter and who furnishes only personal guiding services in assisting a person to hunt or take game animals or fish and who does not furnish any facilities, transportation, or equipment;

(3) "Resident guide" means a resident who guides resident or nonresident friends for the purpose of hunting game animals without compensation;

(4) "Advisory council" means the Montana outfitters' council provided for in 82A-2005;

(5) "Resident" means a person who qualifies for a resident Montana hunting or fishing license under 26-202.3;

(6) "Nonresident" means a person other than a resident;

(7) "License year" means that period commencing May 1 and ending April 30 of the next year."

Section 18. Section 26-912, R.C.M. 1947, is amended to read as follows:

"26-912. Outfitters' council. The council shall have the authority and duty to make recommendations to the commission and the director as to:

(1) *outfitter* standards;

(2) *rules* of procedures and *rules* to effectuate *26-904, 26-906, 26-908, and 26-911 through 26-921*, including but not limited to rules prescribing all requisite qualifications for license. These qualifications shall include training, experience, knowledge of rules of governmental bodies pertaining to outfitting, and condition and type of gear and equipment;

(3) *hearings* and proceedings to suspend or revoke licenses of outfitters and guides and to recommend suspension or revocation of licenses for due cause;

HeinOnline -- 1977 Vol. I 23 1977

(4) *any* reasonable rules, not in conflict with *26-904, 26-906, 26-908, and 26-911 through 26-921*, necessary for safeguarding the health, safety, and welfare of those persons utilizing the services of outfitters and for the protection of landowners and the general public."

Section 19. Section 26-913, R.C.M. 1947, is amended to read as follows:

"**26-913. Authorization for rules.** (1) The commission *may* adopt, promulgate, and enforce rules recommended by the advisory council as provided in 26-912 and all other rules it may *consider* proper for the administration and enforcement of the provisions of *26-904, 26-906, 26-908, and 26-911 through 26-921* and the regulation of outfitting and guiding to provide for the services to the public."

Section 20. Section 26-914, R.C.M. 1947, is amended to read as follows:

"**26-914. Requirement of license as outfitter or guide — services performed — standards.** (1) No person *may* act as an outfitter, professional guide, or resident guide or advertise as an outfitter without first securing a license in accordance with the provisions of *26-904, 26-906, 26-908, and 26-911 through 26-921.*

(2) Whenever an outfitter is engaged by any person or a resident guide takes out nonresident friends, *the* outfitter or resident guide shall keep and submit records as required by the commission.

(3) Outfitters and their employees *may* not shoot, kill, or take big game animals for or in competition with those employing them while acting under employment as an outfitter.

(4) Outfitters and resident guides utilizing lands under the control of the United States government shall obtain the proper permits required by the government office responsible for the area in which the outfitter or resident guide intends to operate and shall comply *with* environmental protection standards established for these lands.

(5) An outfitter *may* not willfully and substantially misrepresent his facilities, prices, equipment, services, or hunting.

(6) Outfitters and their employees shall take every reasonable measure to provide their advertised services to their clients."

Section 21. Section 26-915, R.C.M. 1947, is amended to read as follows:

"**26-915. Application.** (1) Each applicant for an outfitter's or professional guide's license shall make application for license upon a form to be prescribed and furnished by the commission which shall include:

(a) *the* applicant's full name, address, and telephone number;

(b) *the* address of his principal place of business in the state of Montana;

(c) *the* amount and kind of property and equipment owned and used

HeinOnline -- 1977 Vol. I 24 1977

in the outfitting business of the applicant, if an outfitter's license application *is involved;*

(d) *the* experience of the applicant, including years of experience as an outfitter or guide, knowledge of areas in which he has operated and intends to operate, and ability to cope with weather conditions and terrain;

(e) *a* signed statement of the licensed outfitter by whom the professional guide is to be employed that the guide is in fact to be employed by such outfitter and stating that *the* outfitter recommends the applicant for his qualifications;

(f) *a* statement by a warden to the director that the equipment listed on the application has been inspected by *the* warden and that the same is in fact owned or leased by the applicant, is in good operating condition, and is sufficient and satisfactory for the services advertised or contemplated to be performed by such applicant;

(g) *a* statement of the maximum number of guests to be taken at any one time;

(h) the written approval of the rangers in whose district he will establish hunting camps, *if the applicant intends to outfit on a national forest.*

(2) Applications for outfitter's license shall be in the name of an individual person only. Applications involving corporations or partnerships shall be made by one individual person who qualifies under the provisions of *26-904, 26-906, 26-908, and 26-911 through 26-921;* any license issued pursuant thereto shall be in the name of that person; and the license shall specifically state that the same is issued for the use and benefit of the named corporation or partnership involved. Any revocation or suspension of such a license is binding upon the individual person and the partnership or corporation for the use and benefit of which the license was originally issued. *Application shall be made to and filed with the director.*

(3) Each applicant for and holder of an outfitter's license or any renewal thereof shall, in the opinion of the director, meet the following qualifications:

(a) *be* a person of at least 18 years of age, in possession of all natural faculties, of ordinary intelligence, and in such physical condition as to be able to perform his duties as an outfitter;

(b) *be* a citizen of the United States and a resident of Montana for a full 2 years, unless the residency requirement is waived by the commission;

(c) own or hold under written lease or represent a company, corporation, or partnership who owns or holds under written lease the equipment and facilities as *are* necessary to provide the services advertised, contracted for, or agreed upon between the outfitter and his clients *(all* equipment and facilities shall be subject to inspection at all reasonable times and places by the commission or its designated agent*);*

(d) *be* a person who has demonstrated a respect for and compliance with the laws of any state or of the United States and all *rules* promul-

HeinOnline -- 1977 Vol. I 25 1977

gated thereunder as to matters of fish and game, conservation of natural resources, and preservation of the natural ecosystem without pollution thereof;

(e) *have* not been convicted or forfeited bond of $100 or more on more than one violation of the fish and game laws of any state or the United States within the past 5 years;

(f) *have* not, at any time, practiced fraud, deception, or material misrepresentation in procuring any previous outfitter's or guide's license from the state of Montana;

(g) *have* not, at any time, promulgated any false or misleading advertising relating to the business of outfitting;

(h) *have* not been finally adjudged by a court of law guilty of any substantial breach of written or oral contract with any person utilizing the applicant's services as an outfitter or guide during the license year immediately preceding that for which the application is made;

(i) *have* not committed any negligent act or misconduct while acting as an outfitter or guide which negligence or misconduct caused a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide during the license year immediately preceding that for which the application is made;

(j) *have* not, at any time, been convicted of a felony, unless civil rights have been restored pursuant to law. No person may apply for or hold an outfitter's license during any period of time in which a deferred sentence has been imposed for a felony.

(k) *have* substantially complied with all department regulations and state and federal laws concerning outfitters and guides, if the applicant has previously held a license as *an* outfitter or guide;

(l) *pass* a standard examination administered by the director or an agent designated by him, which examination shall require general and sufficient knowledge displaying and indicating ability to perform the services contemplated with efficiency and with safety to the health and welfare of persons employing such services. The examination shall test the applicant's knowledge of subjects which shall apply to the type of license applied for in the following subjects:

(i) *fish* and game laws and regulations;

(ii) *practical* woodsmanship;

(iii) *general* knowledge of big game;

(iv) *field* preparation of trophies;

(v) *care* of game meat;

(vi) *use* of outfitter's gear as shown on the application;

(vii) *knowledge* of area and terrain;

(viii) *knowledge* of firearms;

HeinOnline -- 1977 Vol. I 26 1977

(ix) *federal* and state regulations as applicable to outfitting;

(x) *practical* first aid.

(4) An applicant for a professional guide's license shall meet the following requirements:

(a) *be* a person of at least 18 years of age, in possession of all natural faculties, of ordinary intelligence, and in such physical condition as to be able to perform his duties as a professional guide;

(b) *be* a citizen of the United States and a resident of Montana as defined in *26-908;*

(c) *be* endorsed and recommended by an outfitter with a valid license.

(5) A resident guide shall have been issued a valid resident wildlife conservation license.

(6) Residence requirements for procuring an outfitter's license are waived as to persons who are citizens of a common boundary state and of a common county thereof to the same extent the home state of the applicant waives such requirements for the residents of Montana, except for fee.

(7) For the purpose of obtaining a guide's license only, nonresident professional guides employed by resident outfitters shall be considered resident professional guides.

(8) Applications shall be accompanied by a license fee as herein stipulated, which will be refunded if and when the application is denied:

(a) resident outfitter's license fee $50;

(b) resident professional guide's fee.....$15;

(c) nonresident outfitter's license fee.....$150;

(d) nonresident professional guide's fee .....$100.

(9) A resident guide's license is a valid Montana wildlife conservation license.

(10) The license fee shall be used to investigate the applicant, to enforce 26-904, 26-906, 26-908, and 26-911 through 26-921, and for administrative costs.

(11) If the nonresident resides in a state requiring residents of the state of Montana to pay in excess of *such* amounts for *a* similar license, the fee for such nonresident outfitters or guides shall be the same amount as *the* higher fee charged in the state where *the* nonresident resides.

(12) The director in his discretion may cause to be made such additional investigation and inquiry relative to the applicant for outfitter's license and an applicant's qualifications as he *considers* advisable. The director may deny or refuse to issue any new license or to renew any previous license if, in his opinion, the applicant does not meet the qualifications herein stated. In the event that any application for license is denied or

HeinOnline -- 1977 Vol. I 27 1977

refused, the director shall immediately notify the applicant, setting forth in the notice the grounds upon which the denial or refusal is based. Final decision as to issuance of renewal *licenses* shall be made not later than 30 days from the date of receipt of the completed application for renewal and not later than 90 days from the date of receipt of *a* completed application for *a new* license. A licensee in good standing *is* entitled to a new license for the ensuing license year upon complying with the provisions of this section, but is exempt from having to retake the written examination.

(13) Only one application for an outfitter or guide's license may be made any one license year. If any application is denied, subsequent applications by the same applicant for the license year involved are void, *except as provided in 26-916(1)(b).*"

Section 22. Section 26-916, R.C.M. 1947, is amended to read as follows:

"**26-916. Kinds of licenses.** (1) After receipt of the application and when all the conditions and requirements of *26-904, 26-906, 26-908, and 26-911 through 26-921* have been satisfied, the director shall issue either of the following licenses, depending upon his determination of the applicant's ability and the service that the applicant can perform with the equipment listed on his application:

(a) *a* general license authorizing him to perform all the functions of an outfitter as that term is defined in 26-904; *or*

(b) *a* special license authorizing him to perform only the function of outfitting listed on the license. The license shall be in the form prescribed and shall be valid for the licensing year in which issued. If the application is denied, the director shall notify the applicant, in writing, of the reasons for the denial, and if the reasons are corrected, a license shall be issued upon reapplication thereof.

(2) For the *purposes* of *26-904, 26-906, 26-908, and 26-911 through 26-921*, a person may serve as a professional guide under his employer's license after submitting his application with the proper license fee, until *the* license is issued or for 10 days after notification of *the* rejection of *the* license.

(3) To be valid, a professional *guide's* license must bear the signature and outfitter's license number of an endorsing outfitter and is valid only while the holder of such license is employed by an endorsing outfitter.

(4) No *outfitter's* license may be transferred during any license year. *An* individual person may, upon proper showing, have his outfitter's license amended to indicate that he is holding *the* license for the use and benefit of a named partnership or corporation.

(5) No person may hold more than one outfitter's license either for his own benefit or for the use and benefit of a partnership or corporation, nor may the name of any partnership or corporation appear on more than one current outfitter's license.

(6) Notwithstanding any other provision or law, a license shall expire on the last day of the license year for which it was issued."

HeinOnline -- 1977 Vol. I 28 1977

Section 23. Section 26-917, R.C.M. 1947, is amended to read as follows:

"**26-917. Deposit of fees.** All fees collected under *26-904, 26-906, 26-908, and 26-911 through 26-921* shall be deposited as provided in 26-121."

Section 24. Section 26-921, R.C.M. 1947, is amended to read as follows:

"**26-921. Enforcement.** The warden or ex officio warden designated by the department to primarily administer outfitting and guiding laws and *rules*, other wardens, and all peace officers shall enforce *26-904, 26-906, 26-908, and 26-911 through 26-921.*"

Section 25. Section 26-1006, R.C.M. 1947, is amended to read as follows:

"**26-1006. Exception in cases of extreme hunger.** When it is shown that any violation of the provisions of this *title* was for the purpose of preventing great suffering by hunger of any person which could not otherwise have been avoided, the provisions of this *title* shall not apply to *the* case."

Section 26. Section 26-1102, R.C.M. 1947, is amended to read as follows:

"**26-1102. Sun River game preserve.** *There is a Sun River game preserve described as follows: beginning* at a point on the continental divide of the Rocky *Mountains*, due south of the head or source of the south fork of the north fork of Sun *River*, in what will be, *when surveyed,* section eight, township eighteen north of range ten west, Montana meridian; thence due north from the crest of the continental divide to the head of the south fork of the north fork of Sun *River*; thence northerly along and down the course of the south fork of the north fork of Sun *River* as it winds and turns to its confluence with the north fork of the north fork of Sun *River*; thence northerly along the course of the north fork of the north fork of Sun *River* as it winds and turns to its head or source; thence due north to the crest of the continental divide of the Rocky *Mountains*; thence along the crest of the continental divide of the Rocky *Mountains* southwesterly and southerly to the place of beginning, intending hereby to include in said game preserve all that territory lying between the south fork of the north fork and the north fork of the north fork of Sun *River* on the east and the continental divide of the Rocky *Mountains* on the west."

Section 27. Section 26-202, R.C.M. 1947, is amended to read as follows:

"**26-202. License required.** It *is* unlawful for any person to*:*

(1) pursue, hunt, trap, take, shoot, *or* kill or attempt to trap, take, shoot, or kill any game animal, any game bird, or any fur-bearing animal or take, kill, trap, or fish for any fish within this state or have, keep, or possess, within this state, any game animal, game bird, fur-bearing

HeinOnline -- 1977 Vol. I 29 1977

animal, game fish, or parts thereof, except as herein provided or *as* provided by the commission; or

(2) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, game bird, or fur-bearing animal or take, kill, trap, or fish for any fish, except at the places and during the periods and in the manner herein defined or *as* defined by the commission; or

(3) pursue, hunt, trap, take, shoot, or kill or attempt to trap, take, shoot, or kill any game animal, game bird, or fur-bearing animal or take, kill, trap, or fish for any fish within this state or have, keep, possess, sell, purchase, ship, or reship any imported or other fur-bearing animal or parts thereof, without first having obtained a proper license or permit from the commission to do so."

Section 28. Section 26-202.2, R.C.M. 1947, is amended to read as follows:

"**26-202.2. Restrictions on special licenses.** (1) Special licenses authorized to be issued under the general powers of the department may be issued only to persons holding valid big game licenses for the current year, which have been obtained by the applicant prior to the time of filing of application for a special license.

(2) *A* person who has obtained a grizzly bear, moose, mountain goat, or mountain sheep license *is* not eligible to apply for another such license for the next succeeding 7 years if such person has killed or taken an animal of the species for which *the* special license was issued. *A* person who has obtained a grizzly bear, moose, mountain goat, or mountain sheep license but did not kill or take an animal of the species for which *the* special license was issued *is* eligible to apply for another such license in any succeeding year if he returns his unused special license to the department before or at the time application is made. *A* person who has received a special license for elk *is* not eligible to receive a second special license for this species of game animal during any license year. However, in the event the number of applications received is not equal to the number of game species desired to be killed by the department, reapplication may be made by those valid license holders of the current year who may fall within these limitations. *A* person who has killed or taken a game animal, except a deer, during the current license year *is* not permitted to receive a special license under this *chapter* to hunt or kill a second game animal of the same species.

(3) Every license issued by the department authorizing the holder thereof to pursue, shoot, kill, capture, take, or possess game animals, whether issued to a resident or a nonresident, shall provide such tags, coupons, or markers as the department *prescribes*, and when any person *takes* or *kills* any game animal under *the* license, *the* person shall immediately thereafter cut out from the tag, coupon, or other marker the date the animal was killed or taken and attach the tag, coupon, or other marker to *the* animal, completely filled out with the name of the license holder, his address, and any other information requested on *the* tag, coupon, or other marker. *Such* tag, coupon, or other marker shall be kept attached to *the* carcass so long as any considerable portion of the carcass

HeinOnline -- 1977 Vol. I 30 1977

remains unconsumed, and when the proper tag, coupon, or other marker is attached to *the* game animal so killed, the same may be possessed, used, stored, and transported. *It is unlawful for a* person, who *kills* any game animal by authority of any license issued for the killing of *the* game animal, *to* fail or neglect to cut out *the* day and month of *the* kill or provide such other information as is required and attach his tag, coupon, or other marker so provided with the license issued to the carcass of *the* game animal or portion thereof. *It is unlawful for a* person *to* fail to keep *the* tag, coupon, or other marker attached to *the* game animal or portion thereof while the same is possessed by him."

Section 29. Section 26-213, R.C.M. 1947, is amended to read as follows:

"**26-213. Carrying and exhibiting license.** It is unlawful for any person to whom a license or permit has been issued to fish for or take any fish or pursue, hunt, shoot, kill, or take any game bird or game animal or attempt to trap, trap, or take any fur-bearing animal in this state unless he has the license, licenses, or permit in his possession *at the time.* It is unlawful to refuse to exhibit a license or permit for inspection to a warden or other officer requesting to see it."

Section 30. Section 26-228, R.C.M. 1947, is amended to read as follows:

"**26-228. Rules to implement reciprocal agreements — violations.** The commission is authorized to establish rules for the purpose of implementing agreements *established under 26-225. It is unlawful to violate* any orders or *rules* promulgated by the commission under *26-225 through 26-228.*"

Section 31. Section 26-232, R.C.M. 1947, is amended to read as follows:

"**26-232. False statements in license application.** *It is unlawful to* subscribe to any false statement in *an* application for a wildlife conservation license."

Section 32. Section 26-306, R.C.M. 1947, is amended to read as follows:

"**26-306. Fish pond license for artificial lake or pond.** (1) A person who owns or lawfully controls an artificial lake or pond may apply to the director for a fish pond license. The holder of a private fish pond license may stock his fish pond with fry procured from any lawful source. The commission may designate the species of fish which may be released in the pond when there is a possibility of fish escaping from the pond into adjacent streams or lakes. The license holder may take fish from the lake or pond in any manner. Before a license holder may sell fish or eggs or fry from the lake or pond, he shall furnish a corporate surety bond to the state for $500, conditioned to the effect that he will not sell fish or spawn from any of the public waters of this state and also conditioned to the effect that he will report to the director the quantity of fish, fish eggs, and spawn taken from the lake or pond. This report shall be made under oath annually during the month of January. A record of all trans-

HeinOnline -- 1977 Vol. I 31 1977

actions must be kept showing the species and numbers or pounds of fish sold, number and species of eggs sold, number and species of fry sold, name of person or persons to whom sold, and the date of transaction.

(2) "Artificial lake or pond" as used in this section does not include a natural pond or body of water created by natural means *or* any portion of the *streambed* or *lakebed* thereof. It includes only bodies of water created by artificial means or diversion of water which do not exceed 500 acres of surface area."

Section 33. Section 26-317, R.C.M. 1947, is amended to read as follows:

"**26-317. Unlawful to destroy evidence of sex.** *It is unlawful for any* person killing *a* big game animal within this state *to* destroy evidence of the sex of *the* big game animal so killed *so* as to make the determination of the sex thereof uncertain."

Section 34. Section 26-324, R.C.M. 1947, is amended to read as follows:

"**26-324. Penalty.** *(1)* A person violating *any provision of Title 26,* any *other* state law pertaining to fish and game, or the orders *or* rules of the commission is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than $25 *or* more than $500, imprisoned in the county jail for not more than 6 months, or both. In addition, the person shall, in the discretion of the court, forfeit his license and privilege to hunt, fish, or trap within this state for a period of 16 months from the date of conviction.

(2) Notwithstanding the provisions of subsection (1), the penalties provided by this section shall be in addition to any penalties provided in 26-904, 26-906, 26-908, and 26-911 through 26-921 and 26-907."

Section 35. Section 26-331, R.C.M. 1947, is amended to read as follows:

"**26-331. Sale of fish or spawn unlawful — exceptions.** *No* person *may, for speculative purposes, for market, or for sale,* in any way, *catch* any of the fish which in this *title* are classified as "game fish" or remove or cause to be removed the eggs or spawn of any such fish. *No person may* sell or offer for sale any of the game fish of this state as *defined* in this *title* or the eggs or spawn therefrom. *This* section *does* not apply to fish caught in private ponds by the owners thereof *or* to the taking of fish by the state authorities for the purpose of obtaining eggs for propagation in state fish hatcheries or by any person who receives a permit from the commission to take eggs for *such* purposes."

Section 36. Section 26-332, R.C.M. 1947, is amended to read as follows:

"**26-332. Restrictions on fishing methods.** *(1) It is unlawful for a* person *to take or catch* fish in any of the waters of this state, except with hook and line held in hand or line and hook attached to rod or pole held in hand; *to take or catch* fish with hook baited with any poisonous substance or by means of the use of any poisonous substance, including fish berries; or *to take or catch* fish by means of the use of fishtraps,

HeinOnline -- 1977 Vol. I 32 1977

grabhooks, seines, nets, or other similar means for catching fish. *The* commission *may* designate such waters within the state of Montana wherein, in the judgment of the members of *the* commission, spears or gigs may be used for taking walleyed pike, sauger, northern pike, and nongame fish and traps, seines, nets, and rubber or *spring-propelled* spears, when employed by sportsmen swimming or submerged in the water, may be used for the taking of designated species of fish. *The* waters so designated *may be closed* at the discretion of the commission. *The* taking of all fish by *such* means in *the* waters, when so designated, *is* to be done under such rules as *the* commission may prescribe with reference thereto and under the supervision of *the* commission. *All* such nongame fish so taken may be possessed and sold in such manner and under such restrictions as *the* commission may direct. *All* fish, other than those herein designated, so taken under *commission* rules, when prescribed by *the* commission, shall be returned uninjured to the waters from which they were taken.

(2) The taking of black bass in Flathead Lake may be permitted by the commission."

Section 37. Section 26-344, R.C.M. 1947, is amended to read as follows:

"**26-344. Restrictions on use of fish as bait — unlawful introduction of fish or game.** *(1)* The commission *may* prohibit the use of small fish as bait for catching fish in such waters as the commission *designates.* It *may* promulgate such other *rules* as are necessary to insure an adequate supply of fish in *such* waters *and may* regulate fishing from boats or other floating devices and the use of fishing lures or baits in all waters of the state.

(2) It *is* unlawful for any person to transplant or introduce any fish or fish eggs into any body of water in the state, and it *is* unlawful for any person to transplant or introduce any species of game birds, game *or* fur-bearing animals, *or* nongame wildlife into the state of Montana without first having obtained authorization from the commission."

Section 38. Section 26-501, R.C.M. 1947, is amended to read as follows:

"**26-501. Protection of wild birds and their nests and eggs.** *It is unlawful for a* person *to hunt, capture, kill, possess, purchase, offer or expose for sale, ship, or transport* any wild bird, other than a game bird, or any part of the plumage, skin, or body of the bird, irrespective of whether the bird was captured or killed within the state, or *to* take or destroy the nest or eggs of a wild bird, except under a certificate, falconer's license, or permit issued by the director. This section does not apply to the hunting, trapping, or killing of house sparrows, crows, starlings, rock doves, blackbirds, magpies, and other birds the commission designates or *to* the taking or destruction of their nests and eggs."

Section 39. Section 26-501.1, R.C.M. 1947, is amended to read as follows:

"**26-501.1. Protection and conservation of raptors — falconry.** (1)

"Raptors", when used in this section *or 26-501,* means all birds of the orders falconiformes and strigiformes, commonly called falcons, hawks, eagles, ospreys, and owls.

(2) A person may not at any time hunt, capture, kill, possess, purchase, offer or expose for sale, or transport a raptor except as provided in this section *or 26-501.*

(3) The commission may adopt specific rules for the keeping of records and for the trapping, taking, possession, or training of raptors used in the practice of falconry and may authorize the issuance of licenses to persons for the practice of falconry. It is unlawful for any person to possess a raptor or to train a raptor in the practice of falconry without a license.

(4) The peregrine falcon (Falco peregrinus), bald eagle (Haliaetus leucocephalus), golden eagle (Aquila chrysaetos), and osprey (Pandion haliaetus) may not be captured in this state for the sport of falconry.

(5) The fee for a falconry license is $3 a year or any part of a year. A license expires April 30 each year.

(6) A license may not be issued to a person under the age of 12 years.

(7) Species of raptors which are native to North America may be brought into Montana for the purpose of falconry unless that action is specifically prohibited by this section *or 26-501,* the laws of other states, or the *rules* of the federal government. Those raptors may be possessed, subject to this section *or 26-501.* A person bringing a raptor into this state must be able to show proof of the area of origin.

(8) A licensee may not at any time possess more than three raptors, including those that have been imported.

(9) Licensees may take raptors as young or fledglings from nests (unless specifically prohibited by commission rules) or by traps or nets which are humane in their operation and use. Not more than one young may be taken from one nest by a permittee or permittees, and at least one young must be left in the nest. The commission may close an area of the state to the taking of raptors at any time or designate other raptors which may not be taken. This subsection does not permit the removal of raptors in any national or state refuge or park or in any area in which local laws may prohibit that activity. Trapping raptors is permitted only between September 1 and February 1.

(10) Raptors may not be used to intentionally flush or harass big game.

(11) Raptors may not be loosed intentionally at protected mammals and birds. Game bird limits and all seasons and other *rules* relating to game birds must be obeyed.

(12) A licensee may not transfer ownership or possession of a raptor taken or possessed under the provisions of this section without notifying the department within 10 days after the date of transfer.

(13) Licensees shall have in possession a valid falconer's license when engaged in the practice of falconry. In addition, falconers loosing raptors at game birds shall have in possession a valid resident or nonresident game bird license.

HeinOnline -- 1977 Vol. I 34 1977

(14) Falconry licenses or permits are not transferable and may be revoked for due cause at any time by the department.

(15) A person may not sell or offer for sale Montana raptors in this state. A person may not transport raptors out of the state except by permit issued by the department.

(16) Nonresidents who are working, attending schools, or otherwise living temporarily in the state of Montana may obtain a Montana falconry license and bring raptors, legally acquired in other states or countries, into the state of Montana; such nonresidents shall be allowed to hunt with falcons in the state of Montana subject to all Montana laws and *rules.*

(17) Predatory hawks and owls destroying livestock or poultry may be killed at any time by the livestock or poultry owners. Eagles may be killed in compliance with federal law and regulation."

Section 40. Section 26-503, R.C.M. 1947, is amended to read as follows:

"**26-503. Possession of unlawfully killed animals and of unlawful fishing implements.** *(1)* The possession of dead bodies or any part thereof of any of the game fish, game or nongame birds, *or* game or fur-bearing animals defined by the fish and game laws of the state of Montana *is* prima facie evidence that *the* person or persons in whose possession the same are found have killed, caught, or taken the same, and the possession of a fishing rod and line, spear, gig, or barbed fork on the banks or shores of a stream or lake *is* prima facie evidence that the person or persons in whose possession the same are found *were* using the same to fish.

(2) It is unlawful to possess, have, hold, purchase, keep in storage, or possess for any other purpose any game fish, game bird, nongame bird, game animal, fur-bearing animal, or parts thereof which *were* unlawfully killed, captured, or taken. *No person may unlawfully* use any fishing rod and line, fishing lines, spear, gig, or barbed fork."

Section 41. Section 26-512, R.C.M. 1947, is amended to read as follows:

"**26-512. Failure to tag turkey.** *It is unlawful for any* person who *kills, captures, or possesses* any wild turkey by authority of any turkey tag or permit *to* fail or neglect to attach his tag to the turkey or fail to validate his tag by filling out or punch marking the tag as required and *fail* to keep the tag attached while the same is possessed by him."

Section 42. Section 26-701, R.C.M. 1947, is amended to read as follows:

"**26-701. Removal of animals or parts of animals from the state unlawful.** It is unlawful for any person or persons to possess *or to* ship or take out of the state any illegally taken game *or* nongame birds, fish, game animals, fur-bearing animals, the skins of fur-bearing animals, or any parts thereof, whether taken within or coming from without the state."

Section 43. Section 26-704, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 35 1977

"**26-704. Labeling of packages.** All shippers of fish, game or nongame birds, game animals, fur-bearing animals, the skins of fur-bearing animals or predatory animals, or parts thereof are required to label all packages offered for shipment by parcel post, common carrier, or otherwise. *The* label *shall* be securely attached to the address of the package and *shall* plainly indicate the names and addresses of the consignor and consignee and the complete contents of *the* package."

Section 44. Section 26-705, R.C.M. 1947, is amended to read as follows:

"**26-705. Violation by carriers.** No person or the agent or employee of any common carrier, association, stage, express, railway, or transportation company *may* transport or receive for transportation or carriage or sell or offer for sale any of the game animals, game or nongame birds, fish, fur-bearing animals, the skins of fur-bearing animals, or parts thereof, except as specifically provided for by *26-704. All* game or nongame birds, fish, game animals, fur-bearing animals, or parts thereof had in possession or which have been shipped or are being transported in violation of any of the provisions of this act shall be seized, confiscated, and disposed of as provided by law."

Section 45. Section 26-708, R.C.M. 1947, is amended to read as follows:

"**26-708. Commercial exportation of aquatic insects prohibited.** It is unlawful for any person to ship or take out of the state any aquatic insects for speculative purposes, for market, or for sale. This section *does* not apply to aquatic insects caught in private ponds by the owners thereof."

Section 46. Section 26-804, R.C.M. 1947, is amended to read as follows:

"**26-804. Noncompliance with law.** *It is unlawful for any* person *to* have in his possession and offer for sale or sell any game or game birds without having complied with the provisions of *26-803* relating to the keeping of a record and shipping and transportation receipts."

Section 47. Section 26-811, R.C.M. 1947, is amended to read as follows:

"**26-811. Contests based on size of game animals unlawful.** Except as provided in this section, it is unlawful for any person, as defined in 26-201, to conduct or sponsor in any manner a contest in which a prize is offered to a person who kills a game animal possessing the largest antlers or horns, carrying the greatest weight, having the longest body, or any similar contest based upon the size or weight of a game animal or part of a game animal. This *section* does not apply to recognition given by the nationally established and recognized Boone and Crockett trophy institute."

Section 48. Section 26-907, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 36 1977

"**26-907. Taxidermist's license — fee — penalty for violations.** *A* person who *engages* in conducting any *taxidermy* business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving, or preparing any of the dead bodies of any birds or animals or any part thereof mentioned in the game laws of this state must first obtain from the director a taxidermist's license and pay an annual license fee of $15 therefor. Such person shall keep a written record of all the articles of game, the kind and number of each, by whom owned, the residence of owner, all the articles of game shipped, and to whom and where shipped. The above record shall be kept for at least a period of 1 year and *shall be* open to inspection by any state game warden at any reasonable time. In all cases of conviction of violation of this *section,* the license of the person convicted shall be revoked."

Section 49. Section 26-1008, R.C.M. 1947, is amended to read as follows:

"**26-1008. Taking fish or game for scientific purposes.** It is lawful for the duly accredited representative of an accredited school, college, university, or other institution of learning or of any governmental agency, who may be investigating a scientific subject making it necessary, to take, kill, capture, and possess for that purpose any birds, fish, or animals protected by Montana law or state fish and game *rule.* He may take, kill, and capture protected or unprotected birds, fish, or animals in any way, except by the explosion of dynamite. No more of the birds, fish, or animals may be taken than are necessary for the investigation. A person who desires to engage in the scientific investigation shall apply to the director for a permit. The director may set qualifications for persons to whom permits are issued and may place special authorizations or special requirements and limitations on any permit. If the director is satisfied of the good faith and qualifications of the applicant, he shall issue a permit, which shall place a time limit on the collections and may place a restriction on the number of birds, fish, or animals to be taken and shall require a report of the numbers and species of animals taken by collection areas. The permittee shall pay $5 for the permit. The permittee may not take, have, or capture any other or greater number of birds, fish, or animals than are mentioned in the permit. Any representative of an accredited school, college, university, or other institution of learning who may have various students or associates assisting him throughout the year may apply to have his permit issued to himself and his associates. The associates, when carrying a copy of the permit, shall have the same authorizations and restrictions as the original applicant. The original applicant shall keep a record of all associates to whom he issued a copy of his permit and of the times for which each associate is issued a copy. The original applicant is responsible for his associates' use of the permit or copies of the permit, including their reports of species and numbers of animals collected."

Section 50. Section 26-1101, R.C.M. 1947, is amended to read as follows:

"**26-1101. Creation of game preserves — general provisions.** (1) There are, for the better protection of all the game animals and birds within their limits, game preserves within the state. Except as provided

HeinOnline -- 1977 Vol. I 37 1977

in this section, no person may, within the limits of a game preserve created by the legislature or by the commission, hunt for, trap, capture, kill, or take game animals, fur-bearing animals, or birds of any kind. Within the limits of a preserve, a person may not carry or discharge firearms, create any unusual disturbance tending to frighten or drive away any of the game animals or birds, or chase them with dogs. The commission may declare any preserve open to the trapping of fur-bearing animals during the regular open season.

(2) Permits to capture animals or birds for the purpose of propagation or for scientific purposes, to trap fur-bearing animals, to destroy mountain lions, wolves, foxes, coyotes, wildcats, lynx, or other predatory animals or birds, or *to carry* firearms may be issued by the director upon the payment of the fee and in accordance with rules established for the preserve by the commission."

Section 51. Section 26-1306, R.C.M. 1947, is amended to read as follows:

"**26-1306. Violations.** *No* person, firm, company, or corporation *may violate* any of the provisions of 26-1301 *through* 26-1305."

Section 52. Section 26-1705, R.C.M. 1947, is amended to read as follows:

"**26-1705. Quarantine — cooperation with department of highways.** *The* cargo and vehicle *involved* in *a* violation *of 26-1701, 26-1702, or 26-1704 may,* at the option of the department, either *be* denied the right to proceed further within the state of Montana or *be* quarantined until inspected by a designated biologist from the department. The department shall inform the department of highways of the provisions regarding importation of salmonid fish and eggs, so that the department of highways may enforce such provisions at ports of entry and checking stations under 32-2421."

Section 53. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 54. **Repealer.** Sections 26-303.4, 26-307.1, 26-502, 26-909, and 26-922, R.C.M. 1947, are repealed.

Approved February 18, 1977.

CHAPTER NO. 10

AN ACT TO AMEND SECTIONS 46-609 AND 67-205 TO PROVIDE FOR FEE CHANGES FOR RECORDING, TRANSFERRING, AND RERECORDING MARKS OR BRANDS ON DOMESTIC AND CERTAIN WILD ANIMALS AND TO CLARIFY REQUIREMENTS RELATING TO THE BRANDING OF WILD ANIMALS.

HeinOnline -- 1977 Vol. I 38 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-609, R.C.M. 1947, is amended to read as follows:

"**46-609. Fees for department.** The department shall charge and collect *$25* for recording a new mark or brand, for recording a mark or brand transfer, or for *rerecording* a mark *or* brand. The department shall charge *$2.50* for a certified copy of a record and a duplicate certificate. All fees collected shall be paid into the earmarked revenue fund for the use of the department. However, not more than 10% of the net *rerecording* fees after all expenses of *rerecording* are paid *may* be expended in any one year except in case of an emergency declared by the governor."

Section 2. Section 67-205, R.C.M. 1947, is amended to read as follows:

"**67-205. Brands — recording — fees.** *(1)* An owner or prospective owner of animals *described in 67-204* is entitled, by written subscribed statement, to adopt distinctive brands or tattoo marks, not including arabic numerals and not already in known use by others, for any of the animals and to have the distinctive brands and tattoo marks recorded in his name *with* the department of livestock on paying a recording fee *equal to that charged for recording marks or brands used on domestic animals and livestock set by 46-609* for each brand and for each tattoo mark. The statements shall be recorded in a suitable book to be kept for that purpose by the department of livestock. The presence of the recorded brand or recorded tattoo marks on an animal is prima facie evidence of the ownership of the animal in the person, association, or corporation in whose name the brand or tattoo mark is recorded, subject always to the right to make a transfer of title, right, or interest in, or lien on the animal.

(2) A person desiring to transfer a brand or mark properly recorded by him under this section may do so provided he meets the requirements and pays the fees imposed by chapter 6 of Title 46. Brands or marks recorded under this section are subject to the same rerecording requirements and fees as imposed by chapter 6 of Title 46.

(3) All fees collected under this section shall be paid into the earmarked revenue fund for the use of the department."

Approved February 18, 1977.

CHAPTER NO. 11

AN ACT TO AMEND SECTION 52-322, R.C.M. 1947, TO CHANGE THE FEES CHARGED FOR HANDLING BRAND SECURITY AGREEMENTS FILED WITH THE DEPARTMENT OF LIVESTOCK.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-322, R.C.M. 1947, is amended to read as follows:

"**52-322. Fees — disposal of.** The department of livestock shall charge *a fee* for filing and listing the notices of security agreements for each recorded brand listed in each security agreement and for filing and

listing each notice of satisfaction, renewal, or assignment of the security agreement, for each recorded brand listed. *The fees shall be set by rules adopted pursuant to the Montana Administrative Procedure Act, upon the basis of actual cost to the department not to exceed $15 for each brand listed.* All fees shall be paid into the earmarked revenue fund for the use of the department of livestock."

Approved February 18, 1977.

CHAPTER NO. 12

AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF THE LAWS RELATING TO LIVESTOCK.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2404, R.C.M. 1947, is amended to read as follows:

"**3-2404. Definitions of terms.** For the purpose of this act, the following definitions are adopted:

(1) Butter is the clean, nonrancid product made by gathering the fat of fresh ripened milk or cream into a mass which also contains a small portion of the other milk constituents, with or without salt, and must contain not less than 80% of milk fat. No tolerance for deficiency in milk fat is permitted. Butter may also contain added coloring matter.

(2) Renovated butter or *processed* butter is the product made by melting and reworking, without the addition or use of chemicals or substances except whole milk, cream, or salt, and must contain not less than 80% of milk fat.

(3) Cheese is the sound, solid, and ripened product made from milk or cream by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning, and must contain in the *water-free* substance not less than 50% of milk fat, and not more than 39% of moisture. Cheese may also contain added coloring matter.

(4) Skimmed milk cheese is the sound, solid, and ripened product made from skim milk by coagulating the casein with rennet or lactic acid, with or without ripening ferments and seasoning.

(5) Ice cream is a frozen product made with pure, sweet milk, cream, skim milk, evaporated or condensed milk, evaporated or condensed skim milk, dry milk, dry skim milk, pure milk fat, wholesome sweet butter, or any combination of these products, with or without sweetening, *or* clean wholesome eggs or egg products, with or without the use of harmless flavoring and coloring. Ice cream must contain not less than 10% of milk fat, not less than 33% total solids, and may or may not contain pure and harmless edible stabilizer. Ice cream may contain not to exceed 1% gelatin. No frozen milk or milk product may be manufactured or sold unless it contains at least 10% butterfat, excepting sherbets, ices, and other exceptions under this section. All ice cream must be manufactured from pasteurized ice cream mix.

HeinOnline -- 1977 Vol. I 40 1977

(6) Fruit ice cream shall conform to the requirements of ice cream, except that the fruit ingredients must be from sound, clean, and mature fruit, and it must contain not less than 9% of milk fat.

(7) French ice cream, French custard ice cream, cooked ice cream, ice custard, parfaits, and similar frozen products, except sherbets and water ices, are varieties of ice cream.

(8) Ice cream mix is a pasteurized, unfrozen product used in the manufacture of ice cream and must comply with the requirements for ice cream.

(9) Milk sherbet is the pure, clean, frozen product made from milk product, water, and sugar, with harmless fruit or fruit juice flavoring and with or without harmless coloring, which must contain not less than *35/100 of 1%* of acid, as determined by titrating with standard alkali and expressed as lactic acid, and with or without added stabilizer composed of wholesome edible material. It must contain not less than 4% by weight of solids.

(10) Ice or ice sherbet is the pure, clean, frozen product made from water and sugar with harmless fruit or fruit juice flavoring, with or without harmless coloring *or added stabilizer composed of wholesome edible material*, and must contain *not* less than *35/100 of 1%* of acid, as determined by titrating with standard alkali and expressed as lactic acid. It *may* contain no milk solids.

(11) A creamery is a place where milk or cream furnished by three or more persons is used for manufacture into butter for commercial purposes.

(12) A cheese factory is a place where milk furnished by three or more persons is made into cheese for commercial purposes.

(13) An ice cream factory is a place where ice cream mix is frozen into ice cream for commercial purposes.

(14) An ice cream mix factory is a place where ice cream mix is made.

(15) A milk or cream buying or collecting station is a place where milk or cream is bought or collected for shipment or delivery to a creamery or to a person intending to make use of it for commercial purposes.

(16) Person includes persons, whether natural or artificial, including firms, *partnerships*, corporations, and marketing associations of every description.

(17) The term "department", unless otherwise indicated, means the department of livestock provided for in Title 82A, chapter 13.

(18) It is unlawful for a person, firm, or corporation *or* its servant or agent to manufacture, sell, *or* expose *or* offer for sale or exchange butter or other substance or commodity defined in this act containing less butterfat or other ingredient than required by this act. A violator is guilty of a misdemeanor and is punishable under *3-24-137*."

Section 2. Section 3-2489, R.C.M. 1947, is amended to read as follows:

"3-2489. Promulgation of minimum standards for milk or cream.

The department may adopt minimum standards for *the* production, transportation, grading, testing, use, processing, packaging, and storage of *milk and cream used for manufacturing purposes and of manufactured dairy products.*"

Section 3. Section 3-2496, R.C.M. 1947, is amended to read as follows:

"**3-2496. Investigation of complaints and violations — injunction.** The department shall provide for periodic inspections and investigations to disclose violations of this act or of rules adopted under this act. The department shall receive and provide for the investigation of complaints and request the institution and prosecution of civil or criminal actions, or both. This act *and the rules* adopted under it may be enforced by injunction in a court having jurisdiction to grant injunctive relief. An adulterated, impure, contaminated, misbranded, condemned, or mislabeled article or product involved in a violation of this act or of the rules adopted under this act is subject to seizure and disposition under an order of the court."

Section 4. Section 3-2497, R.C.M. 1947, is amended to read as follows:

"**3-2497. Definitions.** Unless the context requires otherwise in this act *the following definitions apply:*

(1) "Department" means the department of livestock provided for in Title 82A, chapter 13.

(2) "Milk" and "cream" mean milk and cream sold, used, or intended for manufacturing purposes or for conversion into products of a form other than the form in which originally produced or products commonly known as but not limited to:

(a) Butter;

(b) Cheese, including cottage cheese, low-fat cottage cheese, cheese curd, and cream cheese which are either cultured or directly acidified, and cheese dressings;

(c) Ice cream or its mix;

(d) Frozen dessert or its mix;

(e) *Sherbets* of all kinds or their mixes;

(f) Frozen ice cream bars, sandwiches, cones, and similar novelties;

(g) Frozen desserts or products made in the semblance or imitation of frozen dessert;

(h) Frozen confections or their mixes;

(i) Water ices or their mixes;

(j) Ice milk or its mix;

(k) French ice cream, French custard, or their mixes;

(l) Frozen custard or its mix and frozen yogurt;

(m) Yogurt, flavored yogurt, and low-fat yogurt;

HeinOnline -- 1977 Vol. I 42 1977

(n) Sour cream—either cultured or directly acidified;

(o) Cream cheese—either cultured or directly acidified;

(p) Buttermilk—either cultured, from churned butter, or directly acidified;

(q) Eggnog, low-fat eggnog, *eggnog-flavored* milk, whipped cream, flavored toppings, and similar flavored products;

(r) Dry or powdered milk; *and*

(s) Condensed milk products.

(3) The items specified in subsections (2)*(a) through (2)(s)* of this section shall conform to the standards of identity set forth in the Code of Federal Regulations. If standards of identity are not set forth in the code, then the standards adopted by the department prevail. The labeling of manufactured dairy products shall be in accordance with the Montana Food, Drug, and Cosmetic Act.

(4) "Manufactured dairy product" means an item enumerated in subsection *(2)* or any other dairy product made by incorporating milk or cream or converting milk or cream into a different state of appearance or quality.

(5) "Manufactured dairy products plant" or "factory" means a place where milk or cream is collected and converted into a product or into a different state of appearance or quality or which manufactures those products listed in subsection (2). If only products of semblance or imitation of dairy products are made, the plant is not considered as a manufactured dairy products plant.

(6) "Creamery" means a place where butter is made for commercial purposes.

(7) "Cheese factory" means a place where cheese including cream cheese, cottage cheese, creamed cottage cheese, cheese curd, cottage cheese dressing, and low-fat counterparts of cheese, either cultured or directly acidified, *is* made for commercial purposes.

(8) "Frozen dessert plant" means a place where products named in *subsections* (2)(c) through (2)(i) of this section are made for commercial purposes.

(9) "Cream station" means a place other than a creamery where deliveries of milk or cream are weighed, graded, sampled, tested, or collected for purchase.

(10) "Dairy" or "dairy farm" means a place where one or more cows or goats are kept, a part or all of the milk or cream from which is used for manufacturing purposes.

(11) "Milk" means the lacteal secretion, practically free from colostrum, obtained by the milking of one or more healthy cows located in modified accredited areas and modified certified areas or from cows in herds fully accredited as tuberculosis free by the United States *department* of *agriculture* or in the process of being accredited when the milk or cream is sold for use in, intended for use in, or used in a manufactured dairy product.

HeinOnline -- 1977 Vol. I 43 1977

(12) "Cream" means the milk fat which rises to the surface when milk is allowed to stand or which is separated from milk by centrifugal force when sold, used, or intended for use in a manufactured product.

(13) "Raw milk" or "raw milk products" means milk or milk products which have not been treated by a process of pasteurization.

(14) "Person" means an individual, firm, partnership, corporation, *cooperative,* or other business unit or trade device.

(15) "Pasteurization", "pasteurizing", and similar terms mean the process of heating every particle of milk or milk product to at least 145 degrees F. and holding it continuously at or above this temperature for at least 30 minutes, or to at least 161 degrees F. and holding it continuously at or above this temperature for at least 15 seconds in equipment which is properly operated and approved by the department. Milk products that have a higher fat content than milk or contain added sweeteners shall be heated to at least 155 degrees F. and held continuously at or above this temperature for at least 30 minutes, or to at least 175 degrees F. and held continuously at or above this temperature for at least 25 seconds. This definition does not bar any other pasteurization process which has been recognized by the United States *public health service* to be equally effective and which is approved by the department.

(16) "Agent" means a person who is authorized by another person to act for him in dealing with a third person.

(17) "Grading" means the examination of milk, cream, or products by sight, odor, taste, or laboratory analysis, the results of which determine a grade designating their quality.

(18) "Testing", "test", "tested", and similar words mean the examination of milk, cream, or manufactured dairy products by sight, odor, taste, or biological or chemical laboratory analysis to determine their quality, wholesomeness, or composition.

(19) "Safe temperature" means 45 degrees F. or less, unless the product is frozen, in which case the temperature must be at or below 0 degrees F.

(20) "Producer" means the person who exercises control over the production of milk or cream delivered to a milk or cream receiving station or manufactured dairy products plant or who receives payment for milk or cream used in manufacturing.

(21) "Mix" includes the liquid, unfrozen product from which those frozen products listed under subsection (2)(c) through (2)(e) and (2)(g) through (2)*(l)* are made.

(22) For purposes of reporting production and licensing, "manufactured dairy product" includes but is not limited to:

(a) Ice cream or its mix;

(b) French ice cream, custard ice cream, French custard ice cream, their low-fat counterparts, or their mixes;

HeinOnline -- 1977 Vol. I 44 1977

(c) Sherbets of all kinds or their mixes;

(d) Animal or vegetable fat frozen desserts or their mixes;

(e) Frozen confections or their mixes when made in a manufactured dairy products plant;

(f) Water ices or their mixes;

(g) Frozen dessert sandwiches, bars, cones, and similar novelties;

(h) Frozen dessert made of *nondairy* origins and other products made in the semblance or imitation of dairy products or their mixes when made in a manufactured dairy products plant;

(i) Ice milk or its mix;

(j) Cheese of all kinds including cottage cheese, cheese curd, cheese dressing, and cream cheese either cultured or directly acidified;

(k) Sour cream when cultured or directly acidified;

(l) Eggnog, low-fat eggnog, *eggnog-flavored* milk, and similar flavored products;

(m) Buttermilk, cultured or from churned butter or directly acidified;

(n) Butter;

(o) Yogurt—low-fat yogurt, flavored yogurt, either cultured or directly acidified or frozen.

(23) "Official test" means test procedures outlined in the sources referred to under 3-2498 *concerning* samples, methods, *and* rules of evidence.

(24) "Water ice" means a frozen product containing but not limited to the following ingredients: water, sugar, flavoring, coloring, stabilizers, and other ingredients allowed by the Code of Federal Regulations as optional ingredients.

(25) "C.I.P." means the procedure by which sanitary pipelines or pieces of dairy equipment are mechanically cleaned in place by circulation when this procedure meets the 3-A accepted practices for permanently installed sanitary product-pipelines and cleaning systems.

(26) "Filled dairy products" means milk, cream, skimmed milk, or any combination of these, whether or not condensed, evaporated, concentrated, frozen, powdered, dried, or desiccated, or any food product made or manufactured from them, to which has been added or which has been blended or compounded with fat or oil other than milk fat so that the resulting product is in imitation or semblance of a dairy product, including milk, cream, sour cream, skimmed milk, ice cream, low-fat ice cream, whipped cream, flavored milk or skim milk yogurt, dried or powdered milk, cheese, cream, cream cheese, cottage cheese, creamed cottage cheese, ice cream mix, low-fat ice cream mix, sherbet, condensed milk, evaporated milk, or concentrated milk.

HeinOnline -- 1977 Vol. I 45 1977

(27) "Intrastate commerce" means commerce within this state under the jurisdiction of the state and includes the operation of a business or service establishment.

(28) "Code of Federal Regulations" *refers especially but is not limited to* Title 21 which contains the definitions and standards of identity for products as established by the *food* and *drug administration*, United States *department* of *health, education* and *welfare.*

(29) "Culture" means the harmless lactic acid fermenting bacteria which are added to milk or cream to make manufactured dairy products like cultured buttermilk, cheese, cottage cheese, yogurt, sour cream, cream cheese, butter, and other similar products.

(30) "Direct acidification", "directly acidified", and similar terms mean the process of adding a food grade acid to milk or cream instead of or in addition to the adding of culture.

(31) "Mislabeled", "unwholesome", "food additives", "optional ingredients", "impure", "misbranded", "contaminated", "adulterated", "perishable", "hazardous", "unfit", "spoiled", "damaged", and similar terms, when applied to a manufactured dairy product or product made in semblance or in imitation of a manufactured dairy product, are as defined in 27-701 *through* 27-723."

Section 5. Section 3-2498, R.C.M. 1947, is amended to read as follows:

"**3-2498. Tests and analyses — admissibility as evidence.** (1) The department may require a chemist, biologist, microbiologist, serologist, or other qualified employee of the department of health and environmental sciences or other laboratory approved by the department to test or analyze samples of milk, cream, manufactured dairy products, or products made in the semblance or imitation of these products.

(2) Any appropriate test method listed in Standard Methods for the Examination of Dairy Products, current edition—American Public Health Association, Inc. *or* Standard Methods for the Examination of Water and Waste Water, current edition—American Public Health Association, Inc. or the methods in the Official Methods of Analysis of the Association of Official Analytical Chemists, current edition as published by the Association of Official Analytical Chemists, or any other appropriate tests approved by the department *may be used*, and the results of these tests or analyses are admissible as prima facie evidence of the facts disclosed, in a court, hearing, or proceeding arising under this act, when identified by the sample numbers and verified by the department representative and analyst handling them. These tests shall be designated and referred to as "official tests"."

Section 6. Section 3-24-122, R.C.M. 1947, is amended to read as follows:

"**3-24-122. Filled dairy products unlawful — exceptions.** *(1)* Filled dairy products resemble genuine dairy products so closely that they lend themselves readily to substitution for and confusion with such dairy products and in many cases cannot be distinguished from genuine dairy products by the ordinary consumer or ordinary laboratory procedures. The

manufacture, sale, exchange, purveying, transportation, possession, or offering for sale or exchange or purveyance of filled dairy products lends itself to substitution, confusion, deception, and fraud and if permitted, tends to interfere with the orderly and fair marketing of foods essential to the well-being of the people of this state. It is hereby declared to be the purpose of this act *to:*

(a) correct, prevent, and eliminate the condition above referred to;

(b) protect the public from confusion, fraud, and deception;

(c) prohibit practices inimical to the general welfare; and

(d) promote the orderly and fair marketing of essential foods.

(2) It is unlawful*:*

(a) for any person to manufacture, sell, exchange, display, purvey, transport, or possess any filled dairy product or to offer or expose for sale or exchange or to be purveyed any such product *in intrastate commerce;*

(b) for any person owning or operating a bakery, confectionery shop, factory, or other place where food products are prepared or manufactured for sale, exchange, or purveyance to the public in intrastate commerce to utilize any filled dairy product as an ingredient in any food product so manufactured or prepared*;*

(c) for any person knowingly to sell, exchange, purvey, transport, or possess any food product *in intrastate commerce* in which any filled dairy product is an ingredient.

(3) The term "filled dairy product" *does not* mean or include:

(a) *oleomargarine*;

(b) *any* distinctive proprietary food compound not readily mistaken for a dairy product where such compound is customarily used on the order of a physician and is prepared and designed for medicinal or special dietary use and prominently so labeled;

(c) *any* frozen dessert containing animal fat (other than butterfat) or vegetable fat when the container is properly labeled;

(d) *any* dairy product flavored with chocolate or cocoa where the fats or oils other than milk fat contained in such product do not exceed the amount of cacao fat naturally present in the chocolate or cocoa used; or

(e) *any* dairy product in which the vitamin content has been increased and food oil utilized as a carrier of such vitamins provided the quantity of such food oil does not exceed 1/100 of 1% of the weight of the finished dairy product."

Section 7. Section 3-24-127, R.C.M. 1947, is amended to read as follows:

"**3-24-127. Pasteurization apparatus and records.** (1) The department may adopt rules which it considers necessary to assure proper control and use of all equipment used in the process of pasteurization. The

department may require the operation of devices and *apparatus* which are needed to accurately record and indicate temperatures to which and the length of time for which the pasteurized product has been heated, including those periods and temperatures when the equipment is cleaned and sanitized by C.I.P. method. A person using pasteurizing equipment in this state shall properly record and have available to the department for the preceding 2 months all records pertaining to the pasteurization of any product. These records shall at all times be open to the inspection of the department, the department of health and environmental sciences, and all other state, county, and municipal officers charged with the enforcement of laws and ordinances respecting dairy products or the public health.

(2) Pasteurizing equipment which records temperatures or controls the time of holding shall be timed, set, and sealed by the department. The seals may not be removed or broken without first notifying the department."

Section 8. Section 3-24-138, R.C.M. 1947, is amended to read as follows:

"**3-24-138. Deceit in grade, measure, or test of milk and cream unlawful.** *No person may* use a measure or grading or testing apparatus which does not comply with the standards of the department *or make any false or inaccurate statement or otherwise deceive or defraud a producer or other person concerning the weight, measure, butterfat content, or other component content of milk or cream.*"

Section 9. Section 46-208, R.C.M. 1947, is amended to read as follows:

"**46-208. Powers of department.** The department may:

(1) *supervise* the sanitary conditions of livestock in this state, under the provisions of the constitution and statutes of this state and the rules adopted by the department. The department may quarantine a lot, yard, land, building, room, premises, inclosure, or other place or section in this state which is or may be used or occupied by livestock and which in the judgment of the department is infected or contaminated with an infectious, contagious, communicable, or dangerous disease or disease-carrying medium by which the disease may be communicated. The department may quarantine livestock in this state when the livestock is affected with or has been exposed to disease or disease-carrying medium. The department may prescribe treatments and enforce sanitary rules which are necessary and proper to circumscribe, extirpate, control, or prevent the diseases.

(2) *foster*, promote, and protect the livestock industry in this state by the investigation of diseases and other subjects related to ways and means of prevention, extirpation, and control of diseases or to the care of livestock and its products and to this end *may* establish and maintain a laboratory, *may* make or cause to be made biologic products, curatives, and preventative agents, and *may* perform any other acts and things as may be necessary or proper in the fostering, promotion, or protection of the livestock industry in this state;

(3) *impose* and collect such fees as the department considers appropri-

HeinOnline -- 1977 Vol. I 48 1977

ate for the tests and services performed by the laboratory and for biologic products, curatives, and preventative agents made or caused to be made by the department. In fixing *these* fees the department shall take into consideration the costs, both direct and indirect, of *the* tests, services, products, curatives, and agents. All fees shall be deposited in the earmarked revenue fund for the use of the animal health functions of the department.

(4) *adopt* rules and orders which it considers necessary or proper to prevent the introduction or spreading of infectious, contagious, communicable, or dangerous diseases affecting livestock in this state and to this end may adopt rules and orders necessary or proper governing inspections and tests of livestock intended for importation into this state, before it may be imported into this state;

(5) *adopt* rules and orders which it considers necessary or proper for the inspection, testing, and quarantine of all livestock imported into this state;

(6) *adopt* rules and orders which it considers necessary or proper for the supervision, inspection, and control of the standards and sanitary conditions of slaughterhouses, meat depots, meat and meat food products, dairies, milk depots, milk and its by-products, barns, dairy cows, factories, and other places and premises where meat or meat foods, milk or its products, or any *by-products* thereof intended for sale or consumption as food are produced, kept, handled, or stored. *An* authorized representative of the department may take samples of a product so produced, kept, handled, or stored for analysis or testing by the *department. The* records of the samples and their analysis and test, when identified as to the sample by the oath of the officer taking it and verified as to the analysis or test by the oath of the chemist or bacteriologist making it, *are* prima facie evidence of the facts set forth in *them* when offered in evidence in a prosecution or action at law or in equity for violation of this *chapter* or a rule or order of the board adopted under this *chapter.* These standards, *insofar* as they relate to dairies or milk and its by-products, may not include standards of weight or measurement.

(7) *adopt* rules and orders which seem necessary or proper for the supervision and control of manufactured and refined foods for livestock and the manufacture, importation, sale, and method of using a biologic remedy or curative agent for the treatment of diseases of livestock. However, as far as practicable the standards approved by the United States department of agriculture shall be adopted.

(8) *install* an adequate system of meat inspection at any time and in such places as public welfare may demand under the rules which may provide fees for the maintenance of such inspection and which shall provide ways and means for shipping home-grown and home-killed meats into any city in this state. As far as practicable, the rules shall conform with the meat-inspection requirements of the United States department of agriculture.

(9) *slaughter* or cause to be slaughtered any livestock in this state known to be affected with or which has been exposed to an infectious,

HeinOnline -- 1977 Vol. I 49 1977

contagious, communicable, or dangerous disease, when such slaughter is necessary for the protection of other livestock, and destroy or cause to be destroyed all barns, stables, sheds, *outbuildings*, fixtures, furniture, *or* personal property infected with any such infectious, contagious, communicable, or dangerous disease when they cannot be thoroughly cleaned and disinfected and the destruction is necessary to prevent the spreading of the disease*;*

(10) *indemnify* the owner of any property destroyed by order of the department or *pursuant to* any rules adopted by the department under this *chapter;*

(11) *require* persons, firms, and corporations engaged in the production or handling of meat, meat food products, dairy products, or any *by-products* thereof to furnish statistics of the quantity and cost of the food and food products produced or handled and the name and address of persons supplying them any of the products."

Section 10. Section 46-211, R.C.M. 1947, is amended to read as follows:

"**46-211. Adoption of rules.** The department shall adopt and enforce rules for the inspection and tuberculin test of dairy cattle or other animals and for the inspection, test, treatment, or disposition of livestock affected with, or which may have been exposed to, infectious, contagious, communicable, or dangerous disease and for the quarantines provided for in this *chapter.*"

Section 11. Section 46-212, R.C.M. 1947, is amended to read as follows:

"**46-212. Establishment of livestock disease control area — entry into area — compulsory inspection area, when.** *(1)* Upon receipt of a petition signed by not less than 75% of the livestock owners of the species of animals to be inspected, tested, treated, or vaccinated, representing not less than 50% of such species in any school district, as determined from the permanent records of the board of county commissioners describing school district boundaries of any county in the state of Montana, petitioning for the area control, treatment, prevention, or eradication of any dangerous disease of livestock within such school district, the board *may* establish such school district as a disease control area and *may* enforce the inspection, test, treatment, or vaccination of all livestock of the species designated within such school district in accordance with the rules promulgated by the department for the inspection, eradication, treatment, or vaccination of such livestock and *may* reimburse the owners of livestock slaughtered by order of the department or its authorized agent in accordance with the laws of Montana governing the payment of such animal or animals.

(2) In any circumscribed disease control area as established under this *section* by the department no other livestock of the species designated by the department to be inspected, tested, treated, or vaccinated *may* enter the disease control area unless inspected, tested, treated, or vaccinated under the direction of the department or accompanied by a satisfactory health certificate or except under special permit and restrictions provided by the department.

HeinOnline -- 1977 Vol. I 50 1977

(3) When 75% or more of the school districts in any county in Montana are established under this *section* by the department as disease control areas, it becomes mandatory on the part of the remaining livestock owners in such county to submit their livestock of one or more species for inspection, test, treatment, or vaccination, as directed by the department."

Section 12. Section 46-217, R.C.M. 1947, is amended to read as follows:

"**46-217. Authority of municipal corporations.** This *chapter* does not prevent the governing authority of a municipal corporation from enacting or enforcing ordinances for the inspection of slaughterhouses, meat depots, meat markets, meat food products, creameries, butter or cheese factories, dairies, *or* dairy products, *located,* sold, or offered for sale in the limits of the municipal corporation. An ordinance may not be enforced in conflict with the powers of this *chapter* delegated to the department *and* its officers or agents."

Section 13. Section 46-218, R.C.M. 1947, is amended to read as follows:

"**46-218. Classification of animals as to compensation for slaughter.** Animals slaughtered under the direction of the department by order of the board are divided into two classes for the purposes of compensation:

(1) Animals determined by the department to be affected with an incurable disease, which are destroyed by order of the board, are designated as animals of class 1, and unless otherwise provided each of the animals shall be paid for on the basis of 75% of its appraised value. The county in which the animal was owned at the time it was determined to be affected with an incurable disease is liable in part, as later provided, for an indemnity to be paid for the animal. The ownership and county are determined by an affidavit of the owner of the animal or his agent. Each animal directed to be destroyed shall be appraised by a representative or an authorized agent of the department with the owner agreeing in writing as to the value of the animal. When appraised, due consideration shall be given to its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present and probable effect of the disease on the animal. In the absence of an agreement, there shall be appointed three competent, disinterested parties, one appointed by the department, one by the owner, and a third by the first two, to appraise each animal, taking into consideration its breeding value as well as its dairy or meat value and the condition of the animal as to the disease and the present probable effect of the disease on the animal. The judgment of the majority is the judgment of the appraisers and is binding on both parties as the final determination of indemnity to be paid for each animal. The total compensation of each group of appraisers is limited to $5 for the group appraisal, one-half of which shall be paid by the department. The total amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class, and the total combined amount of indemnity paid for the animal by the state and a county may not exceed the sum of $100 for a registered purebred animal or the sum of $50 for a grade

HeinOnline -- 1977 Vol. I 51 1977

animal. Animals presented for appraisal as purebreds shall be accompanied by their registration papers at the time of appraisal or they shall be appraised as grades. If purebreds are less than 3 years old and not registered, the department may grant a reasonable time for their registration and presentation of their registration papers to the appraiser. Registration papers shall accompany the claim for indemnity.

(2) Animals of class 1 shall be paid for on the basis of their full appraised value as determined in this section if no evidence of incurable disease is disclosed by autopsy, bacteriologic, serologic, microscopic, or other findings. The total combined amount of indemnity paid by the state and a county for an animal may not exceed the actual sound value of an animal of its class. The total combined amount of indemnity paid by the state and a county for the animal may not exceed $100 for a registered purebred animal or $50 for a grade animal.

(3) Animals which are determined by the department to be affected with or exposed to foot-and-mouth disease, rinderpest, contagious pleura pneumonia, surra, *or* other *infectious, contagious,* communicable, or dangerous disease, which is not of its nature necessarily fatal, and are destroyed by order of the department as a sanitary safeguard, are designated as animals of class 2 and each animal shall be paid for on the basis of its full appraised value. The appraised value shall be determined in the manner set out in subsection (1) of this section. The appraisal of the animals shall be based on the meat, dairy, or breeding value of the animal, but where appraisal is based on breeding value of the animal, no appraisal may exceed three times its meat or dairy value. The total amount of indemnity paid by the state for an animal may not exceed the actual sound value of an animal in its class. *No* indemnity for a class 2 animal may be paid by a county. In the case of destruction of an animal afflicted with brucellosis (Bang's disease), no indemnity shall be paid for the animal unless the board, in its discretion, determines the best interests of this state will be served by payment of an indemnity. In this event, the board shall set out standards of indemnity by rules and may not pay in excess of $100 for a registered purebred animal or $50 for a grade animal. In all cases where the federal government or agency other than the state compensates the owner in whole or in part for livestock destroyed as a sanitary safeguard, the amount of compensation from the state shall be determined under 46-229.

(4) Animals which are injured or killed while they are being inspected or tested under an order of the department or its agent, *which* do not come within either class 1 or class 2, may be paid for at their full appraised value if the claim for the animal is recommended for payment at a meeting of the *board.* Where it is shown that the injury or death of the animal was not proximately due to the negligence of the owner or his agent, the whole claim, when approved, shall be paid out of department funds. The limit of indemnity for an animal paid for by the state may not exceed that fixed by this *section* for animals of class 2."

Section 14. Section 46-220, R.C.M. 1947, is amended to read as follows:

"**46-220. Indemnity — from what funds paid.** In payment for ani-

HeinOnline -- 1977 Vol. I 52 1977

mals or property destroyed by order of the department, the state shall pay one-half of the indemnity out of the money at the disposal of the department. The county liable in part for the indemnity shall pay one-half of the total indemnity out of the general fund of the county."

Section 15. Section 46-224, R.C.M. 1947, is amended to read as follows:

"**46-224. Examination and payment of claims.** Claims against the state arising under this *chapter*, if found correct, shall be processed and paid from funds of the department."

Section 16. Section 46-226, R.C.M. 1947, is amended to read as follows:

"**46-226. Sale of condemned carcasses — disposal of proceeds.** Where the carcass of an animal ordered destroyed under this *chapter* is found on official *postmortem* inspection to be fit for human consumption, the owner shall receive the net proceeds from the sale of the carcass. The proceeds shall be deducted from his claim against the state and county for the slaughter. A representative of the department may, when considered advisable or necessary or when it is desired by the owner, sell the carcass on terms he considers to be in the best interests of this state, and the net proceeds obtained from the sale shall be paid to the owner. This procedure does not invalidate the owner's claim for indemnity for any balance due him."

Section 17. Section 46-228, R.C.M. 1947, is amended to read as follows:

"**46-228. Persons entitled to indemnity.** *(1)* The owner of an animal or property destroyed under this *chapter* is entitled to indemnity, except in the following cases:

(a) animals belonging to the United States;

(b) animals brought into this state which violate this *chapter* or rules of the department;

(c) animals which the owner or claimant knew to be diseased or had notice of the disease at the time they came into his possession;

(d) animals which had the disease for which they were slaughtered or which were destroyed because of exposure to the disease at the time of their arrival in this state. However, *a class 2* animal shipped into this state under department rules and accompanied by the proper certificate of health from a recognized state or federal veterinarian may be paid for when payment is authorized by the department.

(e) animals which have not been in this state for at least 120 days before the discovery of the disease; however, *class 2* animals which have not been in the state 120 days may be paid for when payment is authorized by the department;

(f) when the owner or agent has not used reasonable diligence to prevent disease or exposure to disease;

HeinOnline -- 1977 Vol. I 53 1977

(g) when the owner or agent has not complied with the rules of the department with respect to animals condemned;

(h) when animals condemned are not destroyed within 60 days after they are determined to be affected with or exposed to a disease which requires them to be destroyed by order of the department.

(2) No compensation or indemnity will be paid for the destruction of livestock affected with tuberculosis or other infectious, contagious, communicable, or dangerous disease unless the entire herd or band of affected livestock is under the supervision of the department for the eradication of the disease."

Section 18. Section 46-230, R.C.M. 1947, is amended to read as follows:

"46-230. Expenses, how paid — lien and foreclosure. The expense of inspecting, testing, supervision of quarantine, supervision of dipping, supervision of disinfection, and supervision of other treatment of livestock by the department and the sanitary inspection of dairies, packing houses, meat depots, slaughterhouses, milk depots, and other premises shall be paid for by the department. However, the owner of the livestock or property is liable for all expenses except the salary of the supervising officer representing the department, when the owner, agent, or person in charge of the livestock or property has violated the rules of the department. These expenses are a lien on the livestock or other property, and the department may retain possession of the livestock until the charges and expenses are paid. The lien is not dependent on possession, and may be foreclosed in the name of the agent of the department by sale of the stock, or as many as may be necessary to pay the sum of the costs, at public auction, *after* 10 days' notice by posting in three public places in the county. The lien may also be foreclosed by an action in a court of competent jurisdiction against the owner of the livestock to recover the amount of charges and expenses."

Section 19. Section 46-232, R.C.M. 1947, is amended to read as follows:

"46-232. Licensing of milk plants and dairies selling milk or cream for public consumption. (1) It is unlawful for the following businesses to operate in this state without first obtaining a license from the department of livestock:

(a) *a* dairy selling milk or cream for public consumption in the form in which it is originally produced;

(b) *a condensed*, evaporated, or powdered milk plant;

(c) *a fluid* milk plant. A *fluid* milk plant is a place where milk or cream is *not produced but is* purchased or collected and prepared for distribution to the consumer in liquid form.

(2) A license expires on December 31 of the year issued. The department may, following the procedures in the Montana Administrative Procedure Act, deny, suspend, or revoke a license when it determines that a person to whom the license is issued has failed to comply with the rules

HeinOnline -- 1977 Vol. I 54 1977

of the department or has failed to conduct his establishment in a sanitary manner. All license fees collected shall be deposited into the general fund.

(3) The department may issue a restraining order prohibiting a dairy from selling or giving away milk or cream not produced or handled under the laws of this state or the rules of the department. It is unlawful for a dairy, while restrained, to sell or give away for public consumption milk or cream produced or handled by the dairy, and it is also unlawful for a dairy products manufacturing plant, milk plant, or cream station to purchase or use the cream or milk from a dairy while the dairy is restrained.

(4) The following license fees are charged for licenses issued under this section:

(a) *condensed,* evaporated, or powdered milk factory, $50;

(b) *fluid* milk plant, $50;

(c) *dairy,* $5.

(5) A person violating this *section* is guilty of a misdemeanor."

Section 20. Section 46-233, R.C.M. 1947, is amended to read as follows:

"**46-233. Exceptions of certain producers of meats and dairy products.** The owners or operators of slaughterhouses, packing houses, meat depots, dairies, creameries, butter factories, cheese factories, or other places of business engaged in the production, storage, or transportation of meats, meat foods, or dairy products are not required to procure a license from the department of health and environmental sciences, *insofar* as the business of production, storage, or transportation of these food products *is* concerned. This *section* does not limit the supervision or regulation of the sanitary condition of a restaurant, hotel, boardinghouse, or retail market or the products sold or offered for sale thereat by the department of health and environmental sciences, nor does this *section* limit the duties imposed by law on the department of health and environmental sciences to make sanitary rules for the eradication or control of an epidemic of human disease which may exist in a community."

Section 21. Section 46-234, R.C.M. 1947, is amended to read as follows:

"**46-234. Cooperation by public officers.** The *department of health and environmental sciences, the board of health and environmental sciences,* and local boards of health of a county, city, *or* town shall cooperate with and assist the department *of livestock* in matters which relate to the execution of its sanitary powers regarding livestock and their food products under this *chapter* in the manner which the department *of livestock* prescribes, either by general rule or direct order."

Section 22. Section 46-235, R.C.M. 1947, is amended to read as follows:

"**46-235. Slaughterhouse license — fees and renewals.** It is unlawful for a person, firm, or corporation to maintain or conduct a slaughter-

HeinOnline -- 1977 Vol. I 55 1977

house, meat packing house, or meat depot in this state without having a license issued by the department. The annual fee for *a license* issued under this section is $1 and shall be paid into the general fund. All licenses expire on December 31 of the year in which they are issued and shall be renewed by the department on request of the licensee. However, when the department finds that the place for which the license is issued is not conducted in accordance with the rules and orders of the board made under *46-208*, the department shall revoke the license and may not renew it until the place is in a sanitary condition in accordance with department rules."

Section 23. Section 46-238, R.C.M. 1947, is amended to read as follows:

"**46-238. Penalty for violation.** Any person, persons, firm, or corporation violating any provision of this *chapter*, or the rule or order promulgated by authority of same, shall be guilty of a misdemeanor. *Violations* of this *chapter* shall be tried without undue delay in any court of competent jurisdiction."

Section 24. Section 46-239, R.C.M. 1947, is amended to read as follows:

"**46-239. Civil liability.** A person, firm, or corporation who violates this *chapter* or rules or orders of the department is liable for damages sustained by a person because of the violation. The damages may be recovered by the person in a civil action in a court of competent jurisdiction."

Section 25. Section 46-243, R.C.M. 1947, is amended to read as follows:

"**46-243. Personal liability of members and officers of department.** No member of the department is personally liable for damage resulting from his official acts or decisions under this *chapter* or a rule or order adopted under this *chapter*, unless it is for his own willful wrong or gross negligence."

Section 26. Section 46-248, R.C.M. 1947, is amended to read as follows:

"**46-248. Penalty.** Any person guilty of violating *46-247 is* guilty of a misdemeanor and upon conviction *is* punishable by a fine not exceeding *$500* or by imprisonment in the county jail not exceeding *1* year or by both fine and imprisonment."

Section 27. Section 46-605, R.C.M. 1947, is amended to read as follows:

"**46-605. Designation of years for rerecording brands.** Each *10th* year after 1921 is the year for *rerecording* artificial marks and brands used to distinguish and identify the ownership of domestic animals and livestock. The department shall, on the application of a person, firm, or corporation or the transferee of the person, firm, or corporation made in a year which is a year for *rerecording* marks and brands, *rerecord* a mark or brand which at the time of the application stands of record in the

HeinOnline -- 1977 Vol. I 56 1977

department in the name of the person, firm, or corporation. A mark or brand which was not originally recorded or *rerecorded* in the name of the person, firm, or corporation during the *rerecording* year last preceding the date when the application is filed or originally recorded in the name of the person, firm, or corporation or his or its predecessor or predecessors in interest between the time of the application and the *rerecording* year last preceding the application, is not of record in the department."

Section 28. Section 46-808, R.C.M. 1947, is amended to read as follows:

"**46-808. Removal of livestock from state without inspection — penalty — exception.** Any person, other than the owner *or* his agent or employee, who, without consent of the owner, removes or causes to be removed from this state any cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly without having the same inspected where such inspection is required by law *is* guilty of a felony and shall be punished by a fine of not more than $2,000, by imprisonment in the state prison for a term of not more than 3 years, or by both such fine and imprisonment. *The* provisions of this section *do* not apply to any person who removes from this state any animal specified by this section, for the purpose of obtaining emergency treatment for such animal by a licensed veterinarian."

Section 29. Section 46-903, R.C.M. 1947, is amended to read as follows:

"**46-903. Quarantine of diseased animals — ownership of animals to be determined — proceeds from sale of stock of unknown owner.** If the livestock inspector at a sale *finds* any livestock afflicted with an infectious or contagious disease, he shall immediately take possession of the livestock and place them in quarantine, to be disposed of as directed by the department. If there is any question respecting the ownership of livestock sold, the livestock inspector may take possession of the livestock. The livestock inspector shall notify the person in charge of the market and conducting the sales and the person who has purchased the livestock at the sale, within a reasonable time. Where livestock is sold, the ownership of which is not known or cannot be determined by the livestock inspector, they may be sold as strays and the net proceeds derived from the sale shall be *handled as provided in 46-918*."

Section 30. Section 46-906, R.C.M. 1947, is amended to read as follows:

"**46-906. Definitions.** Unless the context requires otherwise, in this *chapter*:

(1) "*livestock*" means and includes horses, mules, cattle, swine, sheep, and goats;

(2) "*person*" means a person, *partnership*, association, or corporation;

(3) "*board*" means the board of livestock provided for in 82A-1303;

(4) "*certificate*" means the certificate of public convenience and necessity authorized to be issued under this *chapter*;

HeinOnline -- 1977 Vol. I 57 1977

(5) "*commission* basis" means the compensation or charge imposed on the owner of livestock for the services rendered the owner by the operator of the livestock market;

(6) "*livestock* market" means a place where a person assembles livestock for either private or public sale by him and the service is compensated for by the owner on a commission basis or otherwise, except:

(a) *a* place used solely for a dispersal sale of the livestock of a farmer, dairyman, livestock breeder, or feeder who is discontinuing business and no other livestock is sold there or offered for sale;

(b) *a* farm, ranch, or place where livestock either raised or kept thereon for the grazing season or for fattening is sold and no other livestock is brought there for sale or offered for sale;

(c) *the* premises of a butcher, packer, or processor who *receives* animals exclusively for immediate slaughter;

(d) *the* premises of a person engaged in the raising of livestock for breeding purposes only, who limits his sale to livestock of his own production;

(e) *a* place where a breeder or an association of breeders of livestock of any class assemble and offer for sale and sell under his or their own management any livestock, when the breeder or association of breeders assumes all responsibility for the sale and the title of livestock sold;

(7) "*off-premises* sale" means the sale of livestock by a livestock market *for which a certificate has been issued* under this chapter at a place other than the one at which the *livestock market* conducts *its* usual livestock market operation;

(8) "*test* station sale" means the sale of livestock from a place where livestock *is* taken to measure rates of gain under uniform feeding conditions, when that place is not owned by the owner of the livestock."

Section 31. Section 46-906.1, R.C.M. 1947, is amended to read as follows:

"46-906.1. Board regulation of certain types of nonmarket sales of livestock. (1) *Each* person not a livestock market operator *authorized* under this chapter conducting the sale of livestock in a breed sale, a breed association sale, or at a test station sale, except when all of the livestock are his and are being sold from his own place, shall obtain approval from the board before conducting the sale.

(2) The board, as conditions to granting approval, may require:

(a) the names and addresses of those conducting the sale;

(b) the date, time, and place where the sale will be conducted;

(c) a detailed statement of the assets and liabilities of the persons conducting the sale;

(d) the establishment of a custodial account into which all moneys received as purchase for the sale of livestock must be deposited;

HeinOnline -- 1977 Vol. I 58 1977

(e) the posting of reasonable bond, in an amount determined by the board;

(f) the commissions or charges proposed to be imposed on the owners of livestock for services rendered to them associated with the sale;

(g) a guarantee to pay all consignors in full within a reasonable time as set by the board;

(h) such other information as the board considers necessary."

Section 32. Section 46-907, R.C.M. 1947, is amended to read as follows:

"**46-907. Regulation of livestock markets.** The board shall:

(1) *supervise* and regulate livestock markets in this state;

(2) regulate the properties, facilities, operations, services, and practices of all livestock markets;

(3) supervise and regulate livestock markets in all matters affecting the relationship between the operators and owners of livestock and between the operators and purchasers of livestock at the markets;

(4) prescribe by general order or otherwise rules in conformity with this *chapter* applicable to all livestock markets and not in conflict with the laws of the United States or regulations of the United States department of agriculture or other federal agencies."

Section 33. Section 46-907.1, R.C.M. 1947, is amended to read as follows:

"**46-907.1. Occasional off-premises sales may be authorized.** (1) The board may authorize occasional *off-premises* sales by *authorized* livestock markets and may establish the conditions under which approval for an *off-premises* sale may be granted, including any change in bonding requirements the board considers necessary.

(2) No livestock market *for which a certificate has been issued* under this chapter may conduct an *off-premises* sale without obtaining prior approval of the board."

Section 34. Section 46-908, R.C.M. 1947, is amended to read as follows:

"**46-908. Certificate to operate livestock market required — application, contents of — fee.** *(1)* A person may not operate a livestock market in this state without first obtaining from the board, under this *chapter*, a certificate declaring that public convenience and necessity require the operation. A person making application for a certificate shall do so in writing, verified by the applicant and specifying the following:

(a) the name and address of the applicant and the names and addresses of its officers, if any;

(b) the place where the applicant proposes to operate a livestock market;

HeinOnline -- 1977 Vol. I 59 1977

(c) a complete and detailed description of the property and facilities proposed to be used in connection with the livestock market;

(d) *the* commissions or charges applicant proposes to impose on the owners of livestock for services rendered to them by applicant in the operation of the livestock market;

(e) a detailed statement showing the assets and liabilities of the applicant;

(f) *the* location of other livestock markets within a radius of 200 miles of the proposed livestock market and the names and addresses of the operators thereof;

(g) a detailed statement of the facts upon which the applicant relies showing public convenience and necessity for the livestock market, including the anticipated revenue from inspection fees that may be derived therefrom by *the* state;

(h) *any* additional information the board may require.

(2) The application shall be accompanied by a fee of $100, which shall also be considered the first annual fee if the application is granted; however, the annual fee shall be paid on the following May 1 and each year thereafter, as provided herein."

Section 35. Section 46-910, R.C.M. 1947, is amended to read as follows:

"**46-910. Livestock markets licensed — grounds of discontinuance.** If after a hearing in the manner provided in this *chapter* it appears to the board that a livestock market *for which a certificate has been issued* under this *chapter* has for a period of 2 successive years failed to provide the minimum revenue to the state as provided in this *chapter*, the livestock market may be discontinued by order of the board."

Section 36. Section 46-911, R.C.M. 1947, is amended to read as follows:

"**46-911. Fee.** A person operating a livestock market in this state shall pay on May 1, annually, a fee of $100 to the board. All fees under this *chapter* shall be paid into the state treasury and placed by the state treasurer to the credit of the earmarked revenue fund for the use of the board."

Section 37. Section 46-912, R.C.M. 1947, is amended to read as follows:

"**46-912. Bond required — conditions.** *(1)* Every person operating a livestock market in this state shall provide a bond in favor of this state, upon a form and with surety to be approved by the board, in the minimum penal sum of $10,000 or such greater sum as the board may determine, conditioned upon:

(a) the payment immediately upon the sale of the livestock of all money received, less reasonable expenses and commissions, by the livestock market to the rightful owner of livestock so consigned and delivered to *it* for sale;

HeinOnline -- 1977 Vol. I 60 1977

(b) the payment of the minimum fees as provided by 46-909; and

(c) a full compliance with this *chapter*, including all rules adopted under this *chapter*.

(2) When approved the bond shall be filed with the board.

(3) Actions of law may be brought in the name of the state upon the bond for the use and benefit of a person who suffers loss or damage from violations thereof and may be brought by the person suffering loss or damage in the county of his residence."

Section 38. Section 46-913, R.C.M. 1947, is amended to read as follows:

"**46-913. Records kept by livestock markets.** Each *livestock market* shall keep accounts, records, and memoranda and shall make reports which the board requires, and the board and its authorized agents and employees shall at all times have access to the accounts, records, and memoranda for inspection and examination."

Section 39. Section 46-915, R.C.M. 1947, is amended to read as follows:

"**46-915. Cancellation or suspension of certificates — grounds.** *The board may cancel or suspend the certificate of an operator of a livestock market if it finds that the operator has:*

(1) been guilty of fraud or misrepresentation as to the titles, charges, number, brands, weights, proceeds of sale, or ownership of livestock;

(2) violated any of the provisions of this *chapter*;

(3) violated any of the rules adopted and published by the board;

(4) violated 46-801 through 46-806; or

(5) violated any of the conditions of the bond, as provided by this *chapter*."

Section 40. Section 46-916, R.C.M. 1947, is amended to read as follows:

"**46-916. Investigation of actions of livestock markets — hearing of complaints — additional powers and duties of members of board or agents — witnesses.** (1) *When considered necessary, the* board or any member or agent of the board may upon a motion or upon a verified complaint in writing investigate the actions of a *livestock market* and, if found proper to do so, shall file a complaint against the *livestock market* with the board. The complaint shall be set for hearing before the board upon 10 days' notice served upon the *livestock market*.

(2) Any investigation, inquiry, or hearing which the board may undertake or hold under this *chapter* may be undertaken or held by or before any board member or by or before any agent or examiner of the board designated for that purpose by the board. A finding, order, or decision made by a board member or agent or examiner of the board so designated

HeinOnline -- 1977 Vol. I 61 1977

pursuant to the investigation, inquiry, or hearing, when approved and confirmed by the board and ordered filed in its office, is considered the finding, order, or decision of the board. An agent or examiner of the board may administer oaths, examine witnesses, and receive evidence."

Section 41. Section 46-917, R.C.M. 1947, is amended to read as follows:

"**46-917. Appeal by livestock market or applicant for certificate — bond — procedure.** An appeal of a decision of the board for refusing to grant an application for a certificate or suspending or revoking a certificate of a *livestock market* shall be taken to the district court of the county in which the proposed livestock market is to be located or in which the *authorized livestock market* has *its* principal place of business. The appellant shall file a bond with the clerk of the district court in the sum of $300 to be approved by the judge of the court, conditioned to pay all costs that may be awarded against the appellant in the event of an adverse decision or the decision of the board being affirmed. The cost of preparing transcripts shall be paid by appellant. In case of suspension or revocation of a certificate, the filing of the notice and bond shall stay the order of the board until the final determination of the appeal. If the appellant fails to perfect *the* appeal the stay shall automatically terminate."

Section 42. Section 46-920, R.C.M. 1947, is amended to read as follows:

"**46-920. Penalties.** A person who violates any provisions of this *chapter* or rules adopted by the board under this *chapter* is guilty of a misdemeanor and upon conviction shall be fined not less than $100 *or* more than $600, imprisoned in the county jail not less than 30 days *or* more than 6 months, or both fined and imprisoned. A person who has been convicted of a violation of this *chapter* and who subsequently is found guilty of *another* violation of this *chapter* shall be fined not less than $200 *or* more than $1,000, imprisoned in the county jail for not less than 3 months *or* more than 6 months, or both fined and imprisoned. A second conviction requires the board to suspend or cancel the certificate of the person without a hearing, and the person may not again be granted a certificate for a period of 1 year."

Section 43. Section 46-921, R.C.M. 1947, is amended to read as follows:

"**46-921. Jurisdiction of district courts.** The district courts shall have original jurisdiction in all criminal actions for violations of the provisions of this *chapter.*"

Section 44. Section 46-1011, R.C.M. 1947, is amended to read as follows:

"**46-1011. Powers and duties of inspectors outside of state.** *(1)* The stock inspector appointed to inspect Montana cattle at a cattle market outside this state shall be commissioned by the department and may inspect cattle that come from this state to the market where he is located. He has the same power as stock inspectors in this state to inspect, seize, *and sell* stock which he has reason to believe is stolen or on which brands

HeinOnline -- 1977 Vol. I 62 1977

have been altered or obliterated. He may take the proceeds of an animal in dispute or bearing altered or burned brands, remitting the proceeds to the department, which shall hold the proceeds pending a decision on ownership.

(2) The stock inspector shall, on receipt of the certified lists mentioned in *46-1008* and 46-1010, make an inspection of the cattle listed, and if, on comparison of the list with his own inspection, he finds a difference or discrepancy, he shall make a second inspection of any animal for which the two tallies do not agree, clipping the animal when necessary to determine, accurately and definitely, which inspection or tally is correct. He shall immediately make an inspection report to the department, stating in detail where the discrepancies with the loading tally exist, and calling special attention to his own inspection of the animal. He shall, in his own report, make mention of any animal, with the brands on the animal, which were taken out by the shipper in charge of the stock while in transit between the original loading point and point of final destination. These reports shall be entered in a suitably bound book and are at all times open to public inspection."

Section 45. Section 46-1101.2, R.C.M. 1947, is amended to read as follows:

"46-1101.2. Hide certificate — identification. (1) A seller of an animal hide shall obtain a hide certificate from the person receiving the hide. The department shall prescribe the form of the certificate which shall include the marks and brands on each hide. The party receiving the hide must designate where it will be kept for 30 days following delivery. The certificate must be signed by the seller or his agent and the person receiving the hide.

(2) Hide certificates, tags, and glue shall be furnished to the sheriff of each county by the department at cost and by the sheriff to any person requiring the certificates, tags, and glue. Only those certificates, tags, and glue distributed by the department may lawfully be used under this act. The original certificate shall be filed with the sheriff of the county of the seller's residence. One copy shall be sent by the party receiving the hide to the department, one retained by the seller, and one by the hide buyer. On reasonable notice, a sheriff, deputy sheriff, state stock inspector, or deputy state stock inspector may inspect the hide certificate copy of the seller or buyer. The department shall prescribe an identification tag to be affixed to each hide by the person receiving the hide when it is delivered. *If hides are purchased outside the county of the seller's residence, the hide dealer or buyer* must *also* mail *a copy of the* hide certificate to the sheriff of each county in which hides are purchased within 5 days after purchase."

Section 46. Section 46-1103, R.C.M. 1947, is amended to read as follows:

"46-1103. Mutilation or concealment of hides a felony. Every person who willfully or maliciously mutilates, destroys, or conceals the hide *of* any horse, mare, colt, mule, jack, *jenny,* bull, steer, cow, calf, goat, hog, or sheep with intent to or for the purpose of removing evidence of

HeinOnline -- 1977 Vol. I 63 1977

ownership of such hide or the animal from which *the* hide was removed is guilty of a felony and punishable as hereinafter provided."

Section 47. Section 46-1104, R.C.M. 1947, is amended to read as follows:

"**46-1104. Sufficiency of pleading and proof in criminal prosecution.** In any prosecution for the violation of the provisions of this act, it *is* not necessary for the state to allege in the complaint or information the ownership of the hide or of the animal from which *the* hide was removed, but it *is* sufficient to allege in the complaint or information that the owner of *the* hide or of the animal from which *the* hide was removed is unknown and not the property of the defendant."

Section 48. Section 46-1107, R.C.M. 1947, is amended to read as follows:

"**46-1107. Hide dealer or buyer's license fee — disposition of proceeds.** *Before engaging in business in this state, a* hide dealer or buyer shall *obtain a license from* the department. *The annual* license fee *is* $5 for each established place of business at which the hide dealer or buyer purchases or deals in hides. The license continues in force for that calendar year. The moneys collected from the licenses shall be placed in the earmarked revenue fund *for* the department. The license must be renewed January 1 of each year."

Section 49. Section 46-1107.1, R.C.M. 1947, is amended to read as follows:

"**46-1107.1. Acting without a license — revocation.** *(1)* Any person acting as a hide dealer or buyer without a license as required by this act is guilty of a misdemeanor.

(2) Upon receipt of a certified copy of the judgment of conviction of any hide dealer or buyer for any violation of this act, the *department* may revoke the license of such person for *1* year commencing on the date of the licensee's conviction."

Section 50. Section 46-1406, R.C.M. 1947, is amended to read as follows:

"**46-1406. Procedure when owner unknown or not resident of state — sale of wire removed.** If there *is* no known owner of such wire within the state or if such owner *is* unknown to the board of county commissioners, *the* board *may* collect and remove *the* wire at the expense of the county. All such wire or other fencing as in the opinion of the board of county commissioners can be sold at a price sufficient to cover at least the expense of removal and sale shall be sold by the county commissioners in the manner provided by law for the sale of county property, except that notice of such sale need be published only once and need be given only *10* days before such sale."

Section 51. Section 46-1410, R.C.M. 1947, is amended to read as follows:

"**46-1410. Stock trespassing may be retained.** (1) If an animal

HeinOnline -- 1977 Vol. I 64 1977

breaks into an inclosure surrounded by a legal fence or is wrongfully on the premises of another, the owner or occupant of the inclosure or premises may take into his possession the trespassing animal and keep the animal until all damages, together with reasonable charges for keeping and feeding the animal, are paid. The person who takes the animal into his possession shall, within 72 hours after he takes possession, give written notice to the owner or person in charge of the animal, stating that he has taken the animal. The notice shall also give the date of the taking, the description of the animal taken, including marks and brands, if any, the amount of damages claimed, the charge per head per day for caring for and feeding the animal, and *the description*, either by legal subdivisions or other general description, *of* the location of the premises on which the *animal is* held. In all cases a copy of the notice shall also be posted at a point where the *animal* was taken.

(2) The notice shall be given to the owner or person in charge only when the owner or person in charge of the animal is known to the person taking the animal and resides within 25 miles of the premises on which the *animal was* taken. If the owner or person in charge of the animal resides more than 25 miles from the place of the taking, the notice shall be mailed to him. *In* this case *or* if the owner is unknown, a similar notice shall be mailed to the department of livestock and the sheriff of the county in which the *animal has* been taken. On receipt of the notice, the sheriff shall post a copy of the notice at the courthouse and shall send by *certified* mail a copy of it to the owner of the stock, if known to him. If unknown to him, the sheriff shall send a copy of the notice to the nearest state livestock inspector.

(3) If the parties within 5 days thereafter do not agree to the amount of damages, the claimant must within 10 days thereafter institute a civil action to *collect his claim* in a court of competent jurisdiction. Pending the outcome of the suit, the person taking the stock may, at the expense of the owner, retain a sufficient *number* of *animals* to cover the amount of damages claimed by him. The defendant may, after the institution of the action, on filing a bond executed by two or more sureties and approved by the court in double the sum sued for, conditioned *upon* the payment to the plaintiff of all sums, including costs that may be recovered by the plaintiff, have all livestock returned to him. *The claimant* is liable to the owner for any loss or injury to the stock occurring through his fault or neglect. If the *claimant* fails to recover in the action a sum equal to that offered him by the owner of the stock, the *claimant* bears the expense of keeping and feeding the stock while in his possession.

(4) A person who takes or rescues an animal from the possession of the person taking the animal, without his consent, is guilty of a misdemeanor and shall be fined not less than $100 *or* more than $500."

Section 52. Section 46-1708, R.C.M. 1947, is amended to read as follows:

"**46-1708. Declaration of animals running at large as nuisance — abatement.** Any such animal so running at large *is* a public nuisance, which, in addition to the means and proceedings prescribed by this act for its abatement and removal, may be abated and removed by the means

HeinOnline -- 1977 Vol. I 65 1977

and proceedings provided by law for the abatement or removal of public nuisances."

Section 53. Section 46-1717, R.C.M. 1947, is amended to read as follows:

"**46-1717. Female breeding cattle, purebred bull to accompany.** *(1)* Any person, persons, firm, company, or corporation allowing or permitting female breeding cattle to run at large upon the public ranges or national forest reserves in the state of Montana must place upon *the* range or national forest reserve one purebred graded bull of a recognized beef type, not less than 15 months *or* more than 8 years of age, for every 30 head of female breeding cattle pastured upon such range or national forest reserve. *Any* two or more such users of the public range or national forest reserve may join together in furnishing such bull when the aggregate number of female breeding cattle turned loose upon the same range or national forest reserve by such two or more users thereof does not exceed 30 head.

(2) A purebred bull as contemplated by this act must be a bull having a registration certificate from the breeding association of its particular breed. A graded bull, as defined in this act, shall be *a purebred bull* selected by a committee of permittees."

Section 54. Section 46-1802, R.C.M. 1947, is amended to read as follows:

"**46-1802. Abandoned horses on public range declared public nuisance subject to condemnation — right of owner.** It *is* unlawful for any person *owning or having control of any horse to abandon the horse* upon the open range in the state of Montana, and such horses so running at large upon the open range in the state are a public nuisance and a public menace and are condemned, subject to the right of the owner of any such abandoned horse to reclaim the same under the conditions hereinafter provided."

Section 55. Section 46-2412, R.C.M. 1947, is amended to read as follows:

"**46-2412. Disposal of hides — inspection — filing of dead or fallen animal record.** When a licensed renderer or his agent disposes of the hides from dead or fallen animals, the hides shall be handled and inspected for marks and brands in conformity with Title 46, chapter 11. The sheriff, deputy sheriff, person designated by the board of county commissioners, or the *agent of the* department who makes the inspection for marks and brands in conformity with Title 46, chapter *11*, shall complete the original dead or fallen animal record which accompanies the hide by inserting his inspector's tag number. He shall file the completed original dead or fallen animal record without cost in the office of the county clerk and recorder, together with the duplicate certificate of inspection required to be filed under Title 46, chapter 11."

Section 56. Section 46-3001, R.C.M. 1947, is amended to read as follows:

"**46-3001. Dogging livestock.** Any person who *permits* or *directs* any

HeinOnline -- 1977 Vol. I 66 1977

dog owned by *him* or in *his* possession to chase or run any cattle or other livestock of which he is not the owner or the person in charge upon the open range or government lands or away from any watering place upon the open range *is* guilty of a misdemeanor and punishable by a fine of not more than *$50.*"

Section 57. Section 46-3007, R.C.M. 1947, is amended to read as follows:

"**46-3007. Stolen livestock — seizure and confiscating of vehicle used to transport — service of process.** Service of process in *a* proceeding for confiscation of such vehicle shall conform as far as practicable with the provisions of *the Montana rules of civil procedure,* provided that *insofar* as the proceeding against the vehicle is concerned no copy of the summons or complaint need be mailed and the service shall be complete upon publication."

Section 58. Section 82A-406.1, R.C.M. 1947, is amended to read as follows:

"**82A-406.1. Intent of act.** *Jurisdiction* over milk hauling rates from producer to plant *is* in the department of business regulation and jurisdiction over such rates among plants *is* in the board of milk control."

Section 59. **Repealer.** Sections 3-2445, 3-2446, 46-904, 46-905, and 46-1201 through 46-1204, R.C.M. 1947, are repealed.

Approved February 25, 1977.

CHAPTER NO. 13

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO AGRICULTURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-201, R.C.M. 1947, is amended to read as follows:

"**3-201. Definitions.** *(1) The* word "grain" *includes* flax.

(2) The term "public warehouse" includes any elevator, mill, warehouse, or structure in which grain is received from the public for storage, milling, shipment, or handling.

(3) The term "public warehouseman" *includes* every person, association, firm, and corporation owning, controlling, or operating any public warehouse in which grain is stored or handled in such a manner that the grain of various owners is mixed together and the identity of the different lots or parcels is not preserved.

(4) The term "grain dealer" *includes* every person, firm, association, and corporation owning, controlling, or operating a truck, tractor-trailer unit, or warehouse, other than a public warehouse, and engaged in the business of buying grain for shipment or milling.

HeinOnline -- 1977 Vol. I 67 1977

(5) The term "track buyer" *includes* every person, firm, association, and corporation *which* engages in the business of buying grain for shipment or milling and *which* does not own, control, or operate a warehouse or public warehouse.

(6) The terms "agent", "broker", and "commission man" include every person, association, firm, and corporation *which* engages in the business of negotiating sales or contracts for grain or of making sales or purchases for a commission."

Section 2. Section 3-205, R.C.M. 1947, is amended to read as follows:

"**3-205. Inspectors of grain — samplers and weighers — qualifications — interest.** The department shall provide inspectors, samplers, and weighers to enforce this *chapter*. At all inspection points designated by the department, the department shall provide sufficient inspectors and weighers to inspect and weigh all grain subject to state inspection under the supervision of the department. However, grain held in transit for inspection and diversion only need not be weighed. Inspectors shall be able to qualify under the terms and in accordance with the United States Grain Standards Act. Inspectors, samplers, and weighers may not be interested directly or indirectly in the handling, sorting, shipping, purchasing, or selling of grain or grain products."

Section 3. Section 3-210, R.C.M. 1947, is amended to read as follows:

"**3-210. Rules governing dockage — sample inspection.** The department shall, after the hearing provided in 3-209, adopt rules governing the dockage which shall be made on inferior grades and in all executory contracts entered into after the hearing. The rules may not conflict with the terms of the United States Grain Standards Act. Where the price or amount to be paid depends on terminal weight or grade, the rules shall control the dockage *insofar* as it affects the price to be paid, and the rules become part of the contract of sale. The department shall also provide for sample inspection of grain, adopt rules governing sample inspections, and provide that the sample inspection when made is final."

Section 4. Section 3-220, R.C.M. 1947, is amended to read as follows:

"**3-220. Designation of grain delivered to warehouse.** In cases of grain being sold outright to the warehouseman at the time of delivery or grain placed in store with the warehouseman to be sold at a future time to the warehouseman to whom delivered, settlement shall be made on the basis of grade, quality, protein content, and quantity. In cases of storage of grain with intent of future redelivery of the grain, the owner must so designate at time of delivery to enable the warehouseman to special bin. *Upon failure* to so designate at time of delivery, the grain will lose its identity in general storage, *whereupon the* owner *is obligated* to accept quantity of like grade, kind and quality (as provided for under the United States Grain Standards Act) from *the* warehouseman's general storage."

Section 5. Section 3-224, R.C.M. 1947, is amended to read as follows:

"**3-224. Termination of storage contract — sale of grain for**

HeinOnline -- 1977 Vol. I 68 1977

charges. Storage on any or all grain may be terminated by the owner at any time before the date mentioned herein by the payment or tender of all legal charges and the surrender of the *warehouse* receipt, together with a demand for delivery of such grain or notice to warehouseman to sell the same. In the absence of a demand for delivery, order to sell, or mutual agreement for the renewal of the storage contract entered into prior to the expiration of the storage contract, the warehouseman shall, upon the expiration of the storage contract, sell so much of such stored grain at the local market price on the close of business on *that* day as is sufficient to pay the accrued storage charges and shall thereupon issue new *warehouse receipts* for the balance of the grain to the owner thereof upon surrender by him of the original *warehouse* receipts. *The* warehouseman *shall notify* all *warehouse receipt* holders of the provisions of this *section by June 1 of each year.*"

Section 6. Section 3-225, R.C.M. 1947, is amended to read as follows:

"**3-225. Disposal of grain forbidden without notice to department of agriculture and compliance with law.** No warehouseman *may* sell or otherwise dispose of or deliver out of store, except to the owner, any stored grain, except upon notice in advance to the department of agriculture and after complying in full with the laws of the state and the regulations of the department relating to the handling of stored grain. Any person, firm, association, or corporation owning or operating more than one public warehouse in this state *may deliver grain* from one warehouse in settlement of warehouse receipts issued for grain stored in another warehouse when grain for storage has been presented at any warehouse in excess of its available storage capacity, *provided* that:

(1) this *does* not *confer* upon such warehouseman a right to make delivery of grain of substantially lower value than that delivered for store, though of the same technical grade, in settlement of warehouse receipts;

(2) such warehouseman shall at all times keep on hand in bonded warehouses grain of quality and quantity sufficient to settle all outstanding *warehouse* receipts; *and*

(3) freight and other charges shall be figured on the basis of the point of receipt."

Section 7. Section 3-227, R.C.M. 1947, is amended to read as follows:

"**3-227. Annual report of warehouseman, track buyer, and grain dealer — special reports — penalty for failure to report.** On June 30 of each year, *each* warehouseman, track buyer, and grain dealer shall make a report, under oath, to the department on forms prepared by it. The report shall show the total weight of each kind of grain received and shipped by the warehouseman, track buyer, *or* licensed grain dealer, the amount of outstanding *warehouse* receipts on that date, and a statement of the amount of grain on hand to cover them. The department may also require special reports from a warehouseman, grain dealer, or track buyer at any time. The department may inspect the business of every warehouseman, track buyer, and grain dealer and the method of conducting the business, whenever considered proper. The books, accounts, records, papers, and proceedings of every warehouseman, track buyer, and grain

HeinOnline -- 1977 Vol. I 69 1977

dealer are at all times during business hours subject to inspection. A person who knowingly falsifies any of *his* reports to the department, who fails to make the reports when requested by the department, or who refuses or resists inspection is guilty of a misdemeanor and shall be fined not less than $300 *or* more than $500."

Section 8. Section 3-710, R.C.M. 1947, is amended to read as follows:

"**3-710. Rules to be adopted by department.** The department shall adopt rules it considers necessary for the safe conduct of the business referred to in this act, including a scale of storage charges and *warehouse* receipts. The department may require reports from any warehouseman or person receiving stored beans on forms prepared by the department."

Section 9. Section 3-712, R.C.M. 1947, is amended to read as follows:

"**3-712. Storage constitutes bailment — duty to keep beans in storage.** The storage of beans under this act constitutes a bailment, and upon the return of the warehouse receipt properly endorsed and upon the payment or tender of all advances and legal charges, the holder of the warehouse receipt is entitled to and the warehouseman shall deliver the identical grade and amount of beans placed in storage. A dealer under this act shall maintain at all times in original storage beans equal in amount and grade to all *warehouse receipts* issued, unless authorized in writing by holders of receipts or by the department to move to other storage. Failure to maintain the proper amount of beans is a conversion."

Section 10. Section 3-802.2, R.C.M. 1947, is amended to read as follows:

"**3-802.2. Labeling of agricultural seeds.** *(1)* The owner, vendor, or person in possession of *any* package, parcel, or lot of agricultural seeds, as defined in 3-802.1, that contains 1 pound or more of agricultural seeds, whether in package or in bulk, shall, before offering the seeds for sale, affix in a conspicuous place on the exterior of the container a written or printed label in the English language in legible type or copy *containing* a statement specifying:

(a) a lot number or other distinguishing mark*;*

(b) kind. The name of each kind of seed present in excess of 5% shall be shown on the label and need not be accompanied by the word "kind". When two or more kinds of seed are named on the label, the name of each kind shall be accompanied by the percentage of each. When only one kind of seed is present in excess of 5% and no variety name or type designation is shown, the percentage of that kind may be shown as "pure seed" and such percentage shall apply to seed of the kind named.

(c) variety, as follows:

(i) the following kinds of agricultural seeds shall be labeled to show the variety name or the words *"variety not stated":*

alfalfa	*oat*
barley	*pea,* field

HeinOnline -- 1977 Vol. I 70 1977

bean, field
beet, field
brome, smooth
clover, crimson
clover, red
clover, white
corn, field
corn, pop
fescue, tall
flax
millet, foxtail
rye
safflower
sorghum
sorghum-sudan hybrid
soybean
sudan grass
sunflower
trefoil, birdsfoot
wheat, common
wheat, durum

(ii) if the name of the variety is given, the name may be associated with the name of the kind with or without the words "kind and variety". The percentage in this case may be shown as "pure seed" and shall apply only to seed of the variety named. If separate percentages for the kind and the variety or hybrid are shown, the name of the kind and the name of the variety or the term "hybrid" shall be clearly associated with the respective percentages. When two or more varieties are present in excess of 5% and are named on the label, the name of each variety shall be accompanied by the percentage of each;

(d) that the seed is hybrid, if any one kind or kind and variety of seed present in excess of 5% is "hybrid" seed. The percentage that is hybrid shall be at least 95% of the percentage of pure seed shown unless the percentage of pure seed which is hybrid seed is shown separately. If two or more kinds or varieties are present in excess of 5% and are named on the label, each that is hybrid shall be designated as hybrid on the label. *No one kind or variety of seed may be labeled as hybrid if the pure seed contains less than 75% hybrid seed.* Any one kind or kind and variety that has pure seed which is less than 95% but more than 75% hybrid seed as a result of incompletely controlled pollination in a cross shall be labeled to show:

(i) the percentage of pure seed that is hybrid seed; or

(ii) a statement such as "Contains from 75% to 95% hybrid seed";

(e) state or country *of origin,* if known, of alfalfa, red clover, white clover, native range grasses, and field corn other than hybrid. If the origin is unknown, the fact shall be stated.

(f) the approximate percentage of germination of agricultural seed, together with the date of test of germination. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the percentage of hard seeds may be added to the percentage of germination and stated as "total germination and hard seed".

HeinOnline -- 1977 Vol. I 71 1977

(g) the approximate percentage by weight of pure seed, meaning the freedom of agricultural seeds from inert matter and from other seeds;

(h) the approximate percentage by weight of sand, dirt, broken seeds, sticks, chaff, and other inert matter combined in agricultural seeds;

(i) the approximate total percentage by weight of weed seeds;

(j) the approximate percentage by weight of other crop seeds in agricultural seeds;

(k) the name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of agricultural, vegetable, or flower seeds;

(l) the full name and address of the seedsman, importer, dealer or agent, or other person, firm, or corporation selling the agricultural seed;

(m) in the case of mixtures of agricultural seeds which contain two or more kinds of seed in excess of 5% by weight of each, when sold as mixtures:

(i) name of mixture;

(ii) name and approximate percentage by weight of each kind of agricultural seed present in the mixture in excess of 5% by weight of the total mixture;

(iii) approximate percentage by weight of broken seeds and other inert matter in the mixture of agricultural seeds;

(iv) approximate percentage by weight of weed seeds as defined in 3-802.1;

(v) approximate percentage by weight of other crop seed in the mixture of agricultural seeds;

(vi) name and approximate number of each kind or species of restricted noxious weed seeds occurring per pound of mixtures of agricultural seeds, subject, however, to restrictions as specified in *3-802.4;*

(vii) approximate percentage of germination of each kind of agricultural seed present in the mixture in excess of 5% by weight, together with the month and year the seed was tested. In all cases where hard seeds remain at the end of the germination test, the percentage of actual germination and the percentage of hard seeds shall be stated separately, with the provision that any portion or all of the hard seed may be added to the percentage of germination and stated as "total germination and hard seed".

(viii) full name and address of the vendor of the mixture.

(2) When seed is exchanged or transferred from one seed labeler to another, it shall be accompanied by a shipping document which clearly shows the kind(s) of seed *and* quantity of each kind. *Each* container in a lot shall carry appropriate lot number designation and *shall be* accompanied by mechanical analysis for each lot so involved."

HeinOnline -- 1977 Vol. I 72 1977

Section 11. Section 3-802.4, R.C.M. 1947, is amended to read as follows:

"**3-802.4. Prohibitions.** A person, firm, corporation, *partnership,* or association may not sell or transport for use in planting in this state any agricultural, vegetable, or flower seed that:

(1) *contains* prohibited noxious weed seeds;

(2) *contains* restricted noxious weed seeds in excess of the maximum numbers per pound as follows:

Species	Number *of seeds per pound*
dodder (Cuscuta spp.)	18
blue lettuce (Lactuca pulchella)	27
St.-Johnswort (Hypericum perforatum)	27
oxeye daisy (Chrysanthemum leucanthemum)	90
spotted knapweed (Centaurea maculosa)	18
hoary alyssum (Berteroa incana)	9
wild oats (Avena fatua)	45
buckhorn plantain (Plantago lanceolata)	90
chickweed (Stellaria spp.)	9
curly dock (Rumex crispus)	45

(3) *contains* in excess of 2% or more of weed seed;

(4) *is* offered or exposed for sale more than 9 calendar months from the last day of the month in which the germination test was completed. This *9-month* limitation does not apply when seed is packaged in hermetically sealed containers within 12 months after harvest. The container must be conspicuously labeled in not less than *8-point* type to indicate *that*:

(a) the container is hermetically sealed;

(b) the seed has been preconditioned as to moisture content;

(c) the germination test is valid for a period not to exceed 18 months from the date of the germination test for seeds offered for sale on a wholesale basis and for a period not to exceed 36 months for seeds offered for sale at retail;

(d) the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act of August *1939, 7 U.S.C. 1551 through 1610,* with subsequent revisions.

HeinOnline -- 1977 Vol. I 73 1977

(5) *is* represented in any manner to be for lawn seeding purposes unless it contains at least 50% pure seed of perennial fine-textured species which shall be specified by rules under this act. However, grass mixtures which do not contain 50% pure seed of perennial fine-textured grasses may be sold. When these grass mixtures are contained in packages of 25 pounds or less, they shall carry the statements: "Not recommended for a fine-textured perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable". A definition of fine-textured varieties to be adopted in the rules is as follows:

(a) *bluegrasses*—all varieties except Canada *bluegrass* (Poa compressa), *annual bluegrass* (Poa annua), and *rough bluegrass* (Poa trivialis);

(b) *chewings red fescue* and all improved varieties;

(c) *creeping red fescue* and all improved varieties;

(d) *bentgrass*—all varieties;

(e) *fine*-textured *ryegrasses*.

(6) *is labeled, advertised, or otherwise represented as being* certified seed unless:

(a) it has been determined by a seed certifying agency that such seed *conforms* to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety; and

(b) the seed bears an official label issued for such seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate), or variety;

(7) *is* labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act (7 U.S.C. 2321 et. seq.) without the authority of the owner of the variety or is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for protection specifies sale only as a class of certified seed, provided that seed from a certified lot may be labeled as to variety name when used in a mixture by or with approval of the owner of the variety."

Section 12. Section 3-804, R.C.M. 1947, is amended to read as follows:

"**3-804. Penalty.** Any person, firm, or corporation who sells *or* offers or exposes for sale or distribution in the state any agricultural seeds for seeding purposes without complying with the requirements of *3-802.1 through 3-808 is* guilty of a misdemeanor and upon conviction shall be fined not less than $100 *or* more than $300 *plus* costs of such prosecution and upon conviction of the second or any subsequent offense shall be fined not less than $500 *or* more than $1,000 *plus* costs of such prosecution."

Section 13. Section 3-805, R.C.M. 1947, is amended to read as follows:

"**3-805. Inspection by grain and seed laboratory — reports — enforcement.** (1) The grain and seed laboratory of the agricultural

HeinOnline -- 1977 Vol. I 74 1977

experiment station shall inspect, analyze, and test seeds sold *or* offered or exposed for sale in this state at a time and place and to *the* extent the director of the agricultural experiment station and the department of agriculture determine. The laboratory shall report to the department all violations as they appear. It shall also annually before September 1 make a report to the department of all tests made and the results, which may be published by the department. The laboratory and the department shall have free access at all reasonable hours to all premises or structures to make examination of any seeds or any other premises of a warehouse, elevator, or railway company. Upon tendering payment at the current value, the department may take any sample of seeds.

(2) The department shall administer and enforce *3-802.1 through 3-808.* For that purpose, the department may adopt rules. The department may issue and enforce a written or printed "stop sale" order to the owner or custodian of any lot of agricultural seed which the department finds in violation of *3-802.1 through 3-808.* The order shall prohibit further sale of the seed until the department has evidence that the law has been complied with. The seed may not be confiscated or destroyed. Upon proper correction, by reprocessing, labeling, or otherwise, and when, in the judgment of the department, the requirements of *3-802.1 through 3-808* have been met, the stop sale order shall be lifted and the seed may be sold. The department shall adopt all necessary rules relating to the agricultural experiment station's duties under *3-802.1 through 3-808.*"

Section 14. Section 3-807, R.C.M. 1947, is amended to read as follows:

"**3-807. Laboratory testing of samples — rates.** Any citizen of this state may request the grain and seed laboratory to examine, analyze, and test samples of seed upon payment of the fee and compliance with rules governing the submission of seed samples for such service. Samples of seed analyzed and tested shall be charged for at rates determined jointly by the department and the director of the grain and seed laboratory. All fees collected by the grain and seed laboratory shall be used to defray the expenses incurred by the laboratory under *3-802.1 through 3-808.*"

Section 15. Section 3-1215, R.C.M. 1947, is amended to read as follows:

"**3-1215. Acts made unlawful — penalty.** It *is* unlawful for any person to falsely represent or to misrepresent the name, age, variety, or class of any nursery stock sold or offered for sale; to falsely represent or state that any nursery stock offered for sale, sold, or delivered was grown in or came from a certain nursery or locality, when in fact such nursery stock was grown in or came from another location or nursery; to deceive or defraud any person in the sale of any nursery stock by substituting inferior or different varieties or ages from those ordered; or to willfully or intentionally bring into this state, offer for sale or distribution within this state or ship, sell, or deliver upon any sale any nursery stock that is infected or infested with any disease or insect dangerous to the horticultural interests of the state. *In* case of such misrepresentation, false representation, deceit, fraud, or substitution, *such person is* subject to punishment as provided by *3-1218* and *is* liable to the person, firm, or corporation damaged or injured thereby, *to the extent* of all damages sus-

HeinOnline -- 1977 Vol. I 75 1977

tained, to be recovered in a civil action in any court of competent jurisdiction."

Section 16. Section 3-1405, R.C.M. 1947, is amended to read as follows:

"**3-1405. Unlawful to sell or transport products unless labeled, tagged, or branded — use of tags.** *(1)* It *is* unlawful for any person, firm, association, organization, or corporation or agent, representative, or assistant to any person, firm, association, organization, or corporation to expose for sale or sell, transport, deliver, consign, or have in possession Montana farm products and other farm products prepared for market unless each container has been legibly and conspicuously tagged, branded, labeled, or stenciled before being moved from the premises of the person responsible for the grading and packing, *to indicate* the name of the grade, when applicable, together with the true net contents expressed in weight.

(2) When tags are used, United States No. 1 grade shall be declared on a white tag and United States No. 2 grade shall be declared on a red tag. Bulk shipments shall be accompanied by two cards not less than *4 x 6* inches in size placed on the inside of the car near each door. Likewise cards in size herein described shall be prominently placed on all bulk shipments made by truck or other conveyance. Upon each card shall appear the name and address of the consignor, the name of the grade, if applicable, the name of the loading station, the date of loading, and the name and address of the consignee, if known. It shall be conclusive evidence that the farm products are *considered* for sale when the containers are packed for delivery or transit, are exposed for sale, are in process of delivery or transit, or *are* located at a depot, station, boat dock, or any place where farm products or other products are held for storage or for immediate or future sale or transit."

Section 17. Section 3-1406, R.C.M. 1947, is amended to read as follows:

"**3-1406. Inspection of condition of products in storage or transit.** Montana farm products and other farm products held in storage or in transit which at the time of inspection show deterioration or decay but otherwise *conform* to the grade shall be inspected as to condition and not as to grade."

Section 18. Section 3-1714.3, R.C.M. 1947, is amended to read as follows:

"**3-1714.3. Guaranteed analysis.** (1) Until the department prescribes the alternative form under subsection (2) of this section, "guaranteed analysis" means the minimum percentage of plant nutrients claimed in the following order and form:

(a) *The following plant nutrients shall be guaranteed:*

Total nitrogen (N) ---------- %

Available phosphoric acid (P_2O_5) ---------- %

Soluble potash (K_2O) ---------- %

HeinOnline -- 1977 Vol. I 76 1977

(b) For unacidulated mineral phosphatic materials and basic slag, bone meal, tankage, and other organic phosphatic materials, the total phosphoric acid and degree of fineness may also be guaranteed.

(c) Guarantees for plant nutrients other than nitrogen, phosphorus, and potassium may be permitted or required by rules adopted by the department. The guarantees for other nutrients shall be expressed in the form of the element. The sources of other nutrients including, but not limited to, oxides, salt, and chelates, may be required to be stated on the application for registration and may be included as a parenthetical statement on the label. Other beneficial substances or compounds, determinable by laboratory methods, also may be guaranteed by permission of the department.

(d) Potential basicity or acidity expressed in terms of calcium carbonate equivalent in multiples of 100 pounds per ton *shall be guaranteed* when required by regulation.

(2) If the department finds, after public hearing, that the requirement for expressing the guaranteed analysis of phosphorus and potassium in elemental form would not impose an economic hardship on distributors and users of fertilizer by reason of conflicting labeling requirements among the states, it may require by department rule that the guaranteed analysis be in the following form:

Total nitrogen (N) ---------- %

Available phosphorus (P) ---------- %

Soluble potassium (K) ---------- %

(3) The effective date of the rule may not be less than 6 months following the adoption of the rule. For a period of 2 years following the effective date of the rule, the equivalent of phosphorus and potassium may also be shown in the form of phosphoric acid and potash. However, after the effective date of a rule requiring that phosphorus and potassium be shown in the elemental form, the guaranteed analysis for nitrogen, phosphorus, and potassium is the grade for those elements.

(4) Soil amendments shall guarantee the minimum quantity of each active ingredient in terms approved by the department or in terms as set forth in rules issued by the department. They shall also meet any other requirements established by rule by the department."

Section 19. Section 3-1729, R.C.M. 1947, is amended to read as follows:

"**3-1729. Assessment to fund educational and experimental programs — collection.** Moneys to fund this act will be produced by an assessment of *35* cents per ton of fertilizer sold within Montana. Collections shall be made in accordance with procedures in *3-1717.1* and shall be collected from the *licensee or* "registrant" of fertilizer."

Section 20. Section 3-1901, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 77 1977

"3-1901. **Standard classes of mustard seed — grade requirements.** *(1)* The standard classes of mustard seed for the state of Montana shall be as follows:

(a) *fancy—cultivated* tame yellow mustard seed;

(b) *class* 1—*cultivated* tame yellow mustard seed;

(c) *class* 2—*cultivated* tame brown mustard seed;

(d) *class* 3—*cultivated* tame Montana oriental mustard seed;

(e) *class* 4—*mixed* cultivated tame mustard seed.

(2) Classes 1, 2, and 3 shall contain not more than 5% of other classes. Class 4 shall be any mixture of cultivated tame mustard seed having an admixture of other classes in excess of 5% and shall be graded according to the predominating class in the mixture.

(3) Grade requirements for cultivated tame mustard seed

Percentage figures determined after the removal of dockage.

	GRADE NUMBER			
	Fancy	1	2	3
Sound Cultivated Mustard not less than	99%	98 ½%	97%	95%
Damaged Kernels				
Heat Damaged	0	0.1%	0.2%	0.5%
Total	1%	1 ½%	3 %	5 %
Other Classes				
Wild Mustard	0	0.1%	0.2%	0.5%
Total	0	0.5%	2.0%	5.0%
Foreign Material Other Than Dockage				
Cockle Seed	0	0.1%	0.2%	0.3%
Weed Seed	0	0.3%	0.5%	0.7%
Total	0	1 %	1 ½%	2 %

Sample: Sample grade shall include mustard seed which does not come within the requirements of any of the grades, No. 1 to No. 3, inclusive, or which has any objectionable foreign odor or is sour, heating, hot, or is otherwise of distinctly low quality or contains small inseparable stones or cinders."

Section 21. Section 3-1902, R.C.M. 1947, is amended to read as follows:

"3-1902. **Definitions and specifications.** The following definitions and specifications are hereby adopted and made legal:

HeinOnline -- 1977 Vol. I 78 1977

(1) "Damaged seeds" *include* all seeds and pieces of seeds of mustard seed which are completely covered with mould, very green, sprouted, frosted, badly ground damaged, badly weather damaged, or otherwise distinctly damaged.

(2) "Heat damaged seeds" *include* seeds and pieces of seeds of mustard seed which have been distinctly discolored by external heat or as a result of heating caused by fermentation.

(3) "Dockage" includes sand, dirt, weed seeds, weed stems, chaff, straw, mustard seed other than tame mustard, and any other foreign material which can be removed readily from the mustard by the use of appropriate sieves, cleaning devices, or other practical means suited to separate the foreign material present. *The term also includes* undeveloped, shriveled, and small pieces of mustard seeds removed in properly separating the foreign material which cannot be recovered by properly rescreening or recleaning. The quantity of dockage shall be calculated in terms of percentage. When less than *½ of 1%* it shall be disregarded. The percentage of dockage so determined and stated shall be added to the grade designation. Dockage is to be calculated *in gradients of ½ of 1%* that is to say 0% to *.4%* will be designated as no dockage, *.5%* to *.9%* will be designated as *½ of 1%* dockage, 1% to 1.4% will be designated as 1% dockage, 1.5% to 1.9% will be designated as *1.5%* dockage, and so on.

(4) "Foreign material other than dockage" *includes* all matter other than tame cultivated mustard seed which is not separated in the proper determination of dockage. *However,* rapeseed, common wild mustards, and other seeds that blend with class 2 and class 3 mustard seed and thus are not readily identified and the total of which is not in excess of *2.5%* shall not be considered foreign material and shall not be considered in grading *such* classes of mustard seed.

(5) Each determination of dockage, temperature, odor, and *content of* live weevil or other insects injurious to stored mustard seed shall be upon the basis of the seed as a whole. All other determinations shall be upon the basis of the seed when free from dockage.

(6) Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(7) Percentage of moisture shall be that ascertained by use of the equipment and procedure prescribed by the department of agriculture.

(8) Percentage of dockage shall be that ascertained by use of the equipment and procedure prescribed by the department of agriculture.

(9) The test weight per bushel shall be the weight per Winchester bushel as determined by the testing apparatus and the method of use thereof *prescribed by the department* or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(10) Determination of the percentage of damage, heat damage, sound cultivated mustard seed, foreign material, and determinations of all other

HeinOnline -- 1977 Vol. I 79 1977

factors not otherwise provided for shall be on the basis of a portion cut from the original sample and separated by hand picking."

Section 22. Section 3-1903, R.C.M. 1947, is amended to read as follows:

"**3-1903. Weights per bushel.** *(1) Legal* test weights per bushel *are the* weight per Winchester bushel as determined by the testing apparatus and the method of use thereof *prescribed by the department* or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(2) Weight per bushel for tame yellow mustard seed shall be:

Fancy ..... 56 lbs.

No. 1 ..... 54 lbs.

No. 2 ..... 52 lbs.

No. 3 ..... 50 lbs.

(3) Weight per bushel for tame brown and tame Montana oriental mustard seed shall be:

No. 1 ..... 52 lbs.

No. 2 ..... 51 lbs.

No. 3 ..... 50 lbs.

(4) All seeds weighing less than the above per bushel shall be graded as sample weight, provided that the percentage of damage, heat damage, sound cultivated mustard seed, *and* foreign material and determination of all other factors not otherwise provided for shall be on the basis of a portion cut from the original sample and separated by hand picking."

Section 23. Section 3-3112, R.C.M. 1947, is amended to read as follows:

"**3-3112. Orders effective until reversed or modified by court.** *An* order or rule adopted by the department, including an order refusing a permit for the establishment of a new apiary location, is effective until reversed or modified by a final decision *of a court of competent jurisdiction,* and while such action is pending, as defined in 93-8706. An injunction or other process or writ may not be issued by a court restraining enforcement until that final determination."

Section 24. Section 3-3303, R.C.M. 1947, is amended to read as follows:

"**3-3303. Application for license — contents — bond — expiration date — schedule of commissions and charges to be filed.** (1) Licenses to engage in the business of a dealer at wholesale in this state shall be issued by the department to reputable persons who apply for a license and pay the prescribed fee.

(2) The application shall be in writing, accompanied by the prescribed fee, and under oath. It shall state:

HeinOnline -- 1977 Vol. I 80 1977

(a) the place where the applicant intends to carry on the business for which the license is desired;

(b) the estimated amount of business to be done monthly;

(c) the full names of the persons constituting the firm, if the applicant is a *partnership;*

(d) the names of the officers *and* the place of incorporation, *if the applicant is a corporation;* and

(e) a financial statement showing *in a general way* the value and character of the assets and the amount of liabilities of the applicant.

(3) Before issuing a license the department shall require the applicant to file with it a bond to *the* state in an amount to be fixed by the department based on the monthly business to be transacted by the applicant. The bond *may* not be for less than $1,000. The department may require, *under penalty of revoking the license,* additional bond if the business transacted warrants an increase. *The bond shall cover all wholesale produce business transacted in this state.* The bond shall be executed by the applicant as principal and a surety company authorized to do business in *the* state as surety. The form of the bond shall be fixed by the department, conditioned upon:

(a) faithful performance of his duties as a dealer at wholesale;

(b) observance of all laws relating to the business of a dealer at wholesale;

(c) payment, when due, of the purchase price of produce purchased by him;

(d) the prompt reporting of sales as required by law to all persons consigning produce to the dealer as licensee for sale on commission; and

(e) the prompt payment to persons entitled to the proceeds of the sales less lawful charges, disbursements, and commissions.

(4) All licenses expire December 31 of each year. The license or a certified copy of the license shall be kept posted in the office of the licensee at each place in this state where he transacts business. The fee for each license is $100 and for each certified copy of a license, $1. If a truck is the place of business the license fee for the first truck is $100 and for each additional truck $50.

(5) The applicant shall file with the department a schedule of his commissions and charges for services in connection with produce handling on account of or as agent for another.

(6) A separate license is required for each place of business. Each truck used for assembling and distributing produce, other than from a permanently established place of business through which all business of sales and accounts is handled, is a separate place of business and must be licensed."

Section 25. Section 3-3312, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 81 1977

"3-3312. **Violation — penalty.** A person who violates this *chapter*, fails to comply with rules adopted under this chapter, or fails to obey an order of the department made under this chapter is guilty of a misdemeanor and shall be fined not less than $25 *or* more than $500, imprisoned in the county jail for not more than 6 months, or both fined and imprisoned. The fine shall be paid into the state treasury and deposited as provided in *3-3311*."

Section 26. Section 3-3402, R.C.M. 1947, is amended to read as follows:

"3-3402. **Grades of apples.** *(1)* The standard grades of apples for the state of Montana shall be:

(a) "*extra* fancy or first grade", *which* shall consist of apples of one variety which are mature, hand-picked, clean, well formed, sound, free from bruises, limbrubs, spray burns, sunburn, russeting, drought spot, hail marks, visible water core, broken skin, apple scab, stings, and from diseases and insect injury, except that slight blemishes shall be permitted in this grade;

(b) "*fancy* or second grade", *which* shall consist of apples of one variety which are mature, hand-picked, clean, fairly well formed, sound, free from visible water core, broken skin, and from damage caused by bruises, limbrub, spray burns, sunburn, russeting, drought spot, hail marks, apple scabs, diseases and insect injury;

(c) "C grade", *which* shall consist of apples of one variety which are mature, hand-picked, clean, not badly misshapen, sound, free from broken skin and from serious damage caused by bruises, limbrub, russeting, drought spot, hail marks, apple scab, diseases, and insect injury and must have 15% of color requirements characteristic of the variety. The word "choice" must not be used in connection with this grade;

(d) "*cull grade*", *which* shall consist of apples free from infection or disease or serious damage but which do not meet the requirements of "extra fancy or first grade", "fancy or second grade", or "C grade". *Such apples* shall be marked "*culls*" in block letters not less than *1* inch in height on both ends of *the* box;

(e) "*combination grade*". When "extra fancy or first grade" and "fancy or second grade" apples are packed together, the boxes must be marked "combination extra fancy or first grade and fancy or second grade". This combination grade must contain at least 25% of apples which belong to the higher grade in the combination.

(f) "*hail* grade", *which* shall meet all requirements of "*extra* fancy" *and* "*fancy* grade" except *for* hail marks. Such hail marks must not materially deform or disfigure the fruit or affect more than one-tenth of the surface in the aggregate where skin has not been broken. *Unhealed* hail marks shall not be permitted and not more than an aggregate area of ½ inch shall be allowed for well-healed hail marks where the skin has been broken.

(g) "*orchard*-run grade", *which* shall consist of apples of one variety,

HeinOnline -- 1977 Vol. I 82 1977

which are mature, hand-picked, clean, sound, free from infection or disease or serious damage, and must have 15% color requirements characteristic of the variety and shall be marked *"orchard-run grade"* in block letters not less than *1* inch in height on both ends of *the* box.

(2) No apples smaller than 2 ¼ inches in diameter shall be permitted in any grade. Small apples which are under size requirements as prescribed may be shipped if marked "small" in block letters not less than *1* inch in height on both ends of *the* box, provided such apples are free from insect pests and diseases.

(3) In order to provide for variations incident to commercial grading and handling a tolerance of 10% for a total of all defects from the standard of the grade shall be allowed."

Section 27. Section 3-3501, R.C.M. 1947, is amended to read as follows:

"3-3501. Definitions. As used in this chapter *the following definitions apply*:

(1) "Cropland" means land used for the production of food and forage, including the headlands, ditches, and rights-of-way adjacent to such land.

(2) "Cropland spraying program" means the application of chemical or other substances to croplands for the purpose of destroying insect pests.

(3) "Insect pest" includes the grasshopper, cutworm, pale western cutworm, army worm, chinch bug, and any other insect or arthropod generally recognized as a destroyer of grain, hay, range, and horticultural crops.

(4) "Condition of insect pest infestation" means a condition where an insect pest, or combination of such pests exists in cropland in such numbers and at such times as to destroy or substantially damage or threaten to destroy or substantially damage a significant part of the crop production in a county.

(5) "Department" means the department of agriculture.

(6) "Alternative control program" means a system of controlling insect pest populations through biological or other means not involving toxic chemicals."

Section 28. Section 27-220, R.C.M. 1947, is amended to read as follows:

"27-220. Embargo. (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device *is* adulterated or misbranded, *has* not been registered under the provisions of 27-217, *fails* to bear on its label the information required by this act, or *is* a white powder pesticide and is not colored as required under this act, he shall affix to such article a tag or other appropriate marking giving notice *thereof and that the article* has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It *is* unlawful for any person to remove

HeinOnline -- 1977 Vol. I 83 1977

or dispose of such detained or embargoed article by sale or otherwise without such permission or to remove or alter the tag or marking.

(2) When an article detained or embargoed under *subsection* (1) has been found by such agent to be in violation, if after 30 days the violation has not been resolved, he may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of *subsection* (1), such article shall after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expenses shall be assessed against the claimant of such pesticide or device or his agent, provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond *has been executed,* conditioned *upon the proper labeling or processing of* such pesticide or device, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department of agriculture. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant of the pesticide or device on the representation to the court by the department of agriculture that the article is no longer in violation of this act, and that the expenses of such supervision have been paid."

Section 29. Section 27-232, R.C.M. 1947, is amended to read as follows:

"**27-232. Liability.** The department of agriculture shall *annually* require from each commercial pesticide applicator proof of financial responsibility in amounts to be determined under rules *promulgated* by the department of agriculture."

Section 30. Section 27-237, R.C.M. 1947, is amended to read as follows:

"**27-237. Judicial review.** *(1)* Any person adversely affected by the rules or orders of the department of agriculture may obtain judicial review thereof by filing in the district court within 30 days after entry of such *rule or* order a petition praying that the rule or order be set aside in whole or in part. A copy of the petition shall be *immediately* transmitted by the clerk of the court to the department of agriculture, and thereupon the department of agriculture shall file in court the record of the proceeding on which it based the order.

(2) The court shall have jurisdiction *to* affirm or set aside the order complained of in whole or in part. The finding of the department of agriculture with respect to *questions* of fact shall be sustained if supported by substantial evidence when considered on the record as a whole.

(3) Upon application, the court may remand the matter to the depart-

HeinOnline -- 1977 Vol. I 84 1977

ment of agriculture to take further testimony if there are reasonable grounds for the failure to produce the evidence in the prior hearing. The department of agriculture may modify its finding and its order by reason of the additional record and must file any modification of the findings or order with the clerk of the court."

Section 31. Section 82-1502, R.C.M. 1947, is amended to read as follows:

"**82-1502. Maximum insurance.** When the *reserve* fund is determined actuarially sound, as provided in 82-1507, the board may write not more than $24 insurance on each acre of grain which is on nonirrigated land and not more than $48 per acre on irrigated land. When more than one party desires hail insurance on the same crop, each *party is* entitled to the share of the maximum provided per acre as represented by his interest in the crop. Either party may insure his share in the crop for any amount up to and including the maximum per acre if the others waive their right to insure."

Section 32. Section 82-1506, R.C.M. 1947, is amended to read as follows:

"**82-1506. Tax for hail insurance — limitation on levy — liens, effect of — mortgages — levies, when payable — hail insurance districts — rates.** (1) A tax is hereby authorized and directed to be levied on all lands in this state growing crops subject to injury or destruction by hail, the owners of which have elected to become subject to the provisions of this act. The state board of hail insurance shall annually estimate, *accurately* as possible, the amount required to pay all losses, interest on warrants, and costs of administration and shall recommend a levy to be made on each kind of land respectively, subject to the provisions of this act, to the department of revenue. The rates recommended to apply on the lands of owners shall be applied in the same proportions to the crops of those insured on a personal assessment basis. It is hereby provided, however, that such tax *may* not exceed in any one year $2.40 per acre on lands sown to grain crops on nonirrigated lands, $4.80 per acre on irrigated lands, *or* $2.40 per acre on lands producing hay crops. *If* the tax required to pay the estimated losses, interest on warrants, and costs of administration *is* less than $1.20 per acre on lands sown to grain crops on nonirrigated lands and $2.40 per acre on irrigated lands and a proportionate amount on lands sown to hay crops, the board of hail insurance must recommend a tax levy sufficient to raise the full amount thereof.

(2) In addition to the lien created *in subsection (3)* on the land of the insured, the levy for such hail insurance shall constitute a lien on the crops insured with the exception that the crop lien *may* not apply to owners of unencumbered land or *to* the land or crops of those who pay cash for hail insurance. The applications of these *persons may* not be filed with the county clerk and recorded as provided for in 82-1503. The crop lien shall be included in all applications for hail insurance, *with the above exceptions,* and shall be enforced as provided in 82-1509 and 82-1510 against all insured except those owning unencumbered land or those who have paid cash for hail insurance.

HeinOnline -- 1977 Vol. I 85 1977

(3) The department of revenue *shall* prescribe such levies annually to be made against lands growing crops subject to injury or destruction by hail which are subject to this act, in accordance with the recommendation of the state board of hail insurance. Such tax levies respectively *are* chargeable to the lands of each taxpayer who *elects* to become subject to this act and shall be extended on the tax roll and collected by the officers charged with such duties in the manner and form as are other property taxes and if not paid shall be a lien on the lands against which the same are levied as are other property taxes. *The* lien *may* in no way affect mortgages that are of record at the time of the approval of this act. The lien of any mortgage filed subsequent to the passage and approval of this act shall be subsequent to any lien for hail insurance hereafter levied thereon. All applicants securing hail insurance on crop liens as heretofore provided shall be subject to the same charges per acre as provided herein to be made on land. Notice of such assessment shall be mailed to each person insured by the county treasurer in the same manner as are all other notices of taxes due. *The* assessment shall be payable at the office of the county *treasurer* of each respective county. All insurance levies, whether levied against land or in the form of special assessments secured by crop liens, shall be payable in full and not in semiannual payments, on or before November *30* of each year in which such levies are made.

(4) The state board of hail insurance may, when *it considers* it advisable, establish as many districts as it *considers* advisable and may maintain maximum rates in various parts of the state which rates shall be commensurate with the risk incurred as nearly as *it* can determine from past experiences or from any records available. The highest of these rates shall be the same as the maximum established herein and the lowest *may* not be less than $1.20 per acre on lands sown to grain crops and a proportionate amount on lands sown to hay crops.

(5) Notice of the various rates established for any year shall be plainly printed on the application for hail insurance, and in any year when the requirements of the hail insurance law as herein provided do not require a levy of the maximum rates as established, then the rates for the year shall be determined and levied by the state board of hail insurance for each of the various districts as established, in such proportions as will in *its* judgment be fair and equitable."

Section 33. Section 82-1517, R.C.M. 1947, is amended to read as follows:

"**82-1517. Payment of losses.** (1) The state board of hail insurance shall, as soon as practicable after the loss has been sustained, arrange for the payment of the *loss in the following manner.* From the amount of the loss as adjusted for each claimant, the board shall deduct the amount the claimant then owes as delinquent hail insurance tax and the maximum amount assessed as hail insurance tax for the current year and shall make settlement within 40 days from the time loss is sustained *by* paying, either by registered warrant or otherwise if funds are immediately available, *50%* of the total loss as agreed *upon*, less the maximum rate of assessment. *The* balance *shall* be paid at the expiration of the hail season.

HeinOnline -- 1977 Vol. I 86 1977

(2) The board shall on or before November *1* order payment for the amount so deducted, which payment shall be remitted to the county treasurer of the county in which the tax was assessed. The board shall then order payment for the balance of the adjustment *to* be sent to the claimant, provided that in no case *may* the payment for loss exceed $24 per acre for grain crops on nonirrigated lands, $48 per acre on irrigated lands, and $24 per acre on hay crops. *No* claimant *may* receive payment for any loss incurred where *the* loss does not equal or exceed 5% of the total value of the crop insured. *If* the losses in any year exceed the current levy plus the reserve, if any, then the payment of all losses shall be prorated share and share alike among all grain growers having loss claims adjusted and approved, and the unpaid balance of *the* losses shall be paid out of the reserve without interest in such order as the board *directs,* when in the judgment of the board there are sufficient moneys to provide for the payment of the same and other items payable out of *the* reserve. In any year the board may by resolution authorize its chairman and secretary to borrow as needed from any person, bank, or corporation such sum or sums of money as the board may *consider* necessary for the purpose of paying all warrants as issued.

(3) For any moneys borrowed under the provisions of this act, the board shall cause warrants to be drawn. *The* warrants shall bear interest at not to exceed 6% *a year* and *the* warrants and the interest thereon shall be paid out of funds from the state hail insurance *program* as they are collected from the various counties in the state. The board *may* not at any time borrow a total sum greater than the amount of levies as made for taxes for the current year together with such delinquent taxes as remain unpaid on the books of the county treasurer."

Section 34. Section 82-1519, R.C.M. 1947, is amended to read as follows:

"**82-1519. Compensation of chairman and officers — report.** *(1)* The *appointed members* of the state board of hail insurance shall receive *a per diem of $25 for each day they are engaged in the transaction of official business.*

(2) All board members and employees shall be allowed expenses as provided in 59-538, 59-539, and 59-801.

(3) All other public officials specified in this chapter shall perform the duties relative to hail insurance without other compensation than that allowed by law."

Section 35. **Repealer.** Sections 3-2601 through 3-2606, R.C.M. 1947, are repealed.

Approved February 25, 1977.

CHAPTER NO. 14

AN ACT TO AMEND SECTION 34-101, R.C.M. 1947, BY PROVIDING FOR A MAXIMUM INNKEEPER'S LIABILITY OF $500 IN THE ABSENCE OF A WRITING PROVIDING OTHERWISE.

HeinOnline -- 1977 Vol. I 87 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 34-101, R.C.M. 1947, is amended to read as follows:

"**34-101. Innkeeper's liability.** *(1)* An innkeeper is liable for all losses of or injuries to personal property placed by his guests under his care unless occasioned by an irresistible superhuman cause, by a public enemy, by the negligence of the owner, or by the act of *someone* whom he brought into the inn.

(2) The liability provided for in subsection (1) may not exceed $500 for all personal property of each registered guest, unless the innkeeper consents in writing with the guest to assume a greater liability. An innkeeper whose liability is so limited shall notify the guest at the time of registration, in writing, that this limitation applies."

Approved February 25, 1977.

CHAPTER NO. 15

AN ACT REMOVING AMBIGUITIES IN STATUTES PERMITTING THE SLAUGHTER OF LIVESTOCK BEARING ALTERED BRANDS TO DETERMINE PROPER OWNERSHIP; AMENDING SECTIONS 46-706 AND 46-708, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-706, R.C.M. 1947, is amended to read as follows:

"**46-706. Brands fraudulently changed.** Whenever a mark or brand upon any neat cattle, horse, or other *animal* has been fraudulently altered, obliterated, or defaced so that the original mark or brand cannot be determined through the external inspection thereof, any stock inspector or sheriff may seize and kill *the* animal to ascertain the mark or brand so altered or defaced. *Payment equal to the fair market value of the live animal shall be made after proper ownership is determined.*"

Section 2. Section 46-708, R.C.M. 1947, is amended to read as follows:

"**46-708. Action by dissatisfied owner — costs.** Should the owner of the animal so seized and killed feel dissatisfied with the valuation made, he may maintain an action against *the department or, if the animal is seized by a sheriff, against that sheriff's county,* and should he fail to recover damages in any greater amount than that allowed under 46-707, he shall bear all costs that may be incurred in the maintenance of *the* action."

Approved February 25, 1977.

HeinOnline -- 1977 Vol. I 88 1977

CHAPTER NO. 16

AN ACT PERMITTING THE INVESTMENT OF THE FUNDS OF CERTAIN EARMARKED ACCOUNTS OF THE DEPARTMENTS OF LIVESTOCK AND AGRICULTURE; DIRECTING THAT THE INCOME FROM SUCH INVESTMENTS BE CREDITED TO THE ACCOUNT FROM WHICH THE INVESTMENT IS MADE; AND GENERALLY CLARIFYING LANGUAGE; AMENDING SECTIONS 3-2917, 3-233, 3-2033, AND 82-1507, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 46-105.1 that reads as follows:

46-105.1. Investment of earmarked revenue account funds — crediting of investment income. The board may direct the board of investments to invest funds from the earmarked revenue accounts of the department pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the earmarked account of the department from which the investment is made.

Section 2. Section 3-2917, R.C.M. 1947, is amended to read as follows:

"**3-2917. Research and marketing account — sources — use — expenditures.** (1) There shall be an account in the federal and private revenue fund known as the wheat research and marketing account. The following shall be placed in the account:

(a) *the* proceeds of all mileage levies collected under this chapter; and

(b) *the* proceeds from all gifts, grants, or donations to the department for research authorized under this chapter.

(2) The account shall be maintained for the purposes of this chapter and shall be separate from all other accounts of the department.

(3) The department may direct the board of investments to invest funds from the account pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the wheat research and marketing account."

Section 3. Section 82-1507, R.C.M. 1947, is amended to read as follows:

"**82-1507. Scope and object of levy — reserve.** (1) In making the levy provided in 82-1506, the state board of hail insurance shall provide for:

(a) *the* payment of all expenses of administration, together with all interest owed or to be owing on registered warrants;

(b) that portion of the losses incurred during the current year which are not paid from funds drawn from the reserve;

(c) the maintenance of the reserve, a part or all of which may be used

HeinOnline -- 1977 Vol. I 89 1977

in any one year for the purpose of paying the costs of administration, interest on the warrants, and losses as the same shall be settled and adjusted by the board, including the losses sustained in any prior year or years under the state hail insurance law during or subsequent to the year 1919 that have not been paid.

(2) If at the end of any hail insurance season the board determines and finds that more funds are accumulating from the current year's levies than were estimated when the levy was made and are in excess of the need for the payment of losses and expenses and maintenance of the reserve, the board may, at its discretion, refund to the farmers insured for the year, on a pro rata or percentage basis, the excess.

(3) Each year when the hail board makes its annual levy for the payment of current losses, expenses of administration, and for an addition to the reserve if conditions permit, it *may* not increase the levy enough in any year so that such addition to the reserve will exceed 5% of the maximum risk written for that year.

(4) The reserve fund *may* not exceed *$4 million* prior to January 1, 1976. On January 1, 1976, and thereafter the maximum permissible reserve fund shall be established as set forth in subsection *(5)* of this section.

(5) The board may engage the services of a qualified actuary to conduct an actuarial valuation of the reserve. This valuation shall include the actuary's determination of the amount of reserve necessary to absorb all reasonably anticipated catastrophic losses. This amount shall be the maximum permissible reserve fund for the next year.

(6) The reserve hereby created shall be deposited in the agency fund and the board is hereby granted the power to draw from its moneys in *the* fund such amounts as it *considers* necessary for the purpose of paying costs of administration, interest, and losses. *Whenever* there are no unpaid losses for prior years and whenever in any one year the cost of administration, interest, and losses for the current year *are* less than the sum of *60* cents per acre on nonirrigated grains and a proportionate amount on irrigated grains and other crops, the board *may* not draw on the reserve for any purpose unless the amount required for the payment of losses for the current year, including interest on warrants and costs of administration, *exceeds* the amount of the estimate made by the board.

(7) The board of hail insurance may direct the board of investments to invest funds from the agency fund pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the board of hail insurance account in the agency fund."

Section 4. Section 3-233, R.C.M. 1947, is amended to read as follows:

"**3-233. Fees — disposition.** *(1)* All fees and other charges fixed by the department, including fees for the inspection, grading, weighing, and protein-testing of grain, shall be kept as near the actual cost of the services as possible. All those fees and charges shall be paid to the department and deposited with the state treasurer. The state treasurer shall

HeinOnline -- 1977 Vol. I 90 1977

place all the fees and charges in the earmarked revenue fund. Fees deposited in the earmarked revenue fund may be used to pay claims for expense incurred in inspecting, grading, weighing, and protein-testing of grain, when the claims have been approved as provided by law.

(2) The department may direct the board of investments to invest funds from the earmarked revenue fund pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the proper department account in the earmarked revenue fund."

Section 5. Section 3-2033, R.C.M. 1947, is amended to read as follows:

"3-2033. Deposit of fees. *(1)* All fees collected for permits, registration, and inspection shall be deposited in the state treasury to the credit of the earmarked revenue fund for the purpose of administering this act, including the cost of equipment and facilities and the cost of inspecting, analyzing, and examining commercial feeds manufactured or distributed in this state and the cost of developing better analytical methods *and* means of evaluating the value or the potential toxic qualities of a feed.

(2) The department may direct the board of investments to invest funds from the earmarked revenue fund pursuant to the provisions of the unified investment program for state funds. The income from such investments shall be credited to the proper department account in the earmarked revenue fund."

Approved February 25, 1977.

CHAPTER NO. 17

AN ACT AMENDING SECTION 46-2903.2 OF THE LIVESTOCK DEALERS ACT BY CHANGING THE TIME OF HEARING REQUIREMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-2903.2, R.C.M. 1947, is amended to read as follows:

"46-2903.2. Suspension and revocation of license. (1) When the department finds that a livestock dealer has violated subsection (2), (3), or (4) of 46-2902, 46-2903.1, or 46-2905, the department may, by order, suspend the license of the offender for a period not to exceed 1 year. If the violation is repeated, the department may, by order, permanently revoke the license of the offender.

(2) Before a license issued under this chapter may be suspended or revoked, a hearing shall be given the licensee, before the department, to determine whether the license should be suspended or revoked. The licensee shall be given notice of the time and place of the hearing. The hearing shall be held not less than 10 days *or* more than *30* days after the mailing of the notice. At the hearing, the department shall take and receive evi-

HeinOnline -- 1977 Vol. I 91 1977

dence, under oath, with respect to the complaint and upon the evidence received shall promptly dismiss the proceedings or revoke or suspend the license. On an adverse ruling, the licensee may appeal to the district court in the county where his principal place of business is located."

Approved February 25, 1977.

CHAPTER NO. 18

AN ACT AMENDING THE STATE CONSERVATION DISTRICTS LAW PROVIDING FOR EXCLUDING TERRITORY FROM EXISTING DISTRICTS; REVISING PROCEDURES FOR ELECTION OF DISTRICT SUPERVISORS; AMENDING 76-105, 76-106, 76-107, AND 76-114, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-105, R.C.M. 1947, is amended to read as follows:

"**76-105. Creation of conservation districts.** (1) Any 10 qualified electors within the limits of the territory proposed to be organized into a district may file a petition with the department asking that the board approve the organization of a conservation district to function in the territory described in the petition. The petition shall set forth:

(a) *the* proposed name of the district;

(b) *that* there is need in the interest of the public health, safety, and welfare for a conservation district to function in the territory described in the petition;

(c) *a* description of the territory proposed to be organized as a district, which description may not be required to be given by metes and bounds or by legal subdivisions but shall be considered sufficient if generally accurate;

(d) *a* request that the board duly define the boundaries for the district; that a referendum be held within the territory so defined on the question of the creation of a conservation district in the territory; and that the board determine that a district be created.

(2) Where more than one petition is filed covering parts of the same territory, the board may consolidate all or any part of the petitions.

(3) Within 30 days after a petition has been filed with the department, it shall cause due notice to be given of a proposed hearing before the department upon the question of the desirability and necessity, in the interest of the public health, safety, and welfare, of the creation of the district, upon the question of the appropriate boundaries to be assigned to the district; upon the propriety of the petition and other proceedings taken under this act; and upon all questions relevant to those inquiries. All qualified electors within the limits of the territory described in the petition and of lands within any territory considered for addition to the

HeinOnline -- 1977 Vol. I 92 1977

described territory and all other interested parties are entitled to attend the hearings and be heard. If it appears to the board after reviewing the record of the hearing that it may be desirable to include within the proposed district territory outside of the area within which due notice of the hearing has been given, the board shall adjourn the hearing and the department shall cause due notice of a further hearing to be given throughout the entire area considered for inclusion in the district, and the further hearing shall be held by the department. After the hearing, if the board determines, upon the facts presented at the hearing and upon other relevant facts and information as may be available to the department or the board, that there is need, in the interest of the public health, safety, and welfare, for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall define, by metes and bounds or by legal subdivisions, the boundaries of the district. In making the determinations and in defining the boundaries, the board shall consider the topography of the area considered and of the state, the composition of soils therein, the distribution of erosion, the prevailing land-use practices, the desirability and necessity of including within the boundaries the particular lands under consideration and the benefits those lands may receive from being included within the boundaries, the relation of the proposed area to existing watersheds and agricultural regions and other conservation districts already organized or proposed for organization under this act, and such other physical, geographical, and economic factors as are relevant, having due regard to the legislative determination set forth in 76-102. The territory to be included within the boundaries need not be contiguous. If the board determines after the hearing, after due consideration of the relevant facts, that there is no need for a conservation district to function in the territory considered at the hearing, it shall make and record that determination and shall deny the petition. After 6 months have expired from the date of the denial of a petition, subsequent petitions covering the same or substantially the same territory may be filed and a new hearing held and determinations made thereon.

(4) After the board has made and recorded a determination that there is need, in the interest of the public health, safety, and welfare, for the organization of a district in a particular territory and has defined the boundaries thereof, it shall consider the question whether the operation of a district within the boundaries with the powers conferred upon conservation districts in this act is administratively practicable and feasible. To assist the board in the determination of this administrative practicability and feasibility, the department shall, within a reasonable time after entry of the board's finding that there is need for the organization of the proposed district and the determination of the boundaries thereof, hold a referendum within the proposed district upon the proposition of the creation of the district and cause due notice of the referendum to be given. The question shall be submitted by ballots upon which the words "For creation of a conservation district of the lands below described and lying in the county(ies) of ...., ..., and ...." and "Against creation of a conservation district of the lands below described and lying in the county(ies) of .... and ...." shall appear, with a square before each proposition and a direction to insert an "X" mark in the square before one or the other

of the propositions as the voter may favor or oppose creation of the district. The ballot shall set forth the boundaries of the proposed district as determined by the board. All qualified electors within the boundaries of the territory, as determined by the department, are eligible to vote in the referendum.

(5) The department shall pay all expenses for the issuance of the notices and the conduct of the hearings and referenda and shall supervise the conduct of the hearings and referenda. It shall adopt appropriate rules governing the conduct of the hearings and referenda and providing for the registration prior to the date of the referendum of all eligible voters or prescribing some other appropriate procedure for the determination of those eligible as voters in the referendum. No informalities in the conduct of the referendum or in any matters relating thereto shall invalidate the referendum or the result thereof if notice thereof has been given substantially as herein provided and the referendum has been fairly conducted.

(6) The department shall publish the result of the referendum, and the board shall thereafter consider and determine whether the operation of the district within the defined boundaries is administratively practicable and feasible. If the board determines that the operation of the district is not administratively practicable and feasible, it shall record that determination and deny the petition. If the board determines that the operation of the district is administratively practicable and feasible, it shall record that determination and proceed with the organization of the district in the manner hereinafter provided. In making its determination, the board shall consider the attitudes of the qualified electors within the defined boundaries, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the creation of the district to the total number of votes cast, the approximate wealth and income of the qualified electors of the proposed district, the probable expense of carrying on erosion-control operations within the district, and such other economic and social factors relevant to the determination, having due regard to the legislative determinations set forth in 76-102; however, the board may not determine that the operation of the proposed district within the defined boundaries is administratively practicable and feasible unless a majority of the votes cast in the referendum upon the proposition of creation of the district have been cast in favor of the creation of the district.

(7) If the board determines that the operation of the proposed district within the defined boundaries is administratively practicable and feasible, it shall appoint two supervisors to act with the three supervisors *first* elected, as provided hereinafter, as the *initial* governing body of the district. The district is a governmental subdivision of this state and a public body, corporate and politic, upon the taking of the following proceedings:

(a) The two appointed supervisors shall present to the secretary of state an application signed by them, which shall set forth:

(i) that a petition for the creation of the district was filed with the department pursuant to this act, that the proceedings specified in this act were taken pursuant to the petition, that the application is being filed in order to complete the organization of the district as a governmental

HeinOnline -- 1977 Vol. I 94 1977

subdivision and a public body, corporate and politic, under this act, and that the board has appointed them as supervisors;

(ii) the name and official residence of each of the supervisors, together with a certified copy of the appointments evidencing their right to office;

(iii) the term of office of each of the supervisors;

(iv) the name which is proposed for the district; and

(v) the location of the principal offices of the supervisors of the district.

(b) The application shall be subscribed and sworn to by each of the supervisors. The application shall be accompanied by a statement by the department, which shall certify that a petition was filed, notice issued, and hearing held as provided in this act; that the board determined that there is need in the interest of the public health, safety, and welfare for a conservation district to function in the proposed territory and defined the boundaries thereof; that notice was given and a referendum held on the question of the creation of the district; and that the result of the referendum showed a majority of the votes cast in the referendum to be in favor of the creation of the district and that thereafter the board determined that the operation of the proposed district is administratively practicable and feasible. The statement shall also set forth the boundaries of the district as they have been defined by the board.

(8) The secretary of state shall examine the application and statement, and if he finds that the name proposed for the district is not identical with that of any other conservation district of this state or so nearly similar as to lead to confusion or uncertainty, he shall receive and file them and shall record them in an appropriate book of record in his office. If the secretary of state finds that the name proposed for the district is identical with that of any other conservation district of this state or so nearly similar as to lead to confusion and uncertainty, he shall certify that fact to the board, which shall thereupon submit to the secretary of state a new name for the district which is not subject to such defects. Upon receipt of the new name free of such defects, the secretary of state shall record the application and statement with the name so modified in an appropriate book of record in his office. When the application and statement have been made, filed, and recorded as herein provided, the district is a governmental subdivision of this state and a public body, corporate and politic. The secretary of state shall make and issue to the supervisors without cost a certificate under the seal of the state of the due organization of the district and shall record the certificate with the application and statement. The boundaries of the district shall include the territory as determined by the board, but they may not include any area included within the boundaries of another conservation district.

(9) After 6 months have expired from the date of entry of a determination by the board that operation of a proposed district is not administratively practicable and feasible and denial of a petition pursuant to the determination, subsequent petitions may be filed and action taken thereon in accordance with this act.

(10) Petitions for including additional territory within an existing dis-

HeinOnline -- 1977 Vol. I 95 1977

trict may be filed with the department, and the proceedings herein provided for in the case of petitions to organize a district shall be followed in the case of petitions for the inclusion. The department shall prescribe the form for the petitions, which shall be as nearly as may be in the form prescribed in this act for petitions to organize a district. Where the total number of qualified electors in the area proposed for inclusion *is* less than 10, the petition may be filed when signed by a majority of the qualified electors of the area, and in that case no referendum need be held. In referenda upon petitions for the inclusion, all qualified electors within the proposed additional area are eligible to vote.

(11) In a suit, action, or proceeding involving the validity or enforcement of or relating to a contract, proceeding, or action of the district, the district shall be considered to have been established in accordance with this act upon proof of the issuance of the certificate by the secretary of state. A copy of the certificate, duly certified by the secretary of state, is admissible in evidence in the suit, action, or proceeding and is proof of the filing and contents thereof.

(12) The conservation district is authorized to divide the unincorporated area of the district into five supervisor areas."

Section 2. Section 76-106, R.C.M. 1947, is amended to read as follows:

"76-106. Election of supervisors for each district. *(1)* Within 30 days after the date of issuance by the secretary of state of a certificate of organization of a conservation district, nominating petitions may be filed with the *registrar, as defined in Title 23, R.C.M. 1947,* to nominate candidates for supervisors of the district. A nominating petition may not be accepted by the *registrar* unless it is subscribed by 10 or more qualified electors within the boundaries of the district, *or supervisor areas thereof, wherein the nominee resides.* Qualified electors may sign more than one nominating petition to nominate more than one candidate for supervisor. *If more than six candidates are nominated, the registrar* shall give due notice of *a nominating* election to be held for *the selection of six candidates for supervisor to appear on the next general election ballot. This nominating election may be held in conjunction with the state primary election. In the general election, the names of all persons nominated by petition (if six or fewer) or by election* shall be printed, arranged in *a rotating* order of the surnames, *as provided under 23-3511,* upon ballots, with a square before each name and a direction to insert an "X" mark in the square before any three names to indicate the voter's preference. All qualified electors within the district are eligible to vote in the election. The three candidates who receive the largest number, respectively, of the votes cast in the election are the elected supervisors for the district. *The registrar in each county shall prepare suitable nonpartisan ballots and polling lists for the election of supervisors, which ballots and polling lists shall be delivered to the election judges in those precincts which contain eligible voters prior to each general election and each primary election in which more than four candidates are nominated. The election judges, clerks, and other election officials in such precincts shall submit such ballots to qualified electors, conduct the election and tabulate the results of such election in the manner provided for by the general election laws of the state.*

HeinOnline -- 1977 Vol. I 96 1977

(2) Two supervisors shall be elected at the second general election following the organization or reorganization of the district and shall replace the two supervisors appointed by the department. Thereafter, a district shall alternately elect three and two supervisors at succeeding general elections. Nominations for the election of supervisors shall be made as provided under subsection (1) except that a nominating election shall be held if more than four candidates are nominated by petition when two supervisors are to be elected."

Section 3. Section 76-107, R.C.M. 1947, is amended to read as follows:

"76-107. Appointment, qualifications, and tenure of supervisors. (1) The governing body of the district shall, if there are no incorporated municipalities within the boundaries of said district, consist of five or seven supervisors, elected or appointed as provided herein.

(2) In all cases where the boundaries of such conservation district include any incorporated municipality or municipalities, *the* board of supervisors, in addition to *the* five elected supervisors, shall consist of two appointed supervisors, making a total of seven supervisors in such districts. The two appointed supervisors must be residents of the municipalities within the district. The legislative bodies of the incorporated municipalities within the district shall, after consultation with the elected supervisors, appoint the two additional supervisors. The term of office of the appointed supervisors shall be 3 years.

(3) Where there are more than two incorporated municipalities within a district, the two appointed supervisors shall represent all the municipalities and urban interests in the district and no municipality shall have more than one appointed supervisor residing therein.

(4) The supervisors shall annually elect a chairman from their members. The term of office of each supervisor shall be *4* years, except that the supervisors who are first appointed *by the department* shall be designated to serve for terms of 2 years from the date of their appointment. An elected supervisor shall hold office until his successor has been elected and has qualified. Any vacancy occurring in the office of an elected supervisor shall be filled by appointment by the remaining supervisors until the next regular election, when a successor shall be elected to serve the unexpired term. A majority of the supervisors constitute a quorum, and the concurrence of a majority in any matter within their duties is required for its determination. A supervisor may not receive compensation for his services, but he is entitled to expenses, including travel expenses, as provided for in 59-538, 59-539, and 59-801, incurred in the discharge of his duties.

(5) The supervisors may employ a secretary and such other officers, agents, and employees, permanent and temporary, as they may require and shall determine their qualifications, duties, and compensation. The supervisors may call upon the attorney general of the state for such legal services as they may require or may employ their own counsel and legal staff. The supervisors may delegate to their chairman, to one or more supervisors, or to one or more agents or employees such powers and duties as they consider proper. The supervisors shall furnish to the department

HeinOnline -- 1977 Vol. I 97 1977

copies of such ordinances, rules, regulations, orders, contracts, forms, and other documents as they adopt or employ and such other information concerning their activities as may be required in the performance of their duties under this act.

(6) The supervisors shall provide for the execution of surety bonds for all employees and officers who are entrusted with funds or property; shall provide for the keeping of a full and accurate record of all proceedings and of all resolutions, regulations, and orders issued or adopted; and shall provide for an annual audit of the accounts of receipts and disbursements. A supervisor may be removed by the board, upon notice and hearing, for neglect of duty or malfeasance in office but for no other reason.

(7) The supervisors may invite the *governing* body of any municipality or county located near the territory comprised within the district to designate a representative to advise and consult with the supervisors of the district on all questions of program and policy which may affect the property, water supply, or other interests of the municipality or county."

Section 4. **Compliance.** For the purposes of bringing existing districts into compliance with this act by the time of the 1978 general elections the terms of office for all supervisors shall expire upon passage and approval of this act. However, each supervisor shall remain in office until his successor has been elected and has qualified in accordance with this act. For purposes of the 1978 general election three supervisors shall be elected for a 4-year term and the remaining two supervisors elected for a 2-year term. No action or undertaking of a district may be invalidated or voided for failure to comply with the amendatory provisions of this act prior to January 1, 1979.

Section 5. Section 76-114, R.C.M. 1947, is amended to read as follows:

"76-114. Discontinuance of districts or a part of the district. (1) At any time after 5 years after the organization of a district under this act, any 10 qualified electors within the boundaries of the district may file a petition with the department, praying that the board terminate the operations of the district *or a part of the district* and discontinue the existence of the district *or that part of the district.* The department may conduct such public meetings and public hearings upon the petition as are necessary to assist it and the board in the consideration thereof.

(2) Within 60 days after the petition has been received by the department it shall give due notice of the holding of a referendum, and shall supervise the referendum, and issue appropriate regulations governing the conduct thereof, the question to be submitted by ballots upon which the words "For terminating the existence of the .... (name of the conservation district *or part of the district* to be here inserted)" and "Against terminating the existence of the .... (name of the conservation district *or part of the district* to be here inserted)" shall appear, with the square before each proposition and a direction to insert an "X" mark in the square before one or the other of the propositions as the voter may favor or oppose discontinuance of the district *or a part of the district.* All qualified electors within the boundaries of the district are eligible to vote in the referendum. No informalities in the conduct of the referendum or in any matters rela-

HeinOnline -- 1977 Vol. I 98 1977

tive thereto shall invalidate the referendum or the result thereof if notice thereof is given substantially as herein provided and the referendum is fairly conducted.

(3) *(a) In the case of petitions for discontinuance of a district, the* department shall publish the result of the referendum and the board shall thereafter consider and determine whether the continued operation of the district within the defined boundaries is administratively practicable and feasible. If the board determines that the continued operation of the district is administratively practicable and feasible, it shall record that determination and deny the petition. If the board determines that the continued operation of the district is not administratively practicable and feasible, it shall record that determination and shall certify the determination to the supervisors of the district.

(b) In the case of petitions for discontinuance of part of a district, the department shall publish the result of the referendum and the board shall thereafter consider and determine whether the continued operation of a part of the district within the defined boundaries is administratively practicable and feasible. If the board determines that the continued operation of the district is not administratively practicable and feasible with a part of the district discontinued, it shall record that determination and deny the petition. If the board determines that the continued operation of the district is administratively practicable and feasible with a part of the district discontinued it shall record that determination and shall certify the determination to the supervisors of the district.

(4) In making the determination the board shall give due regard and weight to the attitudes of the qualified electors lying within the district, the number of qualified electors eligible to vote in the referendum who voted, the proportion of the votes cast in the referendum in favor of the discontinuance of the district *or part of the district* to the total number of votes cast, the approximate wealth and income of the qualified electors of the district, the probable expense of carrying on erosion control operations within the district, and such other economic and social factors as may be relevant to the determination, having due regard to the legislative findings set forth in section 76-102; however, the board may not determine that the continued operation of the district *or part of the district* is administratively practicable and feasible unless at least a majority of the votes cast in the referendum are cast in favor of the continuance of the district *or part of the district.*

(5) Upon receipt from the department of a certification of the board that the board has determined that the continued operation of the district *or part of the district* is not administratively practicable and feasible, pursuant to this section, the supervisors shall immediately proceed to terminate the affairs of the district *or part of the district.* The supervisors shall dispose of all property belonging to the district *or part of the district* at public auction and shall pay over the proceeds of the sale to be covered into the state treasury. The supervisors shall thereupon file an application, duly verified, with the secretary of state for the discontinuance of the district *or part of the district,* and shall transmit with the application the certificate of the board, setting forth the determination of the board that the continued operation of the district *or part of the district* is not

HeinOnline -- 1977 Vol. I 99 1977

administratively practicable and feasible. The application shall recite that the property of the district *or part of the district* has been disposed of and the proceeds paid over as in this section provided, and shall set forth a full accounting of the properties and proceeds of the sale. The secretary of state shall issue to the supervisors a certificate of dissolution and shall record the certificate in an appropriate book of record in his office.

(6) Upon issuance of a certificate of dissolution under this section, all ordinances and regulations theretofore adopted and in force within the district *or in that part of the district* are void. All contracts previously entered into, to which the district or supervisors are parties, remain in effect for the period provided in those contracts. The department shall be substituted for the district or supervisors as party to the contracts *if the total district is discontinued. In this case the* department is entitled to all benefits and subject to all liabilities under the contracts and has the same right and liability to perform, to require performance, to sue and be sued thereon, and to modify or terminate the contracts by mutual consent or otherwise, as the supervisors of the district would have had. The dissolution does not affect the lien of any judgment entered under section 76-110, nor the pendency of an action instituted under that section, and the department succeeds to all rights and obligations of the district or supervisors as to those liens and actions."

Approved March 1, 1977.

CHAPTER NO. 19

AN ACT AMENDING SECTIONS 27-405 AND 27-407, R.C.M. 1947, TO TRANSFER THE JURISDICTION OVER TRANSPORTATION OF MILK TO THE BOARD OF MILK CONTROL FROM THE DEPARTMENT OF BUSINESS REGULATION; REPEALING SECTION 82A-406.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-405, R.C.M. 1947, is amended to read as follows:

"**27-405. General powers of the department.** (1) The department shall supervise, regulate, and control the milk industry of this state, including the production, processing, storage, distribution, and sale of milk *sold* for consumption in this state. Nothing in this chapter abrogates or affects the status, force, or operation of any provision of public health laws or the law under which the department of livestock is constituted together with the department of livestock rules or county board of health rules, or municipal ordinances for the promotion or protection of the public health. The department may *cooperate* with the department of health and environmental sciences, the board of livestock or any county or city board of health or the department of agriculture in enforcing this chapter.

(2) The department shall investigate all matters pertaining to the production, processing, storage, distribution, and sale of milk in this state and conduct hearings upon any subject pertinent to the administration

HeinOnline -- 1977 Vol. I 100 1977

of this chapter. The department may subpoena milk dealers, their records, books, and accounts, and any other person from whom information may be desired or considered necessary to carry out the purposes and intent of this chapter and may take depositions of witnesses who are sick or absent from the state or who cannot otherwise appear in person before the department at its offices. The department shall give at least 10 days' notice to the proposed witness."

Section 2. Section 27-407, R.C.M. 1947, is amended to read as follows:

"**27-407. Establishment of minimum prices.** (1) The board shall fix minimum producer, wholesale, jobber, and retail prices for class I milk, and minimum producer prices only for class II and class III milk in all areas of the state, by adopting rules in a manner prescribed by the Montana Administrative Procedure Act.

(2) The board shall establish such prices by means of flexible formulas which shall be devised so that they bring about such automatic changes in all minimum prices as are justified on the basis of changes in production costs and supply, processing and distribution costs, and retailing costs.

(3) The board shall consider the balance between production and consumption of milk, the costs of production and distribution, and prices in adjacent and neighboring areas and states so that minimum prices which are fair and equitable to producers, distributors, jobbers, retailers, and consumers may result.

(4) The board shall, when publishing notice of proposed *rulemaking* under authority of this section, set forth the specific factors which shall be taken into consideration in establishing the formulas and in particular in determining costs of production and distribution and of the actual dollars and cents costs of production and distribution which preliminary studies and investigations of auditors or accountants in its employment indicate will or should be shown at the hearing so that all interested parties will have opportunity to be heard and to question or rebut such considerations as a matter of record.

(5) Such specific factors may include but shall not be limited to the following items:

(a) Current and prospective supplies of milk in relation to current and prospective demands for such milk for all purposes;

(b) The ability and willingness of consumers to purchase, which shall include among other things, per capita disposable income statistics, consumer price indices, and wholesale price indices;

(c) The cost factors in producing milk, which shall include among other things the prices paid by farmers generally (as used in parity calculations of the United States Department of Agriculture), prices paid by farmers for dairy feed in particular and farm wage rates in this state;

(d) The alternative opportunities, both farm and nonfarm, open to milk producers, which shall include among other things, prices received by farmers for all products other than milk, prices received by farmers for

HeinOnline -- 1977 Vol. I 101 1977

beef cattle, and the percentage of unemployment in the state and nation as determined by appropriate state and federal agencies;

(e) The prices of butter-nonfat dry milk and cheese;

(f) The cost factors in distributing milk, which shall include among other things the prices paid by distributors for equipment of all types required to process and market milk and prevailing wage rates in this state;

(g) The cost factors in jobbing milk, which shall include among other things raw product and ingredient costs, carton or other packaging cost, processing cost and that part of general administrative costs of the supplying distributor which may properly be allocated to the handling of milk to the point at which such milk is at the supplying distributor's dock, equipment of all types required to market milk, and prevailing wage rates in the state;

(h) The need, if any, for freight or transportation charges to be deducted by distributors from producer prices for bulk milk;

(i) A reasonable return on necessary investment to all ordinarily efficient and economical milk dealers.

(6) If the board at any time proposes to base all or any part of any official order establishing or revising any milk pricing formulas upon facts within its own knowledge, as distinguished from evidence which may be presented to it by the consuming public or the milk industry, the board shall, when publishing notice of proposed *rulemaking* under authority of this section, cause notice to be given to the consuming public and the milk industry of the specific facts within its own knowledge which it will consider, so that all interested parties will have opportunity to be heard and to question or rebut such facts as a matter of record.

(7) The board, after consideration of the evidence produced, shall make written findings and conclusions and shall fix by official rule:

(a) The formula whereby minimum producer prices for milk in classes I, II, and III shall be computed.

(b) The formula whereby minimum wholesale prices for milk in class I shall be computed.

(c) The formula whereby minimum jobber prices for milk in class I shall be computed.

(d) The formula whereby minimum retail prices for milk in class I shall be computed.

(8) This section shall not be construed as requiring the board to promulgate any specific number of formulas, but shall be construed liberally so that the board may adopt any reasonable method of expression to accomplish the objective set forth in (a), (b), (c), and (d) above. If the evidence presented to the board at any public hearing for the establishment or revision of milk pricing formulas is found by the board to require the establishment of separate and varying wholesale prices for any particular uses, the board shall designate the reasons therefor and establish such separate formulas.

HeinOnline -- 1977 Vol. I 102 1977

(9) Each rule establishing or revising any milk pricing formulas shall classify milk by forms, classes, grades, or uses as the board may deem advisable and shall specify the minimum prices therefor.

(10) The milk produced in one natural marketing area and sold in another natural marketing area shall be paid for by a distributor or dealer in accordance with the pricing order of the area where produced at the price therein specified of the class or use in which it is ultimately used or sold.

(11) *The board shall adopt rules after notice and hearing in the manner prescribed by the Montana Administrative Procedure Act to regulate transportation rates which distributors, contract haulers, and others charge producers for both farm-to-plant and interplant transportation of milk. No allowance for transportation of milk between plants may be permitted unless it is found by the board to be necessary to permit the movement of milk in the public interest.*

(12) All milk purchased within a natural marketing area by a distributor shall be purchased on a uniform basis. The basis to be used shall be established by the board after the producers and the distributors of the area have been consulted.

(13) The board may amend any official rule in the same manner provided herein for the original establishment of milk pricing formulas; provided, further, the board may in its discretion, when it determines the need exists, notice and hold *statewide* public hearings affecting establishment or revision of milk pricing formulas in all market areas of the state.

(14) Upon petition of a distributor or a majority of his producers, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for a base or quota plan as a method of payment by that distributor of producer prices; and if the board finds that the evidence adduced at such hearing warrants the establishment of a base or quota plan, the board shall proceed by official order to establish the same.

(15) Upon petition by any producer, producer-distributor, or distributor in any marketing area, the board shall hold a hearing to receive and consider evidence regarding the advisability and need for an *areawide* or *statewide* pooling arrangement as a method of payment of producer prices, provided that at such hearing the board shall among other things specifically receive and consider evidence concerning production and marketing practices which have historically prevailed in the area concerned or *statewide*, as the case may be; and if the board finds that the evidence adduced at such hearing warrants the establishment of such an *areawide* or *statewide* pooling arrangement, the board shall proceed by official order to establish the same, but such official order shall be of no force or effect until it is approved in a referendum conducted by the board among affected producers, producer-distributors, and distributors.

(16) The requirements hereinabove set forth concerning notices of hearings for the establishment of milk pricing formulas shall apply to any hearings regarding base or quota plans or *areawide* or *statewide* pooling arrangements, or abandonment thereof.

HeinOnline -- 1977 Vol. I 103 1977

(17) Rules adopted pursuant to this section shall be enforced and audited for compliance by the milk control division of the department of business regulation."

Section 3. **Repealer.** Section 82A-406.1, R.C.M. 1947, is repealed.

Approved March 1, 1977.

CHAPTER NO. 20

AN ACT TO REMOVE OBSOLETE WORDING WHICH PERTAINED TO THE OLD EXPERIENCE RATING SYSTEM FOR UNEMPLOYMENT COMPENSATION BENEFITS, CHANGED BY THE 1975 LEGISLATURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-107, R.C.M. 1947, is amended to read as follows:

"**87-107. Claims for benefits.** (a) Filing. Claims for benefits shall be made in accordance with such regulations as the division may prescribe. Each employer shall post and maintain printed statements of such regulations in places readily accessible to individuals in his service and shall make available to each such individual at the time he becomes unemployed, a printed statement of such regulations. Such printed statements shall be supplied by the division to each employer without cost to him.

(b) Initial determination. A representative designated by the division, and hereinafter referred to as a deputy, shall promptly examine the claim and, on the basis of the facts found by him, shall either determine whether or not such claim is valid, and if valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and the maximum duration thereof, or shall refer such claim or any question involved therein to an appeals referee who shall make his decision with respect thereto in accordance with the procedure prescribed in subsection (e) of this section. No determination or redetermination of an initial or additional claim shall be made under this section unless five (5) days notice of the time and place of the claimant's interview for examination of the claim is mailed to each interested party. The deputy shall promptly notify the claimant and any other interested party of the decision and the reasons therefor. The deputy may for good cause reconsider his decision and shall promptly notify the claimant and such other interested parties of his amended decision and the reasons therefor.

(c) Finality of determination. A determination or redetermination shall be deemed final unless an interested party entitled to notice thereof applies for reconsideration of the determination or appeals therefrom within five (5) days after delivery of such notification or within seven (7) days after such notification was mailed to his last known address provided, that such period may be extended for good cause.

(d) Appeals referee. To hear and decide disputed claims, the division

HeinOnline -- 1977 Vol. I 104 1977

shall appoint such impartial appeals referee as are necessary for the proper administration of this act, consisting of salaried examiners selected in accordance with section 87-123. No person shall participate on behalf of the division in any case in which he is an interested party. The division may designate alternates to serve in the absence or disqualification of an appeals referee.

(e) Notice of decision of appeals referee and time for appeal. After a hearing an appeals referee shall make findings and conclusions promptly and on the basis thereof affirm, modify, or reverse the deputy's determination or redetermination. Each interested party shall be furnished promptly a copy of the decision and the supporting findings and conclusions; this decision shall be final unless further review is initiated pursuant to subsection (g) of this section within five (5) days after delivery of such notification or within seven (7) days after such notification was mailed to his last known address, provided, that such period may be extended for good cause.

(f) Prompt payment of claims. Notwithstanding any provision in subsection (b), (c) or (g) of this section, benefits shall be paid promptly in accordance with a determination or redetermination under this section, or the decision of an appeals referee, the board of labor appeals or a reviewing court under subsection (g) of this section upon the issuance of such determination, redetermination or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review that is provided with respect thereto in subsection (g) of this section, as the case may be, or the pendency of any such application, filing, or petition), unless and until such determination, redetermination, or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modifying or reversing redetermination or decision.

If a deputy's determination or redetermination allowing benefits is affirmed in any amount by an appeals referee, or by the board of labor appeals, or if a decision of an appeals referee allowing benefits is affirmed in any amount by the board of labor appeals, such benefits shall be paid promptly regardless of any further appeal or the disposition of such appeal and no injunction, supersedeas, stay or other writ or process suspending the payment of such benefits shall be issued by the board or any court. Benefits shall not be paid for any weeks of unemployment involved in such modification or reversal that begins after such final decision.

(g) Appeal to board of labor appeals and judicial review. Any interested party dissatisfied with a decision of an appeals referee is entitled to appeal to the board of labor appeals. The division will promptly transmit all records pertinent to the appeal to the board. When a decision is rendered by the board with copies of such decision to all interested parties, including the division, that decision shall become final unless an interested party requests a rehearing or initiates judicial review by filing a petition in district court within thirty (30) days of the date of mailing of the board's decision to his last known address."

Approved March 7, 1977.

HeinOnline -- 1977 Vol. I 105 1977

CHAPTER NO. 21

AN ACT TO ELIMINATE THE REQUIREMENT THAT COUNTY CLERK AND RECORDERS PREPARE MONTHLY LISTS OF NON-RESIDENT LOANS SECURED BY CHATTEL MORTGAGE UPON GRAIN BY REPEALING SECTION 84-4903.12, R.C.M. 1947; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 84-4903.12, R.C.M. 1947, is hereby repealed.

Section 2. **Effective date.** This act is effective upon passage and approval.

Approved March 7, 1977.

CHAPTER NO. 22

AN ACT TO CLARIFY THE AUTHORITY OF A COOPERATIVE STATE GRAZING DISTRICT TO POSSESS, MANAGE, AND CONTROL AGRICULTURAL LANDS; AMENDING SECTION 46-2312, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-2312, R.C.M. 1947, is amended to read as follows:

"**46-2312. Powers of state districts.** A state district may:

(1) Purchase or market livestock and livestock products, and purchase supplies and equipment. These supplies may include among other things grass, grass seed, or forage, whether attached to and upon or severed from the land.

(2) Sue or be sued in its corporate name.

(3) Acquire forage producing lands, *including agricultural lands when necessary to comply with the purposes and directives of this chapter,* by lease, purchase, cooperative agreements, or otherwise, either from the United States, the state of Montana, county or counties in which the lands are located, or from private owners. All lands to which a state district may acquire title may be disposed of by exchange, sale or otherwise.

(4) Manage and control the use of its range *and such agricultural lands.* This power includes the right to determine the size of preferences and permit according to a fixed method which shall be stated in the by-laws and which shall take into consideration the rating of dependent commensurate property and the carrying capacity of the range, and may

HeinOnline -- 1977 Vol. I 106 1977

be subject to reservations, regulations and limitations under the terms of agreements between the state district and any agency of the United States. The state district may also allot range to members or nonmembers, and decrease or increase the size of permits if the range carrying capacity changes.

(5) Acquire or construct fences, reservoirs, or other facilities for the care of livestock, and lease or purchase lands for such purposes.

(6) Fix and determine the amount of grazing fees to be imposed on members or nonmembers for the purpose of paying leases and operating expenses and fix and determine the amount of assessments to be made on members on an animal unit basis for the purpose of acquiring lands by purchase, or for the purpose of constructing improvements in the state district.

(7) Specify the breed, quality, and number of male breeding animals which each member must furnish when stock is grazing in common in the state district.

(8) Employ and discharge employees, riders, and other persons necessary to properly manage the state district.

(9) Set up and maintain a reasonable reserve fund.

(10) Borrow money, and if necessary mortgage the physical assets of a state district to provide for operation and development, provided that at least eighty per cent (80%) of the permittee members of the state district consent in writing to the borrowing and the borrowing has been approved by the department. This subsection does not confer power upon a state district to mortgage the property of the individual members of the district.

(11) Change the boundaries of a district, merge with another state district organized under this act, or subdivide.

(a) A merger may not be made unless consented to by a majority of the members of each merging state district and approved by the board after a hearing thereon before the department.

(b) A subdivision may not be made unless consented to by a majority of the members in the affected area and approved by the board after a hearing thereon before the department.

(12) Regulate the driving of stock over, across, into, or through the range, and collect fees therefor. A state district may impose sanitary provisions, regulations and practices.

(13) Undertake reseeding and other approved conservation and improvement practices of depleted range areas or abandon farm lands and enter into cooperative agreements with the federal government or any other person for the reseeding or conservation and improvement practices."

Approved March 7, 1977.

HeinOnline -- 1977 Vol. I 107 1977

CHAPTER NO. 23

AN ACT TO EXEMPT CANDIDATES FOR THE OFFICE OF TRUSTEE OF CERTAIN SCHOOL DISTRICTS FROM THE PROVISIONS OF THE ELECTION LAWS RELATING TO CAMPAIGN TREASURERS, CAMPAIGN DEPOSITORIES, AND FILING REPORTS WITH THE COMMISSIONER OF CAMPAIGN FINANCES AND PRACTICES; AMENDING SECTIONS 23-4778 AND 23-4781, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4778, R.C.M. 1947, is amended to read as follows:

"**23-4778. Reports of contributions and expenditures required.** (1) *Except as provided in subsection (5), each* candidate and political committee shall file periodic reports of contributions and expenditures made by or on the behalf of a candidate or political committee. All reports required by this section shall be filed with the commissioner and with the county clerk and recorder of the county in which a candidate is a resident or the political committee has its headquarters. However, where residency within a district, county, city, or town is not a prerequisite for being a candidate, copies of all reports shall be filed with the county clerk and recorder of the county in which the election is to be held, or if the election is to be held in more than one county, with the clerk and recorder in the county that the commissioner shall specify.

(2) In lieu of all contribution and expenditure reports required by this act, the commissioner shall accept copies of the reports filed by candidates for congress and president of the United States, and their political committees, pursuant to the requirements of federal law.

(3) Candidates for a state office filled by a statewide vote of all the voters of Montana, the political committees for such candidates, and political committees organized to support or oppose a statewide issue, shall file reports:

(a) on the tenth day of March and September, in each year that an election is to be held, and on the fifteenth and fifth days next preceding the date on which an election is held, and within twenty-four (24) hours after receiving a contribution of five hundred dollars ($500) or more at any time after the last pre-election report;

(b) not more than twenty (20) days after the date of the election;

(c) on the tenth day of March and September of each year following an election so long as there is an unexpended balance or an expenditure deficit in a campaign account; and

(d) whenever a candidate or political committee finally closes its books.

(4) Candidates for a state district office, including but not limited to, candidates for the legislature, public service commission, or district court judge, their political committees, and political committees organized to support or oppose district issues, shall file reports:

HeinOnline -- 1977 Vol. I 108 1977

(a) on the tenth day next preceding the date on which an election is held, and within twenty-four (24) hours after receiving a contribution of one hundred dollars ($100) or more at any time after the last pre-election report;

(b) not more than twenty (20) days after the date of the election;

(c) whenever a candidate or political committee finally closes its books.

(5) Candidates for any other public office, their political committees, and political committees organized to support or oppose local issues, shall be required to file the reports specified in subsection (4) only if the total amount of contributions received or the total amount of funds expended for an election, excluding the filing fee paid by the candidate, exceed five hundred dollars ($500); *except candidates for the office of trustee of a school district, their political committees, and political committees organized to support or oppose a school district issue shall not be required to comply with the provisions of this section when the school district is:*

(a) a first-class district located in a county having a population less than 15,000;

(b) a second- or third-class district; or

(c) a county high school district having a student enrollment less than 2,000.

(6) All reports required by this section shall be complete as of the date prescribed by the commissioner, which shall not be less than five (5) or more than ten (10) days before the date of filing as specified in subsections (2) through (5) of this section.

(7) The commissioner shall adopt rules and regulations that will permit political committees, including political parties, to file copies of a single comprehensive report when they support or oppose more than one candidate or issue.

(8) Reports filed under this section shall be filed to cover the following time periods:

(a) the initial report shall cover all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate as defined in subsection (1) of section 23-4777 until the date prescribed by the commissioner for the filing of the appropriate initial report pursuant to subsections (2) through (5) of this section;

(b) subsequent periodic reports shall cover the period of time from the closing of the previous report to a date prescribed by the commissioner, which shall not be less than five (5) days or more than ten (10) days before the date of filing;

(c) final reports shall cover the period of time from the last periodic report to the final closing of the books of the candidate or political committee."

Section 2. Section 23-4781, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 109 1977

"23-4781. **Campaign treasurer and campaign depository — exception for certain school districts.** (1) *Except as provided in subsection (7), each* candidate for nomination or election to office and each political committee shall appoint one (1) campaign treasurer. No contribution shall be received or expenditure made by or on behalf of a candidate or political committee until the candidate or political committee appoints a campaign treasurer and certifies the name and address of the campaign treasurer pursuant to this section. The certification, which shall include an organizational statement, properly acknowledged by a notary public, and setting forth of the name and address of the campaign treasurer and all other officers, if any, of the political committee, shall be filed with the commissioner and the appropriate county clerk and recorder as specified for the filing of reports in section 23-4778.

(2) A campaign treasurer may appoint deputy campaign treasurers, but not more than one (1) in each county in which the campaign is conducted. Each candidate and political committee shall certify the full name and complete address of the campaign treasurer and all deputy campaign treasurers with the office with whom the candidate or the political committee is required to file reports.

(3) Any campaign or deputy campaign treasurer appointed pursuant to this section shall be a registered voter in this state. An individual may be appointed and serve as a campaign treasurer of a candidate and a political committee or two (2) or more candidates and political committees. A candidate may appoint himself as his own campaign or deputy campaign treasurer. No individual may serve as a campaign or deputy campaign treasurer or perform any duty required of a campaign or deputy campaign treasurer of a candidate or political committee until he has been designated and his name certified by the candidate or political committee.

(4) Deputy campaign treasurers may exercise any of the powers and duties of a campaign treasurer as set forth in this act when specifically authorized in writing to do so by the campaign treasurer and the candidate in the case of a candidate, or the campaign treasurer and the chairman of the political committee in the case of a political committee.

(5) A candidate or political committee may remove his or its campaign or deputy campaign treasurer. The removal of any treasurer or deputy treasurer shall immediately be reported to the officer with whom the name of the campaign treasurer was originally filed. In case of death, resignation, or removal of his or its campaign treasurer before compliance with any obligation of a campaign treasurer under this act, the candidate or political committee shall appoint a successor and certify the name and address of the successor as specified in subsection (1) of this section.

(6) *Except as provided in subsection (7), each* candidate and each political committee shall designate one (1) primary campaign depository for the purpose of depositing all contributions received and disbursing all expenditures made by the candidate or political committee. The candidate or political committee may also designate one (1) secondary depository in each county in which an election is held and in which the candidate or committee participates. Deputy campaign treasurers may make deposits

HeinOnline -- 1977 Vol. I 110 1977

in and make expenditures from secondary depositories when authorized to do so as provided in subsection (4) of this section. Only a bank authorized to transact business in Montana may be designated as a campaign depository. The candidate or political committee shall file the name and address of each primary and secondary depository so designated at the same time and with the same officer with whom the candidate or committee files the name of his or its campaign treasurer pursuant to subsection (1) of this section. Nothing in this subsection shall prevent a political committee or candidate from having more than one campaign account in the same depository.

(7) The provisions of this section do not apply to candidates for the office of trustee of a school district, their political committees, and political committees organized to support or oppose a school district issue when the school district is:

(a) a first-class district located in a county having a population less than 15,000;

(b) a second- or third-class district; or

(c) a county high school district having a student enrollment less than 2,000."

Section 3. **Effective date.** This act is effective upon passage and approval.

Approved March 8, 1977.

CHAPTER NO. 24

AN ACT TO PROVIDE FOR THE CORRECT PERIOD FOR APPEALING BOARD OF LABOR APPEALS DECISION AS PROVIDED FOR IN SECTION 87-108, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-108, R.C.M. 1947, is amended to read as follows:

"**87-108. Procedure and appeals.** (a) Procedure. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the division for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. The division shall have continuing jurisdiction over all claims filed for benefits to revise, modify, alter, cancel and amend all orders, findings and determinations made therein at any time and shall not lose such jurisdiction unless and until the jurisdiction of such claim and subject matter thereof has been taken

HeinOnline -- 1977 Vol. I 111 1977

by a court of competent jurisdiction in a proceedings filed therein as provided for in subsection (d) of this section.

(b) Witness fees. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the division. Such fees shall be deemed a part of the expense of administering this act.

(c) Appeal to courts. Any decision of the board of labor appeals in the absence of an appeal therefrom as herein provided shall become final *30* days after the date of notification or mailing thereof, and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the board of labor appeals as provided by this act. The division or board of labor appeals shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such judicial action by any qualified attorney employed by the division or board of labor appeals and has been designated by it for that purpose, or at the division's or board of labor appeals' request, by the attorney general.

(d) Court review. Within *30* days after the *date of notification or mailing of the* decision of the board of labor appeals, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides against the board of labor appeals for the review of its decision, in which action any other party to the proceeding before the board of labor appeals shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon a member of the board of labor appeals or its designate for service of process and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the board of labor appeals shall forthwith mail one such copy to each such defendant. With its answer, the board of labor appeals shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. The board of labor appeals may also in its discretion, certify to such court questions of law involved in any decision by it. In any judicial proceeding under this section, the findings of the board of labor appeals as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law. Such action, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state. An appeal may be taken from the decision of the said district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this act, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the division or board of labor appeals and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the division shall enter an order in accordance with such determination. A petition for judicial review shall not act as a supersedeas or stay unless the division or board of labor appeals shall so order."

Approved March 8, 1977.

HeinOnline -- 1977 Vol. I 112 1977

CHAPTER NO. 25

AN ACT AMENDING SECTIONS 3-3102 THROUGH 3-3107, R.C.M. 1947, PERTAINING TO MONTANA APICULTURE LAW.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-3102, R.C.M. 1947, is amended to read as follows:

"**3-3102. Apiaries — powers and duties of the department of agriculture.** *(1)* To prevent the spread of contagious and infectious disease among bees and apiaries, the department of agriculture may:

(a) order the transfer of colonies of bees from hives or containers which cannot be properly examined for brood or other diseases to other hives or containers;

(b) order disinfection of any bee, beehive, brood comb, or any other equipment which is infected or contaminated and burn any infected or contaminated bee, beehive, brood comb, or any other equipment if, in its judgment, disinfection will not remove the infection or contamination. Before burning any property, the department shall give the owner or person in charge a written notice at least 5 days before the date on which the property will be burned. The notice shall be given by *certified* mail or personal service upon the owner or person in charge of the property.

(c) quarantine any apiary where foulbrood or any contagious or infectious diseases are present and, during the quarantine, prevent the removal from the apiary of any bees or equipment except under a special permit issued by the department permitting the removal under conditions prescribed by it. A person may not sell or offer for sale any apiary, bees, or equipment which are under quarantine unless a permit authorizing the sale or removal is issued by the department. Written notice of quarantine shall be posted by the department, owner, or person in charge at the quarantined apiary at a conspicuous place, and a copy shall be personally served or sent by *certified* mail to the owner of the apiary or person in charge. The quarantine continues in effect until it is ordered removed and a copy of the removal order served in the same manner.

(d) inspect any apiary, hives, equipment, or premises for the presence of disease;

(e) promulgate and enforce rules adopted pursuant to this chapter.

(2) Any person failing to comply with a rule, order, or provision of a quarantine pursuant to this section is subject to penalties provided for in 3-3110."

Section 2. Section 3-3103, R.C.M. 1947, is amended to read as follows:

"**3-3103. Registration.** (1) A person who owns or possesses an apiary in the state shall, before April 1 each year, register the apiary.

(2) Applications shall be made to the department for registration *application* blanks.

(3) Registration *application* blanks shall be furnished by the department. The *applicant shall provide the following information:*

(a) a statement of the name *and* place of residence;

(b) the number of colonies of bees, hives, and equipment in the apiary;

(c) the location of the apiary, setting forth specifically the location by sectional dvision to the nearest quarter section, and the township and range and, if within the corporate limits of a town or city, the number of the lot and block in the town or city;

(d) the name of the owner, renter, or occupant of the land on which the apiary is located;

(e) the date when the *apiary* was first established; and

(f) other information the department may require under rules adopted by it for the protection, safety, and welfare of the public and beekeeping industry.

(4) Upon receipt of the application and payment of the fees prescribed, the department *may* issue a certificate of registration for an apiary, setting forth the name of the owner, the specific location, and the number of colonies of bees or size of the apiary authorized under the registration.

(5) In issuing certificates of registration for apiaries, if there is a conflict between applicants with respect to location, the department shall give preference to the applicant having the oldest continuous *registered apiary.*

(6) Certificates of registration may not be issued for new apiaries which are within such close proximity to established registered apiaries that there is or may be danger of spread of disease or that the proximity will or may interfere with the proper feeding and honey flow of established apiaries.

(7) Before *registering* new *apiaries,* the department shall give at least 10 days' notice by *certified mail* to all registered apiarists likely to be affected by the proposed new *apiary* so that any party affected may file written protests with the department against *registering* the new *apiary.* If a written protest is filed, the department may require a hearing. Notice of the time and place of the hearing shall be given all parties interested by *certified* mail at least 10 days before the date set for the hearing.

(8) Suitable evidence of registration furnished by the department shall be posted *by the apiary registrant* in a conspicuous place at or near the *apiary.* If an owner has more than one *apiary,* suitable evidence of registration furnished by the department shall be posted at each *apiary.*

(9) A registration not applied for by April 1 of each year is a late registration and incurs an added penalty of 10% of the regular registration fee. Registrants who fail to apply for reregistration by April 1 of each year shall be notified of their delinquency by the department. The notification shall be by *certified* mail and is sufficient if deposited in a United States post office or mail box and addressed to the registrant at his last

HeinOnline -- 1977 Vol. I 114 1977

address appearing in the *apiary* registration files of the department at least 10 days before May 1. *The registration of an apiary for which application for reregistration is not made by May 1 of each year is forfeited and all rights under the registration terminate.*"

Section 3. Section 3-3104, R.C.M. 1947, is amended to read as follows:

"**3-3104. Changing locations — enlarging or selling apiaries.** (1) An owner of an established registered apiary may not change *the location of the apiary* without first receiving from the department *authorization* to establish the new *apiary.* In making the application, he shall specify the location *of the apiary* with the same particularity as in the application *for* original registration. If the new *apiary* is not used within 60 days after a *new certificate of registration* is issued, the *certificate of registration* lapses and all rights under the *registration* terminate. *Registrations* for new *apiaries* may not be issued for greater areas than the applicant can show are reasonably necessary for his needs consistent with good beekeeping practice.

(2) *A registered apiary* may be sold or transferred to a purchaser subject to this chapter, if all bees and equipment on the *apiary* are sold to the purchaser.

(3) A person enlarging an apiary so as to exceed the number of hives authorized under a certificate of registration is subject to the penalties in 3-3110."

Section 4. Section 3-3105, R.C.M. 1947, is amended to read as follows:

"**3-3105. Apiaries — termination of rights — abandonment.** (1) *The registration of an* apiary which is not stocked with bees during at least part of the normal build-up or honey-producing season is forfeited and all rights under the *certificate of registration* terminate.

(2) An apiary not regularly attended in accordance with good beekeeping practice, which comprises a hazard or threat to disease control in the beekeeping industry or which by reason of its physical condition or construction cannot be inspected, may be considered an abandoned apiary and may be seized by the department. Any diseased equipment or equipment which by reason of its physical condition or construction cannot be inspected may be burned, and the remainder may be sold at public auction. Proceeds, after the cost of the sale *is* deducted, shall be returned to the former owner or his estate. Before burning or selling any equipment, the department shall give the owner or person in charge a written notice at least 5 days before the burning or sale. The notice shall be given by *certified* mail or personal service upon the owner or person in charge of the property. If the owner or person in charge cannot be located, a *certified* letter sent to the owner's last address registered with the department is sufficient notice under this section."

Section 5. Section 3-3106, R.C.M. 1947, is amended to read as follows:

"**3-3106. Registration fees.** (1) Each year before a certificate of registration may be issued for an apiary, the owner or applicant for the certificate shall pay the department a registration fee in accordance with the following schedule of fees for the total number of colonies owned or possessed:

HeinOnline -- 1977 Vol. I 115 1977

1 to 10 colonies of bees	$ 2.50
11 to 50 colonies	5.00
51 to 200 colonies	10.00
201 to 300 colonies	15.00
301 to 500 colonies	20.00
501 to 1,000 colonies	30.00
1,001 to 2,000 colonies	35.00
2,001 to 3,000 colonies	45.00
3,001 to 4,000 colonies	55.00
4,001 to 5,000 colonies	65.00
5,001 colonies and upward	75.00

(2) If, after registration, additional or new colonies are *authorized for a registered apiary*, fees shall be paid *by the registrant* in accordance with the schedule in subsection (1) for the total number of colonies for that year."

Section 6. Section 3-3107, R.C.M. 1947, is amended to read as follows:

"**3-3107. Inspection of bees or used beekeeping equipment transported interstate.** (1) A person may not transport or bring into the state any used beekeeping equipment or containers, including honey to be extracted, unless it is certified and duly marked as disease-free by an official responsible for apiary regulations of the state from which it is being moved. The department shall be advised in advance of the date of entry and the destination of the material. Used equipment transported into the state *may* be quarantined by the department, in accordance with 3-3102*(3)*, from the time it enters the state until it has been in use while under quarantine for a minimum of 90 days and at least until the following July 1. The department may also inspect and certify as disease-free bees or beekeeping equipment which *is* to be transported from Montana to a state which requires an inspection in the state of origin.

(2) The costs of making the inspections provided for in subsection (1) shall be paid in advance by the owner of the bees or equipment and shall include a per diem of $10, necessary traveling expenses, and a fee of $5 for the issuance of a certificate of health. If inspection by an official of any other state is considered insufficient for the protection of the Montana bee industry by the department, the department shall so state by public statement. Importation of beekeeping materials, including honey for extracting, from that other state shall be denied unless the materials or honey are first inspected by the department and there is obtained from it a certificate of inspection showing that the materials or honey are apparently free from contagious or infectious disease. The costs of making the inspection shall be paid by the person requesting it, and inspection may be made at any point outside this state convenient to the person making the inspection. The department may require that the costs of making the inspection be paid in advance, and the costs shall include per diem of $10, necessary traveling expenses, and a fee of $5 for the issuance of the certificate of inspection. The beekeeping materials are also subject to quarantine as provided in this section."

Approved March 8, 1977.

HeinOnline -- 1977 Vol. I 116 1977

CHAPTER NO. 26

AN ACT TO AMEND SECTION 89-8-105, R.C.M. 1947, TO PROVIDE FOR AN EXTENSION OF THE SUSPENSION OF ACTION ON CERTAIN APPLICATIONS FOR PERMITS TO APPROPRIATE SURFACE WATER OR FOR CHANGES IN PURPOSE OF USE IN THE YELLOWSTONE RIVER BASIN AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-8-105, R.C.M. 1947, is amended to read as follows:

"**89-8-105. Suspension of action.** (1) The department may not grant or otherwise take any action on an application until *one* of the following first occurs:

(a) *the board of natural resources and conservation makes a final determination on the applications for reservations of water in the basin filed before January 1, 1977, in accordance with 89-890;*

(b) a final determination of existing rights has been made in the source of supply in accordance with the Montana Water Use Act*; or*

(c) January 1, 1978; however, if a court stays or enjoins the continuance of proceedings on any pending application for reservation of water in the basin filed before January 1, 1977, and such stay or injunction prevents the board from making a final determination on such application before January 1, 1978, the court shall extend this date by the length of delay incurred. The court may not extend this date beyond January 15, 1979.

(2) A reservation established before such application for permit is granted is a preferred use over the right to appropriate water pursuant to the permit, and the permit, if granted, shall be issued subject to that preferred use."

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 9, 1977.

CHAPTER NO. 27

AN ACT TO AMEND SECTION 64-306.1, R.C.M. 1947, TO DELETE AN ERRONEOUS REFERENCE TO FEDERAL CIVIL RIGHTS LAWS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 64-306.1, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 117 1977

"**64-306.1. Exemptions — records.** (1) A person who seeks to be exempted from the requirements of 64-306 may petition the commission for a declaratory ruling as provided in 82-4218 of the Montana Administrative Procedure Act. If the commission finds that reasonable grounds for granting an exemption exist, it may issue a ruling exempting the petitioner from the particular provision. This section, however, shall be strictly construed, and the burden shall be on the petitioner to demonstrate that an exemption should be granted.

(2) The state, employers, labor organizations, and employment agencies shall maintain records on age, sex, and race that are required to administer the civil rights *laws* and regulations. These records are confidential and available only to federal and state personnel legally charged with administering civil rights laws and regulations. However, statistical information compiled from records on age, sex, and race shall be made available to the general public."

Approved March 14, 1977.

CHAPTER NO. 28

AN ACT TO PROVIDE A SPACE ON A DRIVER'S LICENSE FOR INDICATING WHEN A DOCUMENT OF GIFT UNDER THE UNIFORM ANATOMICAL GIFT ACT HAS BEEN MADE OR REVOKED; PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 31-135.1 that reads as follows:

31-135.1. Indication on driver's license of intent to make anatomical gift. The department of justice shall provide on each operator's or chauffeur's license a space for indicating when the licensee has executed a document under 69-2318 of intent to make a gift of all or part of his body under the Uniform Anatomical Gift Act. The department shall also furnish the licensee a means of revoking the document of gift upon the license.

Section 2. **Effective date.** This act is effective January 1, 1978 for licenses renewed after that date.

Approved March 14, 1977.

CHAPTER NO. 29

AN ACT TO PROVIDE FOR DISTRIBUTION OF FEES, FINES, PENALTIES, AND OTHER MONEYS COLLECTED UNDER THE HARDROCK MINING ACT AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

HeinOnline -- 1977 Vol. I 118 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 50-1227 that reads as follows:

50-1227. Hard-rock mining account. All fees, fines, penalties, and other uncleared moneys which have been or will be paid to the department of state lands under the provisions of chapter 12, Title 50, R.C.M. 1947, shall be placed in the earmarked revenue fund in the state treasury and credited to a special account to be designated as the hard-rock mining and reclamation account. This account shall be available to the department by appropriation and shall be expended for the research, reclamation and revegetation of land and the rehabilitation of water affected by any mining operations. Any unencumbered and any unexpended balance of this account remaining at the end of a fiscal year shall not lapse but shall be carried forward for the purposes of this act until expended or until appropriated by subsequent legislative action.

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 14, 1977.

CHAPTER NO. 30

AN ACT TO PROVIDE THE DEPARTMENT OF AGRICULTURE AUTHORITY TO ADOPT RULES CONCERNING RURAL REHABILITATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section added to Title 3, chapter 28, R.C.M. 1947, numbered 3-2806 that reads as follows:

3-2806. Rules. The department may adopt rules necessary to carry out the provisions of this chapter.

Approved March 14, 1977.

CHAPTER NO. 31

AN ACT TO PROVIDE FOR A SPECIAL PARKING PERMIT TO BE AVAILABLE TO HANDICAPPED PERSONS SO THERE MAY BE ONE RECOGNIZABLE STATEWIDE STANDARD PERMITTING A HANDICAPPED PERSON TO PARK A VEHICLE IN A SPACE RESERVED FOR USE BY THE HANDICAPPED.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 53-106.12 that reads as follows:

HeinOnline -- 1977 Vol. I 119 1977

53-106.12. Special parking permits for physically handicapped persons — application, fee, issuance. (1) The registrar's bureau, department of justice, shall issue a special parking permit to a person who:

(a) holds a valid Montana driver's license and owns a motor vehicle, other than a commercial vehicle, and has a permanent physical handicap that impairs his mobility when not in a motor vehicle; or

(b) regardless of whether he holds a driver's license or owns a motor vehicle, has a permanent physical handicap that impairs his driving ability and impairs his mobility when not in a motor vehicle to such an extent that he needs to be driven by another person to a destination.

(2) The parking permit issued under this section, when displayed, entitles a person to park a motor vehicle in special parking spaces reserved for handicapped persons.

(3) The registrar's bureau shall provide a card or plate that may be displayed in a motor vehicle to indicate a parking privilege granted under this section. The card or plate shall be prominently displayed in the windshield of a vehicle when the parking privilege is being used.

(4) Applications for a special parking permit may be made to the registrar's bureau on forms provided by the bureau, which must require sufficient information to determine eligibility for a permit. The application must be accompanied by:

(a) a certificate from a licensed physician describing the extent of the applicant's disability; and

(b) a fee of $1.

(5) Applications shall be available at the office of the county treasurer in each county and directly from the registrar's bureau.

(6) No one applicant may receive more than one permit.

(7) A permit expires on December 31 of the year of issue.

Approved March 14, 1977.

CHAPTER NO. 32

AN ACT TO REQUIRE RAILROADS TO INSTALL SPOTLIGHTS ON CABOOSES; AMENDING SECTION 72-622, R.C.M. 1947; AND PROVIDING AN EXTENDED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-622, R.C.M. 1947, is amended to read as follows:

"**72-622. Size and equipment of caboose — failures.** (1) Cabooses shall be at least 24 feet in length, exclusive of platforms, and shall be

provided with a door in each end and with cupolas, or bay windows, platforms, guard rails, grabirons, and steps for the safety of persons in alighting or getting on cabooses. Cabooses shall be of metal frame construction and be sufficiently insulated to eliminate track and other related noise above 85 decibels in any octave in the speech range. Other requirements for cabooses are:

(a) The trucks shall provide riding qualities at least equal to those of freight type trucks modified with elliptical or additional coil springs or other means of equal or greater efficiency and shall have at least two (2) four-wheel trucks with standard steel wheels or their equivalent. Draft gears shall have a minimum travel of 2 ½ inches and a minimum capacity of 18,000 foot pounds, and shall comply with Association of American Railroad Standard M-901 or its equivalent.

(b) Electric lighting of at least 40 foot candles shall be provided for direct illumination of the caboose desk, reading areas and lavatory facilities.

(c) A spotlight shall be provided on the rear of the caboose with sufficient candle power to illuminate the track for a distance of at least 300 feet to the rear of the caboose during the hours of darkness.

(d) The caboose marker, or markers, shall be either reflectorized or capable of illumination when required.

(e) Only glass of the safety glass type shall be used in partitions, doors, windows or wind deflectors.

(f) All seats and seat backs shall conform to the safety standards designed by the U.S. department of transportation in its "Federal Motor Vehicle Safety Standards", Motor Vehicle Safety Standard No. 201. All edges and protrusions on seats and seat backs shall be rounded to prevent injury to employees.

(2) Where a failure occurs in required equipment or standards of maintenance after a caboose has commenced to move in service, the failure shall be reported in accordance with subsection (3) of this section. The railroad operating that caboose is not in violation of this act if the failure of equipment or standards of maintenance is corrected at the first point maintenance supplies are available, or in the case of repairs, the first point materials and repair facilities are available and repairs can reasonably be made. If, in any particular case, temporary exemption from any requirements of this act is considered necessary by a carrier concerned, the public service commission may consider the application of that carrier for temporary exemption and may grant an exemption when the application is accompanied by a full statement of the conditions existing and the reason for the exemption. Any exemption so granted will be limited to the particular case, and will be limited to a stated period of time.

(3) A register for the reporting of failures of the required equipment or standards of maintenance shall be maintained on all cabooses, and provisions for maintaining a record of reported failures for not less than the previous *80-day* period shall be established.

(4) The provisions of this act apply to all cabooses, except those used exclusively in yard service."

HeinOnline -- 1977 Vol. I 121 1977

Section 2. **Effective date.** Compliance with this act shall be completed within 3 years of its passage and approval.

Approved March 14, 1977.

CHAPTER NO. 33

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MARRIAGE, HUSBAND AND WIFE, RECONCILIATION, DISSOLUTION OF MARRIAGE, SUPPORT, PARENT AND CHILD, AND ADOPTION; INCLUDING EXTENDING THE POWER TO SOLEMNIZE MARRIAGES TO MAYORS AND JUSTICES OF THE PEACE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-232, R.C.M. 1947, is amended to read as follows:

"**25-232. Fees of clerk of district court.** *(1)* At the commencement of each action or proceeding, the clerk must collect from the plaintiff the sum of $10, and for filing a complaint in intervention the clerk must collect from the intervenor the sum of $10.

(2) The defendant, on his appearance, must pay the sum of $5.

(3) On the entry of judgment in favor of plaintiff, *the plaintiff* must pay the additional sum of $5.

(4) On the entry of judgment in favor of defendant, the defendant must pay the sum of $10.

(5) Items (1) through (4) include all the clerk's costs for all services rendered in any action or proceeding, except *for* issuing *an* execution or order of sale *or* for *issuing a* transcript on appeal. If the action is dismissed, no fee for the entry of judgment need be paid, unless the party desires the entry of such judgment.

(6) For filing the papers and transcript on appeal from a justice or other inferior court or other tribunal, the party appealing must pay the sum of $10, which includes all costs up to the entry of judgment.

(7) For entry of judgment in favor of party appealing, he must pay the sum of $5.

(8) For entry of judgment in favor of the respondent, he must pay the sum of $10.

(9) Items (6) through (8) include all *of* the clerk's costs for all services rendered on such appeal.

(10) The clerk must collect the following fees:

(a) for certifying transcripts on appeal, *if* the same are not prepared by him, $5, and in addition thereto, *5* cents *a* page for each page in excess of 200 pages;

(b) if he prepares such transcript, in addition thereto, per folio, *15* cents;

(c) for preparing copies of papers in his office, per folio, *15* cents, *and* in addition thereto, *when certified, 50* cents for certificate and seal;

(d) for certificate with seal, *50* cents;

(e) for oath and jurat, with seal, *50* cents;

(f) for administering oath, *25* cents;

(g) for taking depositions, per folio, *20* cents;

(h) for filing and docketing transcript of judgment from all other courts and issuing execution thereon, $2.50;

(i) for issuing execution and all services connected therewith, $1;

(j) for issuing execution or order of sale on foreclosure of liens, $1, *and* in addition per folio, *20* cents;

(k) for searching records of files for each year, except for suitors or their attorneys, *25* cents;

(l) for transmission of records or files or transfer of cases to other courts, $2.50;

(m) for filing and entering papers on transfer from other courts, $5;

(n) for making, acknowledging, and procuring the signature of judge to deed of lot in townsite, $4;

(o) for issuing a marriage license, *$15.*

(11) One-fourth of all fees collected by *the* clerk of the district court must be paid to the secretary of the public employees' retirement system board to be credited to the judges' retirement fund."

Section 2. Section 36-204, R.C.M. 1947, is amended to read as follows:

"**36-204. Procedure.** (1) Whenever any controversy exists between the spouses which may, unless a reconciliation is achieved, result in the dissolution or annulment of the marriage or in the disruption of the household and there is any minor child of the spouses or of either of them whose welfare might be affected thereby, the conciliation court shall have jurisdiction over the controversy and over the parties thereto and all persons having any relation to the controversy as further provided in this chapter.

(2) Prior to the filing of any action for *dissolution,* annulment, or separate maintenance, either spouse or both spouses may file in the conciliation court a petition invoking the jurisdiction of the court for the purpose of preserving the marriage by effecting a reconciliation between the parties or for amicable settlement of the controversy between the spouses so as to avoid further litigation over the issue involved.

(3) The petition shall be captioned substantially as follows:

HeinOnline -- 1977 Vol. I 123 1977

District Court of the State of Montana
For the County of ....

Upon the petition of ..... Petitioner	Petition for Conciliation (Under the Conciliation Court Law)

And concerning
..... and
.....
Respondents.

To the Conciliation Court:

(4) The petition shall:

(a) *allege* that a controversy exists between the spouses and request the aid of the court to effect a reconciliation or an amicable settlement of the controversy;

(b) *state* the name and age of each minor child whose welfare may be affected by the controversy;

(c) *state* the name and address of the petitioner or the names and addresses of the petitioners;

(d) *if* the petition is presented by one spouse only, name the other spouse as a respondent and state the address of that spouse;

(e) *also* name as a respondent any other person who has any relation to the controversy and state the address of the person, if known to the petitioner;

(f) *state* such other information as the court may by rule require.

(5) The clerk of the court shall provide, at the expense of the county, blank forms for petitions for filing pursuant to this chapter. The probation officers of the county and the attaches and employees of the conciliation court shall assist any person in the preparation and presentation of any such petition when any person requests such assistance. All public officers in each county shall refer to the conciliation court all petitions and complaints made to them in respect to controversies within the jurisdiction of the conciliation court.

(6) No fee *may* be charged by any officer for filing the petition nor *may* any fee be charged by any officer for the performance of any duty pursuant to this chapter.

(7) The court shall fix a reasonable time and place for hearing on the petition and shall cause such notice of the filing of the petition and the time and place of the hearing as it *considers* necessary to be given to the respondents. The court may, when it *considers* it necessary, issue a citation to any respondent requiring him to appear at the time and place stated in the citation and may require the attendance of witnesses as in other civil cases.

(8) For the purpose of conducting hearings pursuant to this chapter, the conciliation court may be convened at any time and place within the district and the hearing may be had in chambers or otherwise, except that

HeinOnline -- 1977 Vol. I 124 1977

the time and place for hearing *may* not be different from the time and place provided by law for the trial of civil actions if any party, prior to the hearing, objects to any different time or place.

(9) The hearing shall be conducted informally as a conference or series of conferences to effect a reconciliation of the spouses or an amicable adjustment or settlement of the issues of the controversy. To facilitate and promote the purposes of this *chapter,* the court may, with the consent of both of the parties to the proceeding, recommend or invoke the aid of physicians, psychiatrists, other specialists or scientific experts, or the pastor or director of any religious denomination to which the parties may belong. Such aid, however, shall not be at the expense of the court or of the county, unless the county commissioners of the county specifically provide and authorize such aid.

(10) At or after hearing, the court may make such orders in respect to the conduct of the spouses and the subject matter of the controversy as the court *considers* necessary to preserve the marriage or to implement the reconciliation of the spouses, but in no event *may* such orders be effective for more than 30 days from the hearing of the petition, unless the parties mutually consent to a continuation of such time. Any reconciliation agreement between the parties may be reduced to writing, and with the consent of the parties, a court order may be made requiring the parties to comply fully therewith.

(11) During a period beginning upon the filing of the petition for conciliation and continuing until 30 days after the hearing of the petition for conciliation, neither spouse shall file any action for *dissolution,* annulment of marriage, or separate maintenance. If after the expiration of such period, the controversy between the spouses has not been terminated, either spouse may institute proceedings for *dissolution,* annulment of marriage, or separate maintenance. The pendency of a *dissolution,* annulment, or separate maintenance action *may* not operate as a bar to the instituting of proceedings for conciliation under this chapter.

(12) Whenever any action for *dissolution,* annulment of marriage, or separate maintenance is filed in the district court and it appears to the court at any time during the pendency of the action that there is any minor child of the spouses or of either of them whose welfare may be adversely affected by the dissolution or annulment of the marriage *or* the disruption of the household and that there appears to be some reasonable possibility of a reconciliation being effected, the case may be transferred to the conciliation court for proceedings for reconciliation of the spouses or amicable settlement of issues in controversy, in accordance with the provisions of this chapter.

(13) Whenever application is made to the conciliation court for conciliation proceedings in respect to a controversy between spouses or a contested action for *dissolution,* annulment, or separate maintenance but there is no minor child whose welfare may be affected by the results of the controversy and it appears to the court that reconciliation of the spouses or amicable adjustment of the controversy can probably be achieved and that the work of the court in cases involving children will not be seriously impeded by acceptance of the case, the court may accept

HeinOnline -- 1977 Vol. I 125 1977

and dispose of the case in the same manner as similar cases involving the welfare of children are disposed of. In the event of such application and acceptance, the court shall have the same jurisdiction over the controversy and the parties thereto or having any relation thereto that it has under this chapter in similar cases involving the welfare of children."

Section 3. Section 48-126, R.C.M. 1947, is amended to read as follows:

"**48-126. Certificate and copy prima facie evidence.** The original certificate of marriage and the record thereof by the clerk of the district court or a copy of such record duly certified by the clerk of the district court shall be received by all courts in all places as presumptive evidence of such marriage."

Section 4. Section 48-134, R.C.M. 1947, is amended to read as follows:

"**48-134. Proof of age and medical certificate required.** (1) Before a person who is authorized by law to issue marriage licenses *may* issue a marriage license, each applicant therefor shall exhibit to him a birth certificate or other satisfactory evidence of age and, if such applicant is a minor, *the approval required by 48-308*, and shall file with him a *medical* certificate from a duly qualified physician, licensed to practice medicine and surgery in any state or United States territory, or any other person authorized by laws of Montana to make such a *medical* certificate, which certificate shall state that the applicant has been given such an examination, including a standard serological test, made not more than 20 days before the date of issuance of the license, and that the report of the results of the serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

(2) A person who by law is validly able to obtain a marriage license in this state is also validly able to give consent to any examinations and tests required by this *section*. In submitting the blood specimen to the laboratory, the physician or any other person authorized by the laws of Montana to make such a *medical* certificate shall designate that it is a premarital test."

Section 5. Section 48-135, R.C.M. 1947, is amended to read as follows:

"**48-135. Contents and form of medical certificate.** *(1)* The *medical* certificate shall contain a statement from the person in charge of the laboratory making the test or authorized to make such reports, setting forth:

(a) the name of the test;

(b) the date it was made;

(c) the name and address of the physician or other person authorized under the laws of Montana to make the test;

(d) to whom the test was sent; and

(e) the name and address of the person whose blood was tested.

(2) In the event that an error is discovered in the results of the test, such results will be expunged from the records of the department of health and environmental sciences.

HeinOnline -- 1977 Vol. I 126 1977

(3) The certificate and statement shall be on a form to be provided and distributed by the department of health and environmental sciences to all county clerks of the court in the state and to laboratories in this state approved by the department. This form is hereinafter referred to in this act as "the certificate form"."

Section 6. Section 48-137, R.C.M. 1947, is amended to read as follows:

"**48-137. Definition of test — rules.** For the purpose of this act, a standard serological test shall be a test for rubella immunity *and syphilis, as* approved by the department of health and environmental sciences. An approved laboratory shall be the laboratory of the department or a laboratory approved by that department. Any other state *or* United States public health service or United States armed forces laboratory shall be considered approved for the purposes of this act. Such laboratory test may be made on request at the laboratory of the department of health and environmental sciences. Reasonable rules for reports to be submitted by any laboratory making tests and the manner of furnishing the reports to the certifying physician and the state shall be adopted by the department of health and environmental sciences."

Section 7. Section 48-139, R.C.M. 1947, is amended to read as follows:

"**48-139. Penalties.** *(1) An* applicant for a marriage license, *a* physician or other person authorized by the laws of Montana to make a *medical* certificate *or* any person in charge of or authorized to make reports or statements for a laboratory who *misrepresents* his identity or any of the facts called for by the certificate form prescribed by this act, any licensing officer who *issues* a marriage license without having received the certificate form or who *has* reason to believe that any of the facts on the certificate form have been misrepresented and nevertheless *issues* a marriage license, or any person who otherwise *fails* to comply with the provisions of this act *is* guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100.

(2) Medical certificates, laboratory statements or reports, and applications referred to *in this act are* confidential and *may* not be divulged to or open to inspection by any person other than state or local health officers or their representatives. *A* person who *divulges* such information or *opens* to inspection such certificates, statements, reports, *or applications,* without authority, to any person not by law entitled to the same *is* guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $100."

Section 8. Section 48-146, R.C.M. 1947, is amended to read as follows:

"**48-146. License application.** *(1)* No Montana resident *may* be joined in marriage within this state until a license has been obtained for that purpose from the clerk of the district court of the county in which one of the parties has resided for at least 5 days immediately prior to making application therefor.

(2) A license so issued shall authorize a marriage ceremony to be performed in the county where the license is issued or in any other county of this state.

HeinOnline -- 1977 Vol. I 127 1977

(3) If both parties *are* nonresidents of the state, *the* license may be obtained from the clerk of the district court of the county where the marriage ceremony is to be performed. If one of *the* persons is a nonresident of the county where *the* license is to issue, his part of the application may be completed *and* sworn to (or affirmed) before the person authorized to accept such applications in the county and state in which he resides."

Section 9. Section 48-309, R.C.M. 1947, is amended to read as follows:

"**48-309. Solemnization and registration.** (1) A marriage may be solemnized by a judge of a court of record, by a public official whose powers include solemnization of marriages, *by a mayor or justice of the peace,* or in accordance with any mode of solemnization recognized by any religious denomination, Indian nation or tribe, or native group. Either the person solemnizing the marriage or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the clerk of the district court.

(2) If a party to a marriage is unable to be present at the solemnization, he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage, he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the district court for an order permitting the marriage to be solemnized by proxy.

(3) Upon receipt of the marriage certificate, the clerk of the district court shall register the marriage.

(4) The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it, if either party to the marriage believed him to be so qualified."

Section 10. Section 48-317, R.C.M. 1947, is amended to read as follows:

"**48-317. Procedure — commencement — pleadings — abolition of existing defenses.**

(1) The verified petition in a proceeding for dissolution of marriage or legal separation shall allege that the marriage is irretrievably broken and shall set forth:

(a) the age, occupation, and residence of each party and his length of residence in this state;

(b) the date of the marriage and the place at which it was registered;

(c) that the jurisdictional requirements of 48-316 exist and that the marriage is irretrievably broken in that either:

(i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of this proceeding; or

(ii) there is serious marital discord which adversely affects the attitude of one or both of the parties towards the marriage, and there is no reasonable prospect of reconciliation;

HeinOnline -- 1977 Vol. I 128 1977

(d) the names, ages, and addresses of all living children of the marriage and whether the wife is pregnant;

(e) any arrangements as to support, custody, and visitation of the children and maintenance of a spouse; and

(f) the relief sought.

(2) Either or both parties to the marriage may initiate the proceeding.

(3) If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Montana rules of civil procedure and may within 20 days after the date of service file a verified response. No decree may be entered until 20 days after the date of service.

(4) Previously existing defenses to divorce and legal separation, including but not limited to condonation, connivance, collusion, recrimination, insanity, and lapse of time, are abolished.

(5) The court may join additional parties proper for the exercise of its authority to implement this act."

Section 11. Section 48-331, R.C.M. 1947, is amended to read as follows:

"**48-331. Jurisdiction — commencement of proceedings.** (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state:

(i) is the home state of the child at the time of commencement of the proceedings; or

(ii) had been the child's home state within 6 months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because:

(i) the child and his parents or the child and at least one contestant have a significant connection with this state; and

(ii) there is available in this state substantial evidence concerning the child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and:

(i) has been abandoned; or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

HeinOnline -- 1977 Vol. I 129 1977

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with *subsections (1)*(a), *(1)*(b), or *(1)*(c) *of this section* or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child; and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under *subsections (1)*(c) and *(1)*(d) of *this section*, physical presence in this state of the child or of the child and one of the contestants is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition:

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, and custodian, who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties."

Section 12. Section 48-333, R.C.M. 1947, is amended to read as follows:

"**48-333. Temporary orders.** (1) A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in 48-340. The court may award temporary custody under the standards of 48-332 after a hearing or, if there is no objection, solely on the basis of the affidavits.

(2) If a proceeding for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the court finds, after a hearing, that the circumstances of the parents and the best interest of the child *require* that a custody decree be issued.

(3) If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated."

Section 13. Section 61-105, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 130 1977

"61-105. **Custody, services, and earnings of child.** The father and mother of an unmarried minor child are equally entitled to *the* custody, services, and earnings *of the child.* If either parent be dead or unable or *refuses* to take the custody or has abandoned his or her family, the other is entitled to *the* custody, services, and earnings *of the child.*"

Section 14. Section 61-109, R.C.M. 1947, is amended to read as follows:

"61-109. **Allowance to parent.** The proper court may direct an allowance to be made to the parent of a child out of *the child's* property for *the* past or future support and education *of the child,* on such conditions as may be proper, whenever such direction is for *the child's* benefit."

Section 15. Section 61-113, R.C.M. 1947, is amended to read as follows:

"61-113. **Remedy when parent dies without providing for support of child.** If a parent chargeable with the support of a child dies leaving *the child* chargeable to the county and leaving an estate sufficient for *the child's* support, the county commissioners of the county may claim provision for *the child's* support from the parent's estate by civil action and for this purpose may have the same remedies as any creditors against that estate and against the heirs, devisees, and the next of kin of the parent."

Section 16. Section 61-118, R.C.M. 1947, is amended to read as follows:

"61-118. **Compensation and support of person after attaining majority.** Where a *person,* after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor."

Section 17. Section 61-122, R.C.M. 1947, is amended to read as follows:

"61-122. **When custody may be awarded without dissolution proceedings.** When a husband and wife live in a state of separation without *the marriage being dissolved,* any court of competent jurisdiction, upon application of either, if an inhabitant of this state, may inquire into the custody of any unmarried minor child of the marriage and may award the custody of such child to either for such time and under such regulations as the case may require."

Section 18. Section 61-208, R.C.M. 1947, is amended to read as follows:

"61-208. **Petition for adoption.** (1) A petition for adoption shall be filed in duplicate, verified by the petitioners, and shall specify:

(a) *the* full names, ages, and place of residence of the petitioners and, if married, the place and date of the marriage;

(b) *when* the petitioners acquired or intend to acquire custody of the child and from what person or agency;

HeinOnline -- 1977 Vol. I 131 1977

(c) *the* date and place of birth of child, if known;

(d) *the* name used for the child in the proceeding and, if a change in name is desired, the new name;

(e) *that* it is the desire of the petitioners that the relationship of parent and child be established between them and the child;

(f) *a* full description and statement of value of all property owned or possessed by the child;

(g) *facts*, if any, which excuse consent on the part of a parent to the adoption.

(2) One copy of the petition shall be retained by the court. The other shall be sent to the department of social and rehabilitation services. *An additional copy shall be sent* to any agency participating in the adoption proceeding.

(3) Any written consent required by this act may be attached to the petition or may be filed after the filing of the petition, with the consent of the court."

Section 19. Section 61-211, R.C.M. 1947, is amended to read as follows:

"**61-211. Interlocutory and final decree.** *(1)* Upon examination of the report described in 61-209, if such report has been *considered* necessary by *the* court, and after hearing, the court may issue an interlocutory decree giving the care and custody to the petitioners pending the further order of the court.

(2) When a petition has been filed seeking the adoption of a child, the court must cause service of process to be made on the parent or parents of the child, except in those cases hereinafter provided, in the following manner:

(a) The court shall order a citation to issue to the parent or parents in the name of the state of Montana and under the seal of the court directing such parent or parents to appear in court at a time to be fixed by the court and show cause why *the* petition should not be granted.

(b) Such citation, together with a copy of the petition for adoption, shall be personally served upon such parent or parents. If, however, any such parent or parents cannot be found within this state, service may be had by publication of a copy of *the* citation in the manner provided for the publication of summons by Rule 4, M.R.Civ.P.

(3) If, after completion of such service, any parent so served does not appear, the court may act upon the petition and the order of the court thereon shall be binding upon all persons so served; provided that any such person *may* appeal from the order in the manner and form provided for appeals from a judgment in civil actions.

(4) The petitioners and the child shall appear at *the* hearing, unless the presence of the child is waived by the court.

(5) Service of process, as aforesaid, need not be made on a parent who

HeinOnline -- 1977 Vol. I 132-1977

has consented in writing to an adoption; or on any parent whose consent to adoption is not required under the provisions of 61-205 *or 61-325,* and service of process shall not be made on any parent who has relinquished his child to the department of social and rehabilitation services or an adoption agency licensed by the department.

(6) After an interlocutory decree has been issued by the court, the investigator, if any, shall observe the child in his adoptive home and report in writing to the court within 6 months on any circumstances or conditions which may have a bearing on the adoption. After 6 months from the date of the interlocutory decree, the petitioners may apply to the court for a final decree of adoption. The court shall thereupon set a time and place for final hearing. Notice of the time and date of the hearing shall be served on the department of social and rehabilitation services and the investigator, if any. The investigator, if any, shall file with the court a written report of his findings and recommendations and certify that the described investigation, if any, has been made since the granting of the interlocutory decree. After hearing on said application, at which the petitioners and the child shall appear, unless the presence of the child is waived by the court, the court may enter a final decree of adoption if satisfied that the adoption is for the best interests of the child. If the adoption is denied, an appropriate order shall be made as to the future custody of *the* child."

Section 20. Section 61-214, R.C.M. 1947, is amended to read as follows:

"**61-214. Appeal.** An appeal may be taken from any final order, judgment, or decree rendered hereunder *in* the district court by any person aggrieved thereby, in the manner provided for appeals from *the* court in other civil matters."

Section 21. Section 61-309, R.C.M. 1947, is amended to read as follows:

"**61-309. Jurisdiction — venue.** (1) The district court has jurisdiction of an action brought under this act. The action may be joined with an action for *dissolution,* annulment, separate maintenance, support, or adoption.

(2) For purposes of an action brought under this act, personal jurisdiction is established in the courts of this state over any person who has had sexual intercourse in this state which has resulted in the birth of a child who is the subject of such proceedings. In addition to any other method provided by rule or statute, personal jurisdiction may be acquired by service in accordance with Rule 4B of the Montana *rules* of *civil procedure.*

(3) The action may be brought in the county in which the child or the alleged father resides or is found or, if the father is deceased, in which proceedings for probate of his estate have been or could be commenced."

Section 22. Section 61-323, R.C.M. 1947, is amended to read as follows:

"**61-323. Promise to render support.** (1) Any promise in writing to

HeinOnline -- 1977 Vol. I 133 1977

furnish support for a child growing out of a supposed or alleged father and child relationship does not require consideration and is enforceable according to its terms, subject to 61-307(4).

(2) In the best interest of the child or the mother, the court may, and upon the *promisor's* request shall, order the promise to be kept in confidence and designate a person or agency to receive and disburse on behalf of the child all amounts paid in performance of the promise."

Section 23. Section 93-505, R.C.M. 1947, is amended to read as follows:

"**93-505. Sittings of court — when private.** In an action for *dissolution of marriage,* criminal conversation, *or* seduction the court may direct the trial of any issue of fact joined therein to be private and exclude all persons except the officers of the court, the parties, their witnesses, and counsel, provided that in any cause the court may, in the exercise of sound discretion, during the examination of a witness, exclude any or all witnesses in the cause."

Section 24. Section 93-2601-60, R.C.M. 1947, is amended to read as follows:

"**93-2601-60. Hearing and continuance.** If the obligee is not present at the hearing and the obligor denies owing the duty of support alleged in the petition or offers evidence constituting a defense, the court, upon request of either party, *may* continue the hearing to permit evidence relative to the duty to be adduced by either party by deposition or by appearing in person before the court. The court may designate the judge of the initiating court as a person before whom a deposition may be taken."

Section 25. **Repealer.** Sections 36-110, 36-130, 36-131, 48-112, 48-123, 48-144, and 93-2201-6, R.C.M. 1947, are repealed.

Approved March 18, 1977.

CHAPTER NO. 34

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO INCOME, GASOLINE, AND CORPORATION TAXES; AMENDING SECTIONS 84-1501.2, 84-1838, 84-1840, 84-4903.8, 84-4926, 84-6305, AND 84-6307, R.C.M. 1947; REPEALING SECTIONS 84-4903.1, 84-4903.13, AND 84-6303, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1501.2, R.C.M. 1947, is amended to read as follows:

"**84-1501.2. Election by small business corporation.** *(1)* Except as provided in subsection *(6)*, any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if *con-*

HeinOnline -- 1977 Vol. I 134 1977

sented to by all persons who are shareholders in such corporation, *the election is effective:*

(a) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day; or

(b) on the day on which the election is made, if the election is made after such first day.

(2) If a small business corporation makes an election under subsection *(1)*, then:

(a) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such corporation, and

(b) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this act shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such shareholder.

(3) An election under subsection *(1)* may be made by a small business corporation for any taxable year at any time during the first month of such taxable year or at any time during the month preceding such first month. Such election shall be made in such manner as the state department of revenue shall prescribe by regulations.

(4) An election under subsection *(1)* shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year under subsection *(5)*.

(5) (a) An election under subsection *(1)* made by a small business corporation shall terminate if any person who was not a shareholder in such corporation *at the time of the initial election under subsection (1) subsequently* becomes a shareholder in such corporation and does not consent to such election within such time as the department of revenue shall prescribe by regulations. Such termination shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(b) An election under subsection *(1)* made by a small business corporation may be revoked by it for any taxable year after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective:

(i) for the taxable year in which made, if made before the close of the first month of such taxable year;

(ii) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable

HeinOnline -- 1977 Vol. I 135 1977

years of the corporation. Such revocation shall be made in such manner as the department of revenue shall prescribe by regulations.

(c) An election under subsection *(1)* made by a small business corporation shall terminate if *the corporation ceases to meet the definition of a small business corporation* at any time *after election is effective under subsection (1).*

(d) Such termination shall be effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(6) If a small business corporation has made an election under subsection *(1)* and if such election has been terminated or revoked under subsection *(5)*, such corporation (and any successor corporation) shall not be eligible to make an election under subsection *(1)* for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective, unless the department of revenue consents to such election.

(7) This election shall not be effective unless the corporate net income or loss of such electing corporation shall have been included in the stockholders' adjusted gross income as such is defined in 84-4905.

(8) Every electing corporation shall be required to pay the minimum fee of $10 required by 84-1501."

Section 2. Section 84-1838, R.C.M. 1947, is amended to read as follows:

"**84-1838. Administrative powers.** *(1)* The department shall enforce the provisions of this act, and may prescribe, adopt, and enforce reasonable rules relating to the administration and enforcement thereof.

(2) The department or its authorized representative is hereby empowered to examine the books, papers, records, and equipment of any special fuel dealer or special fuel user or any person dealing in, transporting, or storing special fuel, as defined in this act and to investigate the character of the disposition which any person makes of such special fuel in order to ascertain and determine whether all excise taxes due hereunder are being properly reported and paid. If such books, papers, records, and equipment are not maintained in this state at the time of demand, they shall be furnished to the department for review and shall be accompanied by the special fuel dealer or special fuel user or such dealer or user shall bear the reasonable cost of examination by an agent authorized or designated by the department at the place where such books or records are kept, provided the taxpayer shall not be liable for such costs for a period exceeding 1 week or for such longer period as he may consent to in writing, unless the result of said examination is the payment of a tax deficiency.

(3) For the purpose of enforcing the provisions of this act, the fact that a special fuel dealer or a special fuel user has placed or received special fuel into storage or dispensing equipment designed to fuel motor vehicles shall be prima facie evidence that all of such special fuel has been delivered by the special fuel dealer or special fuel user into the fuel supply

HeinOnline -- 1977 Vol. I 136 1977

tanks of motor vehicles and consumed in the propulsion of motor vehicles upon the highways as herein defined unless the contrary shall be established by satisfactory evidence.

(4) The department shall, upon request from officials to whom are entrusted the enforcement of the special fuel tax law of any other state, the District of Columbia, the United States, its territories and possessions, *or* the provinces of the Dominion of Canada, forward to such officials any information which it may have relative to the receipt, storage, delivery, sale, use, or other disposition of special fuel by any special fuel dealer or special fuel user, provided such other state or states furnish like information to this state."

Section 3. Section 84-1840, R.C.M. 1947, is amended to read as follows:

"**84-1840. Disposition of funds.** All taxes, interest, and penalties collected under this *chapter or chapter 63 of this title* shall be turned over promptly to the state treasurer, *who* shall place the same in the earmarked revenue fund to the credit of the department of highways, except those funds hereinbelow allocated to cities, towns and counties, which funds shall be paid by the state treasurer directly to such cities, towns, and counties.

(1) $6,500,000 of the funds collected under this act shall be allocated each fiscal year on a monthly basis to the counties and incorporated cities and towns in Montana for construction, reconstruction, maintenance, and repair of rural roads and city or town streets and alleys, as provided in subsections (a) and (b) hereof:

(a) $2,950,000 shall be divided among the various counties in the following manner:

(i) 40% in the ratio that the rural road mileage in each county, exclusive of the federal-aid interstate system and the federal-aid primary system, bears to the total rural road mileage in the state, exclusive of the federal-aid interstate system and the federal-aid primary system;

(ii) 40% in the ratio that the rural population in each county outside incorporated cities and towns bears to the total rural population in the state outside incorporated cities and towns;

(iii) 20% in the ratio that the land area of each county bears to the total land area of the state;

(b) $3,550,000 shall be divided among the incorporated cities and towns in the following manner:

(i) 50% of the sum in the ratio that the population within the corporate limits of the city or town bears to the total population within corporate limits of all the cities and towns in Montana;

(ii) 50% in the ratio that the city or town street and alley mileage, exclusive of the federal-aid interstate system and the federal-aid primary system, within corporate limits bears to the total street and alley mileage, exclusive of the federal-aid interstate system and federal-aid primary system, within the corporate limits of all cities and towns in Montana.

HeinOnline -- 1977 Vol. I 137 1977

(2) All funds hereby allocated to counties, cities, and towns shall be used exclusively for the construction, reconstruction, maintenance, and repair of rural roads, city or town streets and alleys, or for the share which such city, town, or county might otherwise expend for proportionate matching of federal funds allocated for the construction of roads or streets which are part of the federal-aid primary or secondary highway system or urban extensions thereto.

(3) Upon receipt of the allocation provided herein, the governing bodies of the recipient counties, cities, and towns, shall inform the department of highways of the purposes for which the funds *will* be expended so that the county commissioners, the governing body, and the department of highways may *coordinate* the expenditure of public funds for road improvements.

(4) All funds hereby allocated to counties, cities, and towns shall be disbursed to the lowest responsible bidder according to applicable bidding procedures followed in all cases where the contract for construction, reconstruction, maintenance or repair is in excess of $4,000.

(5) For the purposes of this *section* where distribution of funds is made on a basis related to population, the population shall be determined by the last preceding official federal census.

(6) For the purposes of this *section* where determination of mileage is necessary for distribution of funds it shall be the responsibility of the cities, towns, and counties to furnish to the department of highways and state treasurer a yearly certified statement indicating the total mileage within their respective areas applicable to this act. All mileage submitted shall be subject to review and approval by the department of highways.

(7) None of the funds authorized by this section shall be used for the purchase of capital equipment."

Section 4. Section 84-4903.8, R.C.M. 1947, is amended to read as follows:

"**84-4903.8. Department may require withholding agent to make return and pay tax at any time.** If the department of revenue in any case has reason to believe that the collection of the tax provided for in *84-4903.2* is in jeopardy, it may require the withholding agent to make such return and pay such tax at any time."

Section 5. Section 84-4926, R.C.M. 1947, is amended to read as follows:

"**84-4926. Soldiers' and sailors' relief.** *(1)* The collection from any person in the military service, as defined by the Soldiers' and Sailors' Civil Relief Act of 1940, effective October 17, 1940, as amended October 6, 1942, of any tax prescribed by the state of Montana on the income of such person, whether falling due prior to or during his period of military service, shall be deferred for a period extending not more than 6 months after the termination of his period of military service if such person's ability to pay such tax is materially impaired by reason of such service.

HeinOnline -- 1977 Vol. I 138 1977

(2) No interest on any amount of tax, collection of which is deferred for any period under this act, and no penalty for nonpayment of such amount during such period shall accrue for such period of deferment by reason of such nonpayment. The running of any statute of limitations against the payment of such tax by any lawful means shall be suspended for the period of military service of any individual *for whom* the collection of such tax is deferred under this section and for an additional period of 1 year, beginning with the day following the period of military service."

Section 6. Section 84-6305, R.C.M. 1947, is amended to read as follows:

"**84-6305. Definition of other words and terms.** All other words and terms used in this act, including the words "person", "motor vehicle", "gasoline", and "use", unless otherwise indicated in this act, shall have the same meaning given to said words by *84-1846*."

Section 7. Section 84-6307, R.C.M. 1947, is amended to read as follows:

"**84-6307. Failure or refusal to make and file return or false return — department of revenue to prepare statement.** If any importer fails or refuses to make and file a return at the time prescribed in this act, or *makes*, willfully or otherwise, an erroneous, false, or fraudulent statement, the department of revenue or its duly appointed agent shall make the statement from its or his own knowledge and from such information as it or he can obtain through testimony or otherwise. Any statement so made shall be prima facie good and sufficient for all legal purposes. As a further means of making the statement, the department or its duly appointed agent shall have the power to examine the books, records, and papers of such importer to ascertain the amount of tax due under the provisions of this act. From the statement so made, the department shall determine the amount of tax due, if any, and shall add the penalty provided herein for failure to pay the tax or to file the return within the time prescribed for the payment of such tax or the filing of such return and shall notify the importer of the amount of tax and penalty assessed, together with a demand for immediate payment of the tax and penalty. If such tax and penalty *are* not paid within 30 days, the *state* treasurer shall proceed to collect such tax and penalty in the manner prescribed in *84-1858*."

Section 8. **Repealer.** Sections 84-4903.1, 84-4903.13, and 84-6303, R.C.M. 1947, are repealed.

Approved March 18, 1977.

CHAPTER NO. 35

AN ACT TO CLARIFY SECTIONS 64-305 AND 71-1305.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 64-305, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 139 1977

"64-305. **Definitions.** As used in this act, unless the context requires otherwise, *the following definitions apply*:

(1) "Age" means number of years since birth. It does not mean level of maturity or ability to handle responsibility. These latter criteria may represent legitimate considerations as reasonable grounds for discrimination without reference to age.

(2) "Commission" means the commission for human rights provided for in 82A-1015.

(3) "Educational institution" means a public or private institution and includes an academy; college; elementary or secondary school; extension course; kindergarten; nursery; school system; university; a business, nursing, professional, secretarial, technical, or vocational school; or an agent of an educational institution.

(4) "Employee" means any individual employed by an employer.

(5) "Employer" means an employer of one or more persons but does not include a fraternal, charitable, or religious association or corporation if the association or corporation is not organized *either* for private profit or to provide accommodation or services that are available on a nonmembership basis.

(6) "Employment agency" means a person undertaking to procure employees or opportunities to work.

(7) "Financial institution" means a commercial bank, trust company, mutual savings bank, *cooperative* bank, homestead association, finance company, mutual savings and loan association, or an insurance company.

(8) "Housing accommodation" means a building or portion of a building, whether constructed or to be constructed, which is or will be used as the sleeping quarters of its occupants.

(9) "Labor organization" means an organization *or* an agent of the organization, organized for the purpose, in whole or in part, of collective bargaining, *of* dealing with employers concerning grievances *or* terms *or* conditions of employment, or of other mutual aid protection of employees.

(10) "Mental handicap" means any mental disability resulting in subaverage intellectual functioning or impaired social competence.

(11) "National origin" means ancestry.

(12) "Person" means one or more individuals, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated employees, employers, employment agencies, or labor organizations.

(13) "Physical handicap" means *a* physical disability, infirmity, malformation, or disfigurement which is caused by bodily injury, birth defect, or illness, including epilepsy, and shall include without limitation any degree of paralysis, amputation, lack of physical *coordination*, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog for the blind, *a* wheelchair, or *any* other remedial appliance or device.

HeinOnline -- 1977 Vol. I 140 1977

(14) "Public accommodation" means a place which caters or offers its services, goods, or facilities to the general public, including but not limited to a public inn, restaurant, eating house, hotel, roadhouse, place where food or *alcoholic beverages* or malt liquors are sold for consumption, motel, soda fountain, soft drink parlor, tavern, night club, trailer park, resort, campground, barber shop, beauty parlor, bathroom, *rest house*, theater, swimming pool, skating rink, golf course, cafe, ice cream parlor, transportation company, hospital, and all other public amusement and business establishments, subject only to the conditions and limitations established by law and applicable alike to all persons.

(15) "Staff" or "commission staff" means the staff of the commission *for human rights.*

(16) "Credit" means the right granted by a creditor to a person to defer payment of a debt, to incur debt and defer its payment, or *to* purchase property or services and defer payment therefor, including but not limited to the right to incur and defer debt which is secured by residential real property.

(17) "Creditor" means *a* person who, regularly or as a part of his business, arranges for the extension of credit, for which the payment of a financial charge or interest is required, whether in connection with loans, sale of property or services, or otherwise.

(18) "Credit transaction" means any invitation to apply for credit, application for credit, extension of credit, or credit sale."

Section 2. Section 71-1305.1, R.C.M. 1947, is amended to read as follows:

"**71-1305.1. Access to housing accommodations.** (1) Blind persons and visually handicapped persons *are* entitled to *as* full and equal access as other members of the general public to *any* housing *accommodation* offered for compensation in this state.

(2) "Housing *accommodation*" means any real property or portion thereof which is used or occupied or is intended, arranged, or designed to be used or occupied as the home, residence, or sleeping place of one or more human beings but *does* not include any single family residence the occupants of which furnish for compensation not more than one room therein.

(3) Nothing in this section *requires a* person renting, leasing, or providing *real property* for compensation to modify his property in any way or provide a higher degree of care for a blind person or a visually handicapped person than for a person who is not so disabled."

Approved March 18, 1977.

CHAPTER NO. 36

AN ACT TO PROVIDE A UNIFORM COLLECTION PROCEDURE FOR

THE LICENSE TAXES ON EXPRESS COMPANIES, FREIGHT LINE COMPANIES, SLEEPING CAR COMPANIES, TELEGRAPH COMPANIES, AND TELEPHONE COMPANIES; AMENDING SECTION 84-4821; AND REPEALING SECTIONS 84-1704, 84-1705, 84-1706, 84-1708, 84-2307, 84-2308, 84-2309, 84-2504, 84-2506, 84-2507, 84-2508, 84-2604, 84-2606, 84-2607, 84-2608, 84-4823, 84-4825, AND 84-4826, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-7701 that reads as follows:

84-7701. Estimation of tax upon failure to file return. If any person subject to a license tax under Title 84, chapters 17, 23, 25, 26, or 48, R.C.M. 1947, fails to file a statement required in connection with that tax or fails to pay the tax within the time provided by law, the department shall proceed to investigate and inform itself as best it may regarding the matters required by the statement and to fix the amount of license tax due from the person. The department's estimate of the tax due is subject to a hearing under 84-711 and a subsequent revision if warranted by the evidence, but the person objecting to the estimate bears the burden of proving the estimate incorrect.

Section 2. There is a new R.C.M. section numbered 84-7702 that reads as follows:

84-7702. Penalty for delinquency — notice — waiver. (1) Any license tax imposed under Title 84, chapters 17, 23, 25, 26, or 48, R.C.M. 1947, is delinquent if not paid when due. The department shall assess a penalty equal to 10% of the amount delinquent, and the whole thereof shall bear interest at the rate of 1% per month from the date of delinquency until paid.

(2) The department shall mail to the delinquent taxpayer a letter setting forth the amount of tax, penalty, and interest due, and the letter shall further advise that if payment is not received within 15 days of receipt of the letter, a lien may be filed under 84-7703. The department may waive the10% penalty if the person responsible demonstrates reasonable cause for the failure to remit the tax or report within the time provided.

Section 3. There is a new R.C.M. section numbered 84-7705 that reads as follows:

84-7705. Lien for collection of tax. All tax, penalty, and interest due from any person under Title 84, chapters 17, 23, 25, 26, or 48, R.C.M. 1947, shall be a lien upon any real property of the person owing such tax when the department files a certified copy of the letter sent under 84-7702 in the office of the clerk and recorder of the county where such property is situated. This lien has precedence over any other claim, lien, or demand subsequently filed and recorded and may be enforced in the name of the state of Montana as judgment liens are enforced.

Section 4. Section 84-4821, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 142 1977

"84-4821. **Computation of tax.** Upon the filing of the reports herein provided for, the department shall compute and determine the amount of the tax and, on or before May *1*, notify such railroad company and freight line company if such report or payment of tax be incorrect or insufficient, and such railroad company shall be liable for any additional tax found to be owing the state of Montana."

Section 5. **Repealer.** Sections 84-1704, 84-1705, 84-1706, 84-1708, 84-2307, 84-2308, 84-2309, 84-2504, 84-2506, 84-2507, 84-2508, 84-2604, 84-2606, 84-2607, 84-2608, 84-4823, 84-4825, and 84-4826, R.C.M. 1947, are repealed.

Approved March 18, 1977.

Note: Section 3 was erroneously enrolled as 84-7705. This section will appear in R.C.M. 1947 as 84-7703.

CHAPTER NO. 37

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO VOCATIONAL REHABILITATION, PUBLIC ASSISTANCE, STATE INSTITUTIONS, THE DEVELOPMENTALLY DISABLED, AND THE MENTALLY ILL; AMENDING SECTIONS 38-110, 38-120, 38-506, 38-1202, 38-1205, 38-1206, 38-1208, 38-1222, 38-1302, 41-817, 71-113, 71-207, 71-210, 71-211, 71-212, 71-213, 71-214, 71-216, 71-217, 71-222, 71-226, 71-230, 71-233.1, 71-233.3, 71-302.2, 71-303, 71-305, 71-306, 71-307, 71-308, 71-311, 71-314, 71-501, 71-509, 71-710, 71-901, 71-1401, 71-1516, 71-1903, 71-2304, 71-2404, 71-2405, 80-1405, 80-1410, 80-1413, 80-1603, 80-1912, 80-2412, 80-2701, 80-2702, 80-2717, AND 80-2802, R.C.M. 1947; AND REPEALING SECTIONS 38-210, 71-101, 71-107, 71-118, AND 71-233.5, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 38-110, R.C.M. 1947, is amended to read as follows:

"38-110. **Maintenance of indigent patients on discharge.** Prior to the discharge of a patient from a mental health facility, the professional person in charge of the facility shall notify the welfare department of the county from which the patient was committed. The county welfare department shall at once ascertain whether the discharged patient is in financial need. If the patient is found to be in financial need, the county welfare department shall properly care for and maintain the discharged patient under the laws of this state relating to public *assistance* until the patient is able to care for himself or until another provision has been made for care of the patient."

Section 2. Section 38-120, R.C.M. 1947, is amended to read as follows:

"38-120. **Receipt of nonresident person who is seriously mentally ill pending return to home state.** *A* person who is *seriously mentally ill and* not a resident of this state may be received into the state hospital

for a period not to exceed 30 days pending return to the state of his residence."

Section 3. Section 38-506, R.C.M. 1947, is amended to read as follows:

"**38-506. Support of patient conditionally released.** When a mental health facility conditionally releases a patient committed to its care, it is not liable for his support while conditionally released. Liability devolves upon the legal guardian, parent, or person under whose care the patient is placed when conditionally released or upon any other person legally liable for his support. The public welfare officials of the county where the patient resides or is found are responsible for providing relief and care for a conditionally released patient who is unable to maintain himself or who is unable to secure support from the person under whose care he was placed on convalescent leave, like any other person in need of relief and care, under the public *assistance* laws."

Section 4. Section 38-1202, R.C.M. 1947, is amended to read as follows:

"**38-1202. Definitions.** As used in this act *the following definitions apply*:

(1) "Board" means the mental disabilities board of visitors created by this act.

(2) "Community-based facilities" or "community-based services" *includes* those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, *day-care* facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means *a* district court of the state of Montana.

(4) "Developmentally disabled" means suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals, which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(7) "Professional person" means:

(a) a medical doctor; or

HeinOnline -- 1977 Vol. I 144 1977

(b) a person trained in the field of developmental disabilities and certified by the department of institutions or the department of social and rehabilitation services in accordance with standards of professional licensing boards, federal regulations, and the joint commissions on accreditation of hospitals.

(8) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment, or habilitation.

(9) "Residential facility" or "facility" means any residential hospital or hospital and school which exists for the purpose of evaluating, treating, and habilitating the developmentally disabled on an inpatient basis, including the Boulder River *school* and *hospital* and the Eastmont *training center*. The term does not include a group home, foster home, or a halfway house. A correctional facility or a facility for the treatment of the mentally ill shall not be a "residential facility" within the meaning of this act.

(10) "Respondent" means a person alleged in a petition filed pursuant to this act to be developmentally disabled and in need of developmental *disability* services.

(11) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled. Whenever in any proceeding under this act the court believes that a conflict of interest may exist between a person who is developmentally disabled or alleged to be developmentally disabled and his parents or guardian or that the parents or guardian are unable to protect the interests of such person or whenever there is no parent or guardian, the court shall appoint a responsible person to protect the interests of the person who is developmentally disabled or alleged to be developmentally disabled. Only one person shall at any one time be the responsible person within the meaning of this act. In appointing a responsible person, the court shall consider the preference of the respondent or patient. The court may at any time, for good cause shown, change its designation of who is the responsible person.

(12) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both rendering a person unable to function in a community-based setting."

Section 5. Section 38-1205, R.C.M. 1947, is amended to read as follows:

"**38-1205. Petition for involuntary treatment.** (1) Any person who believes that there is a person who is developmentally disabled and in need of developmental disability services may report the situation to a professional person. If the professional person believes from the facts given to him that the person may be developmentally disabled and in need of developmental disability services, he shall contact the parents or guardian of the person alleged to be developmentally disabled or the person himself. If any of the persons so contacted refuse to cooperate with the professional person and if the professional person believes from all the circumstances of the case that the person may be developmentally disabled and in need of developmental *disability* services, he shall request

HeinOnline -- 1977 Vol. I 145 1977

the county attorney to file a petition alleging that there is a person in the county who is developmentally disabled and in need of developmental *disability* services.

(2) The petition shall contain:

(a) *the name and address of* the professional person and any other person requesting the petition and their interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person whom the county attorney believes might be willing and able to be appointed responsible person; and

(f) a statement of the rights of the respondent and his parents or guardian which shall be in conspicuous print and identified by a suitable heading.

(3) Upon presentation to the court by the county attorney, the court shall immediately consider the petition with or without a hearing to determine if there is probable cause to believe that the respondent is developmentally disabled and in need of evaluation and treatment. If the court finds no such probable cause, it shall dismiss the petition. If the court finds that probable cause does exist, it shall direct a professional person to examine the respondent and to make an inquiry concerning the circumstances of the case. Such examination shall not exceed 4 hours in length. If probable cause is found, the court may appoint a responsible person other than the respondent's parents or guardian to protect the interests of the respondent. The responsible person shall be notified as soon as possible that a petition has been filed. Notice of the petition and the finding of probable cause shall be mailed or delivered to the respondent and to all other persons named in the petition and to any person who would have been named in the petition had his name, address, and relationship to the respondent been known at the time.

(4) When the professional person first contacts the respondent, before he begins any examination, he shall give the respondent a copy of the petition and explain to the respondent the nature of the proceeding and his rights as set forth in the petition. If the respondent is incapable of understanding the explanation and proceeding, the professional person shall give the petition and make the explanation to the parents or guardian of the respondent. Before making any inquiry of the parents or guardian of the respondent, the professional person shall give them a copy of the petition *and* explain the nature of the proceeding and their rights as set forth in the petition."

Section 6. Section 38-1206, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 146 1977

"**38-1206. Action on petition.** (1) If the professional person, based on his examination and inquiry, determines that the respondent is not developmentally disabled or is not in need of developmental disability services, he shall report this finding in writing to the court and the petition shall be dismissed. If the professional person concludes that the respondent is developmentally disabled and in need of developmental disability services, he shall report this conclusion to the court in writing together with his recommendations for evaluation and treatment. The report shall include an explanation of the basis on which the professional person has reached his conclusion and shall include a description of any tests or evaluation devices he has employed. If the professional person's recommendation is for further evaluation and treatment, notice of this recommendation shall be sent to the respondent, his parents or guardian, the next of kin, the responsible person appointed by the court, if any, *and* any attorney representing the respondent or his parents or guardian. If no responsible person has yet been appointed, the court may appoint one at this time.

(2) If the respondent, his parents or guardian, the responsible person, if any, or counsel for any party requests a hearing on the recommendation, the court shall set a time and place for hearing. The hearing shall be before the court without a jury. The rules of civil procedure shall apply.

(3) Prior to any hearing held pursuant to this section, the court shall appoint counsel to represent the respondent if the respondent has not retained independent counsel. The parents (or guardian) shall be informed of their right to counsel, and if they are indigent, the court shall on their request appoint counsel for them. In no case *may* the same attorney represent the respondent and his parents or guardian.

(4) If the hearing is waived or if the court finds, after hearing, that the respondent is developmentally disabled and in need of further evaluation and treatment, the court shall order that the respondent undergo such evaluation and treatment. Evaluation and treatment ordered pursuant to this subsection *may not* be for more than 30 days. It shall take place in the least restrictive environment in which the necessary evaluation and treatment can be accomplished. Evaluation and treatment in a residential facility *may* be ordered only if the necessary evaluation and treatment cannot be accomplished through the use of community-based facilities."

Section 7. Section 38-1208, R.C.M. 1947, is amended to read as follows:

"**38-1208. Recommendation to residential facility.** (1) If as a result of the evaluation and treatment, either agreed to by the parents, guardian, or the person himself pursuant to 38-1204 or ordered by the court, the professional person in charge of the case concludes that the person evaluated is seriously developmentally disabled and recommends that treatment and habilitation be had in a residential facility on an extended basis, the professional person shall file his written recommendation and report with the court and request that the court order the admission. The report shall include the factual basis for the recommendation and shall describe any tests or evaluation devices which have been employed in evaluating the patient. If no responsible person has yet been

HeinOnline -- 1977 Vol. I 147 1977

appointed, the court may appoint one at this time. If there is no parent or guardian, the court shall appoint a responsible person. At the request of the respondent, his parents or guardian, or the responsible person, the court shall appoint counsel for the respondent. If the parents (or guardian) are indigent and if they request it, the court shall appoint counsel for the parents or guardian. Notice of the recommendation shall be mailed or delivered to the respondent, his parents or guardian, the responsible person, next of kin, if known, and the attorney for the respondent, if any, and for the parents or guardian, if any.

(2) The respondent, his parents or guardian, the responsible person, or the attorney for any party may request that a hearing be had on the recommendation. If a hearing is requested, the court shall mail or deliver notice of the date, time, and place of the hearing to each of the parties listed at the beginning of this subsection. The hearing shall be to the court without jury. The rules of civil procedure shall apply.

(3) If the court finds that the respondent is seriously developmentally disabled and that available community-based services are not adequate, it shall order the respondent admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent is developmentally disabled, in need of developmental *disability* services, *and* that available community-based services are adequate, it shall order the respondent to undertake a community-based course of treatment and habilitation. If the court finds that the respondent is not developmentally disabled or is not in need of developmental disability services, it shall dismiss the request.

(4) If none of the parties notified of the recommendation request a hearing, the court may issue an order authorizing the person to be admitted to the residential facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to whether the order should be granted. The court may refuse to authorize admission of a person to a residential facility for an extended period of treatment and habilitation if such admission is not in the best interests of the person.

(5) If any person is admitted to a residential facility for an extended course of habilitation without a hearing and if subsequent to such admission one of the parties who could have requested a hearing learns that an alternative course of treatment is available which is more suitable to the needs of the resident, the party may request the professional person in charge of the resident to release the resident to the alternative if it is a community-based alternative or transfer the resident to the alternative if it is a residential alternative. Any such transfer or release shall comply with the requirements of 38-1209. If the professional person in charge of the resident refuses to authorize the release or transfer, then the party may petition the court for a hearing to determine whether the present residential alternative should be continued. The hearing shall comply with the procedures set forth in subsection (2) of this section."

Section 8. Section 38-1222, R.C.M. 1947, is amended to read as follows:

"**38-1222. Right to habilitation.** (1) Persons admitted to residential

HeinOnline -- 1977 Vol. I 148 1977

facilities shall have a right to habilitation, including medical treatment, education, and care suited to their needs regardless of age, degree of retardation, or handicapping condition. Each resident has a right to a habilitation program which will maximize his human abilities and enhance his ability to cope with his environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize his fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

(a) more to less structured living;

(b) larger to smaller facilities;

(c) larger to smaller living units;

(d) group to individual residence;

(e) segregated from the community to integrated into the community living;

(f) dependent to independent living.

(3) Within 30 days of his admission to a residential facility, each resident shall have an evaluation by appropriate specialists for programming purposes.

(4) Each resident shall have an individualized habilitation plan formulated by the facility. This plan shall be developed by appropriate professional persons and implemented as soon as possible but no later than 14 days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this act, shall commence promptly upon the resident's admission. Each individualized habilitation plan shall contain:

(a) a statement of the nature of the specific limitations and specific needs of the resident;

(b) a description of intermediate and long-range habilitation goals with a projected timetable for their attainment;

(c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the professional persons and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, including criteria for discharge and a projected date for discharge.

HeinOnline -- 1977 Vol. I 149 1977

(5) As part of his habilitation plan, each resident shall have an individualized *postinstitutionalization* plan. This plan shall be developed by a professional person who shall begin preparation of such plan upon the resident's admission to the institution and shall complete such plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, shall be consulted in the development of such plan and shall be informed of the content of such plan.

(6) In the interests of continuity of care, one professional person shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. This professional person shall also be responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. In addition, 6 months after admission and at least annually thereafter, each resident shall receive a comprehensive psychological, social, educational, and medical diagnosis and evaluation and his habilitation plan shall be reviewed by an interdisciplinary team of no less than two professional persons and such resident care workers as are directly involved in his habilitation and care. A habilitation plan shall be reviewed monthly.

(8) Each resident discharged to the community shall have a program of transitional habilitation assistance.

(9) The professional person in charge of the residential facility shall report in writing to the parents or guardian of the resident or the responsible person at least every 6 months on the resident's educational, vocational, and living skills progress and medical condition. Such report shall also state any appropriate habilitation program which has not been afforded to the resident because of inadequate habilitation resources.

(10) The parents or guardian of each resident or the responsible person appointed by the court shall promptly upon *the* resident's admission receive a written copy of all the above standards for adequate habilitation. Each resident, if the resident is able to comprehend, shall promptly upon his admission be orally informed in clear language of the above standards and, where appropriate, be provided with a written copy."

Section 9. Section 38-1302, R.C.M. 1947, is amended to read as follows:

"**38-1302. Definitions.** As used in this act *the following definitions apply*:

(1) "Board" means the mental disabilities board of visitors created by this act.

(2) "Court" means *a* district court of the state of Montana.

(3) "Department" means the department of institutions *provided for in Title 82A, chapter 10.*

HeinOnline -- 1977 Vol. I 150 1977

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this act.

(7) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means a person committed by the court to a *72-hour* evaluation or treatment or for a longer period.

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(10) "Professional person" means:

(a) a medical doctor; or

(b) a person trained in the field of mental health and certified by the department in accordance with standards of professional licensing boards, federal regulations, and the joint commission on accreditation of hospitals.

(11) "Respondent" means a person alleged in a petition filed pursuant to this act to be seriously mentally ill.

(12) "Responsible person" means any person willing and able to assume responsibility for a seriously mentally ill person or person alleged to be seriously mentally ill, including next of kin; the person's conservator or legal guardian, if any; representatives of a charitable or religious organization; or any other person appointed by the court to perform the functions of a responsible person set out in this act. Only one person shall at any one time be the responsible person within the meaning of this act. In appointing a responsible person, the court shall consider the preference of the respondent. The court may at any time for good cause shown change its designation of the responsible person.

(13) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. No person may be involuntarily committed to a mental health facility *or* detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of this act."

Section 10. Section 41-817, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 151 1977

"**41-817. Definitions.** (1) "Severely handicapped person" means any individual:

(a) who has a physical or mental impairment which requires multiple services over an extended period of time and results from amputation, blindness, cancer, cerebral palsy, cystic fibrosis, deafness, heart disease, hemiplegia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, and other spinal cord conditions, renal failure, and any other disability specified by the department in regulations it shall prescribe; or

(b) who, because of lack of social competence, mobility, experience, skills, training, or other successful characteristics is in need of sheltered employment or work activity services in a protective setting.

(2) "Physical or mental disability" means a physical or mental condition which materially limits, contributes to limiting, or if not corrected will probably result in limiting an individual's activities or functioning. The term includes behavioral disorders characterized by deviant social behavior or impaired ability to carry out normal relationships with family and community which may result from vocational, educational, cultural, social, environmental, or other factors.

(3) "Vocational rehabilitation services" means goods or services provided handicapped persons to enable such persons to be fit for gainful occupation or to attain or maintain a maximum degree of self-support or self-care and includes every type of goods and services for which federal funds are available for vocational rehabilitation purposes, including but not limited to the establishment, construction, development, operation, and maintenance of workshops and rehabilitation facilities.

(4) "Self-care" means a reasonable degree of restoration from dependency upon others for personal needs and care and includes but is not limited to ability to live in own home rather than requiring nursing home care and care for self rather than requiring attendant care.

(5) "Department" means the department of social and rehabilitation services.

(6) "Sheltered workshop" means a charitable organization or institution conducted not for profit but for the purpose of carrying out a recognized program of rehabilitation for handicapped workers or providing such individuals with remunerative employment or other occupational rehabilitating activity of an educational or therapeutic nature.

(7) "Work activity center" means a physically separated department of a workshop having an identifiable program, separate supervision and records, *and which is* planned and designed exclusively to provide therapeutic activities for handicapped workers whose physical or mental impairment is so severe as to make their productive capacity inconsequential. Therapeutic activities include custodial activities (such as activites where the focus is on teaching the basic skills *of* living) and any purposeful activity so long as work or production is not the main purpose."

HeinOnline -- 1977 Vol. I 152 1977

Section 11. Section 71-113, R.C.M. 1947, is amended to read as follows:

"71-113. **Bond of contractor — duty of physician to examine and notify contractor.** *A* person with whom *a* contract *for the maintenance or medical attendance of the poor or indigent sick* is made must execute a bond to the state in a sum not less than *$1,000 or* more than *$5,000,* with two or more sureties, conditioned for the faithful performance of his contract. *The* bond *is* to be approved by and filed with the chairman of the board. *The* physician with whom *a* contract for medical attendance is made *shall* each week *examine* any person who is a charge upon the county, and if after *the* examination he is satisfied that *the* person is able to support and maintain himself, he must notify the contractor having the person in charge by leaving with the contractor a notice of the fact that *the* person requires no further medical attendance. *He shall* file a duplicate *notice* with the clerk of the board. After the *physician serves the* notice and *files* the duplicate with the clerk, the person mentioned therein ceases to be a charge upon the county."

Section 12. Section 71-207, R.C.M. 1947, is amended to read as follows:

"71-207. **Attorney general to act as legal adviser to department.** The attorney general of the state shall act as legal adviser to the state department, shall perform such legal services as may be required, and *may* employ such other and additional counsel as may be necessary for this purpose and fix the compensation therefor. *The* total *yearly* sum for the service *may* not exceed $2,400, which compensation shall be paid out of state public *assistance* funds."

Section 13. Section 71-210, R.C.M. 1947, is amended to read as follows:

"71-210. **Powers and duties of state department.** (1) The state department shall:

(a) *administer* or supervise all forms of public assistance, child protection, and child welfare, including the provision of medical care payments in behalf of recipients of public assistance;

(b) *administer* or supervise all child welfare activities, including importation and exportation of children; licensing and supervising of private and local child-caring agencies; the care of dependent, neglected, and delinquent children in foster family homes, especially children placed for adoption or those of illegitimate birth;

(c) *give* consultant service to private institutions providing care for the needy, indigent, handicapped, or dependent adults;

(d) cooperate with other state agencies *and develop* provisions for services to the blind, including the prevention of blindness, the location of blind persons, medical services for eye conditions, and vocational guidance and training of the blind;

(e) *provide* services in respect to organization and supervise county departments of public welfare and county boards of public welfare in the

HeinOnline -- 1977 Vol. I 153 1977

administation of public *assistance* functions and for efficiency and economy;

(f) *assist* and cooperate with other state and federal departments, bureaus, agencies, and institutions, when so requested, by performing services in conformity with *public assistance purposes; and*

(g) *administer* and supervise all federal funds allocated to this state and all state funds appropriated to *the* state department for *public assistance activities.* The state department shall do all things necessary, in conformity with federal and state law, for the proper fulfillment of *public assistance purposes.*

(2) The state department may:

(a) *purchase,* exchange, condemn, or receive by gift, either real or personal property which is necessary to carry out its *public assistance* functions. Title to property obtained under this subsection shall be taken in the name of the state of Montana for the use and benefit of the state department.

(b) *contract* with the federal government to carry out its *public assistance* functions. The state department may do all things necessary in order to avail itself of federal aid and assistance."

Section 14. Section 71-211, R.C.M. 1947, is amended to read as follows:

"**71-211. State department to act as agency of federal government — assistance to ward Indians.** *(1)* The state department shall act as the agent of the federal government in public *assistance* matters of mutual concern in conformity with this act and the *federal* Social Security Act and in the administration of any federal funds granted to the state to aid in the purposes and functions of the state department.

(2) The counties shall not be required to reimburse the state department for any portion of old-age assistance, medical assistance, aid to needy dependent children, aid to needy blind, or aid to the totally disabled paid to ward Indians or for any payment on behalf of any person in a state-operated medical institution. *The* federal government may reimburse the state of Montana in behalf of counties providing general relief to ward Indians a sum in lieu of taxes which the counties would collect if the lands of such ward Indians were not in trust status. A "ward Indian" is hereby defined as an Indian who is living on an Indian reservation set aside for tribal use or is a member of a tribe or nation accorded certain rights and privileges by treaty or by federal statutes. If and when the *federal* Social Security Act is amended to define a "ward Indian", such definition shall supersede the foregoing definition."

Section 15. Section 71-212, R.C.M. 1947, is amended to read as follows:

"**71-212. Power of state department in administering state grants-in-aid.** In administering or supervising any state or federal funds appropriated or made available to the state department for public *assistance* purposes, the state department shall have the authority to:

HeinOnline -- 1977 Vol. I 154 1977

(1) require as a condition for receiving grants-in-aid that the county shall bear the proportion of the total of local public assistance as is fixed by law relating to such assistance;

(2) make use of all legal processes to enforce the minimum standards prescribed by the state department under laws providing for grants-in-aid, provided that such standards shall not exceed in cost the amount derived from levies established by state law; *and*

(3) require that each part of *the public assistance laws* shall be in effect in all counties of the state."

Section 16. Section 71-213, R.C.M. 1947, is amended to read as follows:

"**71-213. County departments to be established.** There shall be established in each county of the state a county department of public welfare which shall consist of a county board of public welfare and such staff personnel as may be necessary for the efficient performance of the public *assistance* activities of the county. *If* conditions warrant and if two or more county boards enter into an agreement, two or more counties may combine into one administrative unit and use the same staff personnel throughout the administrative unit."

Section 17. Section 71-214, R.C.M. 1947, is amended to read as follows:

"**71-214. County commissioners ex officio county welfare board — compensation.** The board of county commissioners, ex officio, shall be the county welfare board and is hereby authorized to devote such additional time for public *assistance* matters as may be found necessary. The members of the county welfare board shall receive the same compensation for their services and the same mileage when acting as the county board of public welfare as they receive when acting as the board of county commissioners and shall be limited as to meetings as now provided by law, and the compensation and mileage of the members of the board shall be paid from county funds. They may transact business as a board of county commissioners and as a county welfare board on the same day, and in such cases they shall be paid as a board of county commissioners but *may not* receive compensation for more than *1* day's work for all services performed on the same calendar day."

Section 18. Section 71-216, R.C.M. 1947, is amended to read as follows:

"**71-216. Powers and duties of the county board.** The county board of public welfare *is* responsible for establishing local policies and such rules as are necessary to govern the county department and local administration of public *assistance* activities except that all such policies and rules must be in conformity with general policies and rules established by the state department. The county board of public welfare shall review the determinations of eligibility and amount of payment to or on behalf of individuals made by the staff of the county department for conformity with the aforesaid rules. Determinations not in conformity will be referred to the staff by the county welfare board for appropriate action as authorized by *the* board."

HeinOnline -- 1977 Vol. I 155 1977

Section 19. Section 71-217, R.C.M. 1947, is amended to read as follows:

"**71-217. Staff personnel — how selected, paid, and controlled — dismissal.** *(1)* Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the state department *may* supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare *may* not dismiss any member of the staff personnel without the approval of the state department, but the state department *may* request the county board to dismiss any member of the staff personnel for inefficiency, incompetence, or similar cause.

(2) Public assistance staff personnel attached to the county board shall be paid from state public *assistance* funds both their salaries and their travel expenses as provided for in 59-538, 59-539, and 59-801, when away from the county seat in the performance of their duties, but the county board of public welfare shall reimburse the state department from county poor funds one-half of the payments so made to its public assistance staff personnel, except that, under circumstances prescribed by the state department, the reimbursement by the county board of public welfare may be less than one-half. All other administrative costs of the county department shall also be paid from county poor funds.

(3) On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the state department shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within 20 days after the presentation of the claim, and the state department shall credit (add) all such reimbursements to its account for administrative costs."

Section 20. Section 71-222, R.C.M. 1947, is amended to read as follows:

"**71-222. County to levy taxes, budget, and make expenditures for public assistance activities.** (1) The board of county commissioners in each county shall levy *13.5* mills for the county poor fund as provided by law or so much thereof as may be necessary. The board shall budget and expend so much of the funds in the county poor fund for *public assistance* purposes as will enable the county welfare department to pay the general relief activities of the county and to reimburse the state department for the county's proportionate share of the administrative costs of the county welfare department and of all public assistance and its proportionate share of any other *public assistance* activity that may be carried on jointly by the state and the county.

HeinOnline -- 1977 Vol. I 156 1977

(2) The amounts set up in the budget for the reimbursements to the state department shall be sufficient to make all of these reimbursements in full. The budget shall make separate provision for each one of these public assistance activities, and proper accounts shall be established for the funds for all such activities.

(3) As soon as the preliminary budget provided for in 16-1903 has been agreed upon, a copy thereof shall without delay be mailed to the state department, and at any time before the final adoption of the budget, the department shall make such recommendations with regard to changes in any part of the budget relating to the county poor fund as considered necessary in order to enable the county to discharge its obligations under the *public assistance laws.*

(4) The state department shall promptly examine the preliminary budget in order to ascertain if the amounts provided for reimbursements to the state department are likely to be sufficient and shall notify the county clerk of *its* findings. The board shall make such changes in the amounts provided for reimbursements, if any are required, *in order* that the county will be able to make the reimbursements in full.

(5) The board of county commissioners may not make any transfer from the amounts budgeted for reimbursing the state department without having first obtained a statement in writing from the state department to the effect that the amount to be transferred will not be required during the fiscal year for the purposes for which the amounts were provided in the budget.

(6) No part of the county poor fund, irrespective of the source of any part thereof, may be used directly or indirectly for the erection or improvement of any county building so long as the fund is needed for general relief expenditures by the county or is needed for paying the county's proportionate share of public assistance or its proportionate share of any other *public assistance* activity that may be carried on jointly by the state and the county. Expenditures for improvement of any county buildings used directly for care of the poor may be made out of any moneys in the county poor fund, whether such moneys are produced by *the 13.5-mill* levy provided for in *subsection* (1) of this section or from any additional levy authorized or to be authorized by law. Such expenditure shall be authorized only when any county building used for the care of the poor must be improved in order to meet legal standards required for such buildings by the department of health and environmental sciences and when such expenditure has been approved by the state department."

Section 21. Section 71-226, R.C.M. 1947, is amended to read as follows:

"**71-226. Fraudulent obtainment of public assistance a misdemeanor.** Whoever knowingly obtains or attempts to obtain or aids or abets any person to obtain, by means of *a* willfully false statement or representation or by impersonation or other fraudulent device, public assistance to which he is not entitled *or* assistance greater than that to which he is justly entitled, or whoever aids or abets in buying or in any

HeinOnline -- 1977 Vol. I 157 1977

way disposing of the property, either personal or real, of a recipient of assistance without the consent of the county department and with the intent to defeat the purposes of this act *is* guilty of a misdemeanor. In assessing the penalty, the court shall take into consideration, among other factors, the amount of money fraudulently received."

Section 22. Section 71-230, R.C.M. 1947, is amended to read as follows:

"**71-230. Method of issuing assistance grants — reimbursement.** *(1)* Checks in payment of public assistance, with the exception of general relief, shall be issued by the state department upon approved certificates of award and reports of changes of such eligible grantees as are forwarded by the county department to the state department, and all such checks will be mailed to the individual recipient or the appropriate vendor. The checks in payment of public assistance shall be issued in the full approved amount for each eligible approved grantee, and the original monthly payment shall be from the state public *assistance* accounts. All public assistance checks shall represent cash on demand at full par value to the recipient and vendor.

(2) Whenever the state department, acting pursuant to standards established by *the* department, *determines* that any otherwise eligible recipient of *old-age* assistance, aid to the needy blind, *or* aid to the permanently and totally disabled has, by reason of any physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare, the department may, under standards established under the state plan, make the public assistance payment on behalf of such recipient to another person found by the department to be interested in or concerned with the welfare of such needy individual. Before such payments may be paid to such other person, such person shall give a bond, with adequate corporate surety and in form to be approved by the state department, running in favor of the needy individual and the state of Montana, conditioned upon the faithful use by such other person of the funds for the welfare of the needy individual. Such bond shall be in an amount equal to six times the amount of the monthly payment involved.

(3) On or before the *20th* of each month the state department *shall* present a claim for reimbursement to each county department for its proportionate share of public assistance granted in the county to recipients during the month and for vendor medical payments made on behalf of recipients in the previous month. The county department *shall* make *the* reimbursement to the state department within 20 days after *the* claim is presented."

Section 23. Section 71-233.1, R.C.M. 1947, is amended to read as follows:

"**71-233.1. Investigations and enforcement actions by department of revenue.** When requested by the department of social and rehabilitation services, the department of revenue shall:

(1) investigate matters relating to public assistance and vendor payments, including but not limited to the claim for an acceptance of *public*

HeinOnline -- 1977 Vol. I 158 1977

assistance benefits by *public assistance* recipients and the receipt and disbursal of *public assistance* funds by state, county, or other governmental agencies;

(2) institute civil or criminal actions in the appropriate courts to enforce the *public assistance* laws and violations thereof."

Section 24. Section 71-233.3, R.C.M. 1947, is amended to read as follows:

"**71-233.3. Information made available to department of revenue.** (1) The department of social and rehabilitation services and its local units shall make available to the department of revenue information contained in the *public assistance* files pertinent to the investigations and judicial actions described in 71-233.1.

(2) Every other state, county, or other governmental agency shall make available to the agents or attorneys of the department of revenue all records, files, memoranda, forms, or other papers relating to public *assistance* matters, including income tax returns filed with the department of revenue."

Section 25. Section 71-302.2, R.C.M. 1947, is amended to read as follows:

"**71-302.2. Residency requirements.** *(1)* Any person otherwise qualified who makes his home in Montana with the intent to become a resident shall be eligible for general relief. Upon the filing of his application in the county of residence, *a qualified applicant's general relief* assistance shall be paid entirely from state funds until he has resided for 1 continuous year in Montana, at which time he shall become a financial responsibility of the county in which he resides at the expiration of the *1-year* period. A person who leaves Montana with the intent to reside in another state and later returns to reside in Montana *is considered* a new resident for the purposes of this act. If a recipient moves from his original county of residence to reside in another county, he shall continue to be a financial responsibility of the original county of residence for 1 year from the date of his change of residence. If during this *1-year* period the individual resides in several counties, he shall become a financial responsibility of the county in which he resides at the expiration of the *1-year* period. County medical assistance under 71-308 shall not be entitled to be paid from state funds.

(2) If a person is absent from the state voluntarily, he *is* ineligible for general relief in Montana. Aliens found to be illegally within the United States *are* not eligible for relief from state funds.

(3) Recipients of public assistance who become wards or patients in a licensed nursing home or hospital, foster home, or a private charitable institution shall have the county share of financial participation paid entirely from state funds for 1 year from the original date of entrustment or the original date of state residency, whichever is earlier. At the expiration of such period, the appropriate county, as defined by the following guidelines, shall become financially responsible to the extent of its legally required share of participation. The county in which commitment of an

HeinOnline -- 1977 Vol. I 159 1977

adult is initiated *is considered* the county of financial responsibility except where court decree declares the residency to be otherwise. *When* an adult is transferred from a facility or institution to one of the above-enumerated facilities, the county which initiated the original commitment *is considered* the county of financial responsibility except in the case of an adult transfer from an out-of-state institution, in which case the county in which the facility is located *is considered* the county of financial responsibility. In all cases where a minor patient or ward is involved, the county of financial responsibility *is* the county in which the parent or guardian resides. *If* the custody of a minor is entrusted to a state agency, the agency *may* make a reasonable declaration of the county residency of its ward using applicable guidelines enumerated in this section. A person who reaches majority in an institution, upon release and restoration to competency, *may* determine his own county residency. Such person shall continue to be a financial responsibility of the county which initiated the original commitment for 1 year from the date of release, at which time he shall become a financial responsibility of his new county of residence.

(4) Nonresidents or interstate transients may receive temporary relief from county funds in cases of extreme necessity and destitution until they *are* returned at state expense to their state of residence or origin. Medical expenses arising from accidental injury to interstate transients shall be paid from county funds and reimbursed by the state upon submission of a proper claim.

(5) "Interstate transient", as the term is used in this act, is defined as an individual who has signed a declaration that he is unable to pay for his own necessities or transportation to return to his state of residence or origin and is en route to a point outside of this state, being unable, due to unexpected distress, to reach his destination."

Section 26. Section 71-303, R.C.M. 1947, is amended to read as follows:

"**71-303. Eligibility for general relief based on investigation of resources.** An applicant for *general relief* assistance, including medical care and hospitalization, shall be eligible to receive assistance only after investigation by the county department reveals that the income and resources are insufficient to provide the necessities of life. *Assistance* shall be provided to meet a minimum subsistence compatible with decency and health."

Section 27. Section 71-305, R.C.M. 1947, is amended to read as follows:

"**71-305. Right of equal consideration.** Persons eligible for and in need of *general* relief, whether employable or unemployable, *shall be* given equal consideration for public assistance as those persons eligible for assistance under other parts of this act."

Section 28. Section 71-306, R.C.M. 1947, is amended to read as follows:

"**71-306. Grievances concerning general relief assistance.** Individuals or committees with complaints or grievances concerning *general*

HeinOnline -- 1977 Vol. I 160 1977

relief assistance may present their complaints or grievances to either the county board or the state department, and due consideration shall be given all proven facts presented by the individuals or committees. The county board or the state department shall take action to relieve situations brought to their attention under this section to the extent of funds available."

Section 29. Section 71-307, R.C.M. 1947, is amended to read as follows:

"**71-307. Relief by check or disbursing orders.** (1) All *general* relief disbursements by county departments of public welfare shall be by warrant or check. However, if the county welfare department finds that a recipient is in the habit of dissipating *general* relief allowances instead of using them for the purposes intended or that for any other reason it is better for the recipient and his family to receive the allowance through disbursing orders, then disbursing orders shall be used instead of cash payments. *All* such disbursing orders must be written in such form that the goods and merchandise to be provided may be furnished by any regular dealer in such goods and merchandise within the county. A recipient of general relief must register for employment with the *state employment service* and must accept available employment within his or her capability. Refusal to accept such employment will render the recipient ineligible for further general relief assistance. If the county has work available which a recipient of general relief is capable of performing, then the county department of public welfare may require the recipient to perform the work at the prevailing rate of wages paid by that county for similar work, to be paid from the county poor fund in place of granting him general relief.

(2) The county department of public welfare shall provide coverage under the *Workers'* Compensation Act for those recipients of general relief working under the provisions hereof and may enter into such agreements with the division of *workers'* compensation of the department of labor and industry as may be necessary to carry out the provisions of this section.

(3) Any recipient of general relief who is subject to the provisions of this section and who without cause refuses to perform work assigned to him as herein provided shall lose his eligibility for general relief for 1 week for each refusal."

Section 30. Section 71-308, R.C.M. 1947, is amended to read as follows:

"**71-308. County to provide medical aid and hospitalization to indigent.** (1) *Except as provided in other parts of this act, medical* aid and hospitalization for nonresidents within the county and county residents unable to provide such necessities for themselves are the legal and financial duty and responsibility of the board of county commissioners, payable from the county poor fund. The board of county commissioners shall make provisions for competent and skilled medical or surgical services as approved by the department of health and environmental sciences or the state medical association or in the case of osteopathic practitioners by the state osteopathic association or chiropractors by the state chiro-

HeinOnline -- 1977 Vol. I 161 1977

practic association or optometrical services as approved by the Montana optometric association and dental services as approved by the dental association. "Medical" or "medicine" as used in this *section* refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by the board who shall be known as county physicians or deputy county physicians and may fix a rate of compensation for the furnishing of the medical attendance.

(3) The board of county commissioners shall make suitable arrangements to provide respectable burial for nonresidents within the county and county residents for whom such expenses are not otherwise available.

(4) The department of social and rehabilitation services may promulgate rules to determine under what circumstances persons in the county are unable to provide medical aid and hospitalization for themselves, including the power to define the term "medically needy". *Such* definition may not allow payment by a county for general assistance-medical for persons whose income exceeds 300% of the limitation for obtaining regular county general *relief* assistance.

(5) In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment."

Section 31. Section 71-311, R.C.M. 1947, is amended to read as follows:

"**71-311. Grants from state funds to counties.** *(1)* If the whole of *the 13.5-mill* levy authorized by 71-106 and the income to the county poor fund from all other sources *is* inadequate to pay for the general relief in the county actually necessary and to meet the county's proportionate share of public assistance and its proportionate share of any other *public assistance* activity that may be carried on jointly by the state and the county and if warrants upon the county poor fund can no longer lawfully be issued to meet these charges and if the board of county commissioners is unable to declare an emergency for the purpose of providing additional funds or to provide additional funds from any other source and if the county has in all respects expended the county poor fund only for lawful purposes and if all of these conditions exist in any county of the state, then the state department shall, *insofar* as it has funds available, come to the assistance of such county in the following manner.

(2) When the county in question has submitted proof to the state department, through such reports as it may require and through other evidence that may be *considered* necessary, that these conditions exist, then the state department *is authorized* to issue a check to the county treasurer of the county for general relief purposes, and the county department of public welfare shall make the disbursements of these state funds for general relief purposes within the county. These grants-in-aid from the state department may be used for any relief activity lawfully conducted by the county, including medical aid, hospitalization, and institutional care; but no part thereof may be used, directly or indirectly, to

HeinOnline -- 1977 Vol. I 162 1977

pay for the erection or improvement of any county building or for furniture, fixtures, appliances, or equipment for any such building.

(3) Immediately upon receiving notice that such grant-in-aid has been made by the state department, the board of county commissioners *shall* adopt an emergency budget in accordance with the provisions of 16-1907 but *are not* required to publish any notice of intention to adopt such emergency budget or hold a hearing thereon. This emergency budget shall appropriate the whole amount of the general relief grant from the state department for the various classes of expenditures from the poor fund for which the grant-in-aid was made by the state department. The money received through such general relief grant from the state department shall be placed in a special poor fund account kept separate and distinct from the poor fund accounts arising under the original poor fund budget, and all expenditures from this special poor fund account shall be made by a separate series of warrants or checks."

Section 32. Section 71-314, R.C.M. 1947, is amended to read as follows:

"**71-314. Amount of general relief assistance to be determined by county board.** The amount of *general relief* assistance granted any person or family shall be determined by the county board of public welfare according to the rules and standards of assistance established by the state department."

Section 33. Section 71-501, R.C.M. 1947, is amended to read as follows:

"**71-501. "Dependent child" defined.** (1) *(a)* The term "dependent child", for *public assistance* purposes, means:

(i) a child under the age of 18; or

(ii) a person under the age of 21 who is a student under the regulations prescribed by the state department.

(b) The child ((a)(i) or (a)(ii) above) must be deprived of parental support or care by reason of the death, continued absence from the home, continued unemployment, or physical or mental incapacity of a parent and *be living* with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, nephew, niece, or first cousin in a place of residence maintained by one or more of such relatives as his or their own home.

(2) Aid to dependent children may not be denied to or for the care of children who would otherwise be entitled to such aid under the laws of this state by the fact that the child is living in the home of his father who is, in the opinion of the county board of public welfare of the appropriate county, either unemployable or who is honestly and responsibly seeking proper employment and is unable to find such employment *or* by the fact that the child is living in the home of a head of a household who is at the time receiving job training under the laws of this state; nor *may* the benefits which would otherwise accrue to the child for aid to dependent children under the laws of the state be reduced by reason of any such cause.

HeinOnline -- 1977 Vol. I 163 1977

(3) Primary factors in determining whether a father is honestly and responsibly seeking employment include his willingness to register for employment with the department of labor and industry, if that department has a representative in his county of residence, and his willingness to accept employment in which he is able to engage which will increase his ability to maintain himself and his family.

(4) The state department may establish additional criteria for determining whether a father is honestly and responsibly seeking employment."

Section 34. Section 71-509, R.C.M. 1947, is amended to read as follows:

"**71-509. Periodic reconsideration and changes in amount of assistance — appointment of guardian or payment to another person.** *(1)* All assistance grants made under this chapter shall be reconsidered by the county department as frequently as may be required by the rules of the state department. After such further investigation as the county department may *consider* necessary or the state department may require, the amount of assistance may be changed or assistance may be entirely withdrawn if the state or county departments find that the child's circumstances have altered sufficiently to warrant such action. *If* the county department, after investigation, finds that any recipient is not utilizing the grant adequately for the needs of the child or children, is dissipating such grant or refuses or fails to accept employment or training, and payments made to him would not be used in the best interests of the child or children, the county department may request the county attorney to file a petition in the district court for the appointment of such recipient as guardian of the assistance grant in behalf of the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the county department not less than 5 days before the date set for such hearing; such petition may be filed with the clerk of the district court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interests of the child or children and all parties concerned that such guardian be appointed, he shall order such appointment and may require such guardian to render to the court a detailed itemized account of expenditures of such assistance payments at such times as the court *considers* advisable.

(2) It is the intention of this *section* that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant or sooner on order of the court, upon good cause shown. In lieu of guardianship proceedings, payments may be made in behalf of the child or children to another person found by the *county* department to be interested in or concerned with the welfare of such needy child or children in accordance with the rules established by the state department. *Before such payments may be paid to such other person, such person shall give a bond, with adequate corporate surety and in form to be approved by the*

HeinOnline -- 1977 Vol. I 164 1977

state department, running in favor of the needy individual and the state of Montana, conditioned upon the faithful use by such other person of the funds for the welfare of the needy individual. Such bond shall be in an amount equal to six times the amount of the monthly payment involved.

(3) When federal law or regulations *require,* any amount received by an enrolled member of a recognized Indian tribe as per capita payments or a share in the profits and receipts from tribal lands and interests or tribal enterprises *may* not be used to decrease the amount of assistance received under this act."

Section 35. Section 71-710, R.C.M. 1947, is amended to read as follows:

"**71-710. Child rehabilitation.** The state department shall:

(1) enforce all laws pertaining to children and take the initiative in all matters involving the interest of illegitimate, dependent, neglected, and delinquent children where adequate provision therefor has not been made by law;

(2) use funds available for cases where special medical or material assistance is necessary to rehabilitate subnormal or physically handicapped children and where it is not otherwise provided for by law;

(3) cooperate for the purposes hereof with all reputable *child-helping* and *child-placing* agencies*; and*

(4) inspect, license, and supervise public and private infants' homes *and child-caring* and *child-placing* institutions and agencies."

Section 36. Section 71-901, R.C.M. 1947, is amended to read as follows:

"**71-901. State treasurer to receive funds.** The treasurer of the state of Montana is hereby designated as the appropriate fiscal officer of the state to receive federal funds. All money *for public assistance purposes* appropriated by the legislature, received from the United States government, *or* received from any other source shall be paid into the state treasury to the credit of the state department."

Section 37. Section 71-1401, R.C.M. 1947, is amended to read as follows:

"**71-1401. Definitions.** As used in this act *the following definitions apply*:

(1) "Vocational rehabilitation" and "vocational rehabilitation services" mean any services, provided directly or through public or private instrumentalities, found by the state department to be necessary to compensate a blind individual for his employment handicap and to enable him to engage in a remunerative occupation including but not limited to medical and vocational diagnosis, vocational guidance, counseling and placement, rehabilitation training, physical restoration, transportation, occupational and business licenses, tools, equipment, initial stocks and supplies, including livestock, capital advances, maintenance, and training books and materials.

HeinOnline -- 1977 Vol. I 165 1977

(2) "Rehabilitation services" means any services, provided directly or through public or private instrumentalities, found by the state department to be necessary to compensate a blind individual for his employment handicap or to enable him to achieve the maximum degree of self-care and to engage in productive tasks.

(3) "Rehabilitation training" means all necessary training provided to a blind individual to compensate for his employment handicap, including, but not limited to manual, preconditioning prevocational, and supplementary training and training provided for the purpose of achieving broader or more remunerative skills and capacities.

(4) "Physical restoration" means any medical, surgical, or therapeutic treatment necessary to correct or substantially reduce a blind individual's employment handicap within a reasonable length of time, including but not limited to medical, psychiatric, dental, and surgical treatment, nursing services, hospital care, convalescent home care, drugs, medical and surgical supplies, and prosthetic appliances, but excluding curative treatment for acute or transitory conditions.

(5) "Prosthetic appliance" means an artificial device necessary to support or take the place of a part of the body or to increase the acuity of a sense organ.

(6) "Occupational licenses" means a license, permit, or other written authority required by any governmental unit to be obtained in order to engage in an occupation.

(7) "Business licenses" means any license, permit, or other written authority required by any governmental unit to be obtained in order to engage in a business.

(8) "Maintenance" means money payments not exceeding the estimated cost of subsistence during the provision of vocational rehabilitation and rehabilitation services.

(9) "Blind individual" means an individual whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity is greater than 20/200 but is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees or who has other eye conditions which render vision equally defective or who has an eye condition which will cause blindness."

Section 38. Section 71-1516, R.C.M. 1947, is amended to read as follows:

"**71-1516. Eligibility requirements.** Medical assistance shall be granted in behalf of all persons:

(1) who reside in the state of Montana, including residents temporarily absent from the state; and

(2) who meet any of the following requirements:

(a) receive all or part of their income from the *federally-aided* public

assistance programs: old-age assistance, aid to the blind, aid to dependent children, and aid to the permanently and totally disabled;

(b) upon application, would be eligible for financial assistance under any one of the *federally-aided* programs referred to above;

(c) would be entitled to financial assistance under one of the *federally-aided* categories except that they do not meet the durational residence requirements or relative responsibility requirements of any of the public assistance programs above enumerated;

(d) are in medical institutions *and* if they were no longer in such institution would be eligible for financial assistance under one of the above programs;

(e) are under *21 years of age and* meet the conditions of eligibility in the state's plan for aid to dependent children, other than with respect to school attendance;

(f) are under *21 years of age and* in foster care under the supervision of the state;

(g) have income less than 133 ⅓% of the amounts specified as maximum income levels for *federally-aided* categories of assistance;

(h) are under 21 years of age *and medically needy,* as defined by the department of social and rehabilitation services; *or*

(i) are under 21 *years of age,* were in foster care under the supervision of the state, and have been adopted as "hard-to-place" children."

Section 39. Section 71-1903, R.C.M. 1947, is amended to read as follows:

"71-1903. Application for protective services. (1) Protective services may be provided on a voluntary basis for any developmentally disabled person who requests them for himself or at the request of any interested person when the department determines that such person is a developmentally disabled person who would benefit from services provided in this act and that the department is currently able to supply services to such person. A parent may name the department as guardian of the *developmentally* disabled person in his will. A parent may also name the department as guardian or trustee of the *developmentally* disabled person to assume such duties during the *parents'* lifetime. Voluntary services may be discontinued upon the written request of the ward or any personal representative of the ward.

(2) Application for protective services under this act shall be made to the designated field staff of the department or other designated state agency in the county in which the applicant resides, and the application shall be transmitted promptly to the department. Such application shall be in writing or reduced to writing in the manner and upon the form prescribed by the department and shall contain the name, age, and residence of the applicant and such other information as may be required by the rules of the department. The rules of the department shall simplify the application process in order that protective services may be furnished as

HeinOnline -- 1977 Vol. I 167 1977

soon as possible. Adequate safeguards shall be established by the department to insure that only eligible persons receive protective services under this act. The department shall notify the applicant and the designated field staff of the department or other designated state agency in writing of its decision concerning eligibility for protective services."

Section 40. Section 71-2304, R.C.M. 1947, is amended to read as follows:

"**71-2304. Definitions.** As used in this act *the following definitions apply*:

(1) "Department" means the department of social and rehabilitation services.

(2) "Adult foster family care homes" means private homes owned by one or more persons 18 *years of age or older* which offer light personal care or custodial care to aged persons or disabled adults who are not related to the owner by blood or marriage.

(3) "Aged person" means a person defined by the department as aged.

(4) "Disabled adult" means a person 18 *years of age or older* defined by the department as disabled.

(5) "Light personal care" means assisting the aged person or disabled adult in accomplishing such personal hygiene tasks as bathing, dressing, hair grooming, and supervision of prescriptive medicine administration but not administration of prescriptive medications.

(6) "Custodial care" means providing a sheltered *family-type* setting for an aged person or disabled adult so as to provide for *his* basic needs of food *and* shelter and having a specific person available to help *him* meet *his* basic needs.

(7) "Skilled nursing care" means *24-hour* care supervised by a registered nurse or a licensed practical nurse under orders of an attending physician."

Section 41. Section 71-2404, R.C.M. 1947, is amended to read as follows:

"**71-2404. Department to adopt rules.** The department shall control developmental disabilities programs which receive any state assistance by adopting rules for providing developmental disabilities facilities and services. It shall set minimum standards for programs *and* establish appropriate qualifications, compensation scales, and personnel policies for persons employed in such programs. All developmental disabilities facilities and services shall comply with existing federal guidelines and with requirements which will enable the services and facilities to qualify for available aid funds. However, nothing herein *requires* facilities serving the developmentally disabled to meet the same or equal standards as licensed medical facilities, unless the developmental disabilities facility is providing professional or skilled medical care."

Section 42. Section 71-2405, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 168 1977

"**71-2405. Community services.** (1) The department may establish and administer community comprehensive services, programs, clinics, or other facilities throughout the state for the purpose of aiding in the prevention, diagnosis, amelioration, or treatment of developmental disabilities. Programs, clinics, or other services may be provided directly by state agencies; indirectly through contract or *cooperative* arrangements with other agencies of government, regional or local, private or public agencies, *or* private professional persons; or in accredited health or *long-term* care facilities.

(2) Comprehensive services, programs, clinics, or other facilities established or provided by the department under this chapter shall conform as nearly as possible to the plans of the advisory council created under 71-2406 and the regional councils provided for in 71-2407."

Section 43. Section 80-1405, R.C.M. 1947, is amended to read as follows:

"**80-1405. Powers and duties of department.** The department shall:

(1) *adopt* rules for the admission, custody, transfer, and release of residents of institutions except as otherwise provided by law; *however*, no such rules *may* amend or alter the statutory powers and duties of the state board of pardons;

(2) *subject* to the functions of the department of administration, lease or purchase lands for use by institutions and classify those lands to determine which are of such character as to be most profitably used for agricultural purposes, taking into consideration the needs of all institutions for the food products that can be grown or produced on the lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in the institutions;

(3) *utilize* the staff and services of other state agencies and units of the Montana *university system*, within their respective statutory functions, to carry out *its functions under this title;*

(4) *propose* programs to the *legislature* to meet the projected long-range needs of institutions, including programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; *and*

(5) *encourage* the establishment of programs at the local level for the prevention and rehabilitation of physical and mental disability."

Section 44. Section 80-1410, R.C.M. 1947, is amended to read as follows:

"**80-1410. Establishment of juvenile correctional facilities.** The department, within the annual or *biennial* budgetary appropriation, may establish, maintain, and operate facilities to properly diagnose, care for, train, educate, and rehabilitate children in need of these services. The children must be 10 years of age or older and under 21 years of age. The facilities include but are not limited to the Mountain View school, the Pine Hills school, and the youth forest camp."

Section 45. Section 80-1413, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 169 1977

"80-1413. **Participation by institutions in research programs.** The department may direct a penal *and* corrective institution of the state to participate in and *cooperate* with programs of research and development being conducted and carried on by any units of the Montana university system, by any of the other educational institutions of the state of Montana, or by any foundation or agency thereof in the fields of science, health, education, and natural resources. These programs may include the voluntary participation of the inmates of the institution in testing and experimental work conducted as a part thereof. Any funds received from the authorized programs may be shared with the participating inmates or otherwise held and used for the welfare and rehabilitation thereof and *may* not become a part of the regular budgeted operation of the institution."

Section 46. Section 80-1603, R.C.M. 1947, is amended to read as follows:

"80-1603. **Computation of per diem rate, monthly assessment, and disposition of receipts.** (1) The department shall assess monthly against each resident or responsible person the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a proportionate share of the ancillary charge, or no ancillary charge based upon financial information given to the department during its investigation. The per diem shall be computed on July 1 of each year by the department.

(2) An assessment made by the department under this section shall be based on the resident's or responsible person's ability to pay. The department *may* not make an assessment which would place an undue financial burden on the resident or the responsible person.

(3) For the purpose of these investigations, every agency of the state is required to render all reasonable assistance to the department in obtaining all information necessary for the proper implementation of the purposes of this investigation. A representative of the department, authorized by the director, may administer oaths, take testimony, *and* subpoena and compel the attendance of witnesses and the production of books, papers, records, and documents in connection with the duty of securing payments for support as provided by this act. A person who fails to obey the subpoena, upon petition of the department to any judge of the district court of the state, may be ordered by the judge to appear and show cause for his disobedience of the subpoena. The judge, after the hearing, may order that the subpoena be obeyed or, if it is made to appear to the judge that the subpoena was for any reason inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena when ordered to do so by the judge may be punished for contempt of court on application of the district court by the department.

(4) The state has a claim against the estate of a patient and against the estate of a responsible person for an amount due to the state at the date of death of the resident or the responsible person. The claim against the estate of a responsible person does not have priority against the estate for the amount necessary to rear and educate surviving children of the responsible person.

HeinOnline -- 1977 Vol. I 170 1977

(5) The attorney general shall collect any claim which the state may have against such estate. This claim may not be enforced against any real estate while it is occupied as a home by the surviving spouse *of* the resident or responsible person.

(6) If a resident or responsible person disagrees with the determination of the department as to the ability of the resident or responsible person to pay any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the determination with the board. If the resident disagrees with the determination of the appeal by the board, an appeal may be filed in any court of record in Montana having jurisdiction of the resident or responsible person liable for the payment.

(7) The department may at any time review and change a determination for per diem or ancillary charge payments. In any case, however, a resident of an institution may not be released by reason of the nonpayment of the per diem or the ancillary charge if, in the judgment of the superintendent of the institution at which he is a resident, this release is medically inadvisable.

(8) A per diem payment received by the department shall be deposited in the state treasury to the credit of the general fund."

Section 47. Section 80-1912, R.C.M. 1947, is amended to read as follows:

"**80-1912. Expense of trial for offenses committed in prison.** Whenever a trial takes place of any person under any of the provisions of 94-7-306 and whenever a prisoner in the state prison *is* tried for any crime committed therein, the county clerk of the county where such trial is *held* shall make out a statement of all the costs incurred by the county for the trial of such case and of guarding and keeping such prisoner, properly certified by a district judge of said county, which statement shall be sent to the *department of institutions* for *its* approval and after such approval, *the department* must cause the amount of such costs to be paid out of the money appropriated for the support of the state prison to the county treasurer of the county where such trial was *held*."

Section 48. Section 80-2412, R.C.M. 1947, is amended to read as follows:

"**80-2412. Interstate compact on mental health enacted — text.** The *Interstate Compact on Mental Health* as contained herein is hereby enacted into law and entered into by this state with all other jurisdiction legally joining therein in the form substantially as follows:

The contracting states solemnly agree, that:

Article I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by *cooperative* action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the resi-

HeinOnline -- 1977 Vol. I 171 1977

dence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

Article II

As used in this compact:

(1) "*sending* state" *means* a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent;

(2) "*receiving* state" *means* a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent;

(3) "*institution*" *means* any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency;

(4) "*patient*" *means* any person subject to or eligible, as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact;

(5) "*aftercare*" *means* care, treatment, and services provided a patient, as defined herein, on convalescent status or conditional release;

(6) "*mental* illness" *means* mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, the welfare of others, or of the community;

(7) "*mental* deficiency" *means* mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs but shall not include mental illness as defined herein; *and*

(8) "*state*" *means* any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Article III

(1) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or *mental deficiency, he shall be eligible for care and* treatment in an institution in that state irrespective of his residence, settlement, or citizenship qualifications.

(2) The provisions of *subsection (1)* of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire

HeinOnline -- 1977 Vol. I 172 1977

period of care and treatment or for any portion or portions thereof. The factors referred to in this *subsection* shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(3) No state shall be obliged to receive any patient pursuant to the provisions of *subsection (2)* of this article unless the sending state *gives* advance notice of its intention to send the patient, *furnishes* all available medical and other pertinent records concerning the patient, *gives* the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish, and unless the receiving state *agrees* to accept the patient.

(4) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(5) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

Article IV

(1) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive aftercare or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that aftercare in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such aftercare in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(2) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby and if the public safety would not be jeopardized thereby, the patient may receive aftercare or supervision in the receiving state.

(3) In supervising, treating, or caring for a patient on aftercare pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employes for similar local patients.

HeinOnline -- 1977 Vol. I 173 1977

Article V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escapee in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

Article VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact without interference.

Article VII

(1) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(2) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific arrangement for that purpose, arrange for a different allocation of costs as among themselves.

(3) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies, add officers of and in the government of a party state or between a party state and its subdivisions as to the payment of costs or responsibilities therefor.

(4) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency, or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(5) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care, or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

Article VIII

(1) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that, where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court

HeinOnline -- 1977 Vol. I 174 1977

which appointed the previous guardian shall, upon being duly advised of the new appointment and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances. *In* the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(2) The term "guardian" as used in *subsection (1)* of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

Article IX

(1) No provisions of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(2) To every extent possible it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail, or lockup, but such patient shall with all expedition be taken to a suitable institutional facility for mental illness or mental deficiency.

Article X

(1) Each party state shall appoint a compact administrator who, on behalf of his state, shall act as general *coordinator* of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of *a* sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(2) The compact administrators of the respective party states shall have power to promulgate reasonable rules to carry out more effectively the terms and provisions of this compact.

Article XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or *cooperative* basis whenever the states concerned find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

HeinOnline -- 1977 Vol. I 175 1977

Article XII

This compact shall enter into full force and effect as to any state when enacted by it into law, and such state shall thereafter be a party thereto with any and all states legally joining therein.

Article XIII

(1) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect 1 year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(2) Withdrawal from any agreement permitted by Article VII *(2)* as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

Article XIV

(1) This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance *is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance* shall not be affected thereby. If this compact shall be held contrary to the constitution of any party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(2) The director of the department of institutions, hereafter called "the director", shall be the compact administrator and shall have the power to make any rules necessary for the administration of this article. The director shall *cooperate* with all departments, agencies, and officers of the state and any political subdivision thereof to facilitate the proper administration of the *Interstate Compact on Mental Health* or of any supplementary agreement or agreements entered into by this state thereunder.

(3) The director may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact.

(4) The department of institutions in its annual budget shall include such amounts necessary to discharge the financial obligations incurred by it to carry out the purposes of the *Interstate Compact on Mental Health*, and the general assembly shall appropriate such sums necessary therefor.

(5) The compact administrator is hereby directed to consult with the immediate family of any proposed transferee and, in the case of a proposed transferee from an institution in this state to an institution in another party state, to make no transfer out of the state without approval of the

HeinOnline -- 1977 Vol. I 176 1977

district or probate court. Before granting such approval the court shall hold such hearings as it *considers* appropriate. In addition, the court shall designate some appropriate person to deliver written notice of the proposed transferee's right to a hearing to the proposed transferee and his guardian ad litem. The person serving such notices shall make a written return to the court that such has been done. At the conclusion of such hearing, if any, the court may approve the proposed transfer, order the release of the proposed transferee, or enter any other suitable order.

(6) Duly authenticated copies of the article shall, upon its approval, be transmitted by the secretary of state to the governor of each state, the attorney general, and the secretary of state of the United States and the Council of State Governments."

Section 49. Section 80-2701, R.C.M. 1947, is amended to read as follows:

"**80-2701. Legislative purpose.** It is the purpose of this act and the policy of this state to recognize *alcoholism* and drug dependence as problems affecting the health, safety, morals, economy, and general welfare of this state; to recognize *alcoholism* and drug dependence as problems subject to treatment; and to recognize the sufferer of *alcoholism*, drug dependence, or both as worthy of treatment and rehabilitation. It is the intent of this act to establish means whereby the appropriate resources of this state may be focused fully and effectively upon the problems of *alcoholism* and drug dependence and utilized in implementing programs for the control and treatment of these problems."

Section 50. Section 80-2702, R.C.M. 1947, is amended to read as follows:

"**80-2702. Duties of department — department authorized to accept gifts — enter into contracts — acquire and dispose of property.** (1) The department of institutions, hereafter referred to as department in this chapter, shall:

(a) *plan*, promote, and assist in the support of *alcoholism* and drug dependence prevention, treatment, and control programs;

(b) *conduct*, sponsor, and support research, investigations, and studies, including evaluation, of all phases of *alcoholism* and drug dependence;

(c) *assist* the development of educational and training programs relative to *alcoholism* and drug dependence and carry on programs to assist the public and technical and professional groups in becoming fully informed about *alcoholism* and drug dependence;

(d) *promote*, develop, and assist, financially and otherwise, *alcoholism* and drug dependence programs administered by other state agencies, local government agencies, and private nonprofit organizations and agencies; *and*

(e) *encourage* and promote effective use of facilities, resources, and funds in the planning and conduct of programs and activities for prevention, treatment, and control of *alcoholism* and drug dependence and, in this respect, cooperate with and utilize to the maximum possible extent the resources and services of federal, state, and local agencies.

HeinOnline -- 1977 Vol. I 177 1977

(2) To carry out this act, the department may:

(a) *accept* gifts, grants, and donations of money and property from public and private sources;

(b) *enter* into contracts; *and*

(c) *acquire* and dispose of property."

Section 51. Section 80-2717, R.C.M. 1947, is amended to read as follows:

"**80-2717. Emergency commitment of intoxicated persons.** (1) An intoxicated person who has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed or *who* is incapacitated by alcohol may be committed to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(2) The certifying physician, spouse, guardian, or relative of the person to be committed or any other responsible person may make a written application for commitment under this section directed to the administrator of the approved public treatment facility. The application shall state facts to support the need for emergency treatment and be accompanied by a physician's certificate stating that he has examined the person sought to be committed within 2 days before the certificate's date and facts supporting the need for emergency treatment. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(3) Upon approval of the application by the administrator of the approved public treatment facility, the person shall be brought to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse, the patient's guardian, or any other interested person. The person shall be *detained* at the facility to which he was admitted or transferred to another appropriate public or private treatment facility until discharged under subsection (5).

(4) The administrator of an approved public treatment facility shall refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment.

(5) When on the advice of the medical staff the administrator determines that the grounds for commitment no longer exist, he shall discharge a person committed under this section. No person committed under this section may be detained in any treatment facility for more than 5 days. If a petition for involuntary commitment under 69-6221 has been filed within the 5 days and the administrator in charge of an approved public treatment facility finds that grounds for emergency commitment still exist, he may detain the person until the petition has been heard and determined but no longer than 10 days after filing the petition.

(6) A copy of the written application for commitment and of the physician's certificate and a written explanation of the person's right to counsel

HeinOnline -- 1977 Vol. I 178 1977

shall be given to the person within 24 hours after commitment by the department. *The department* shall provide a reasonable opportunity for the person to consult counsel."

Section 52. Section 80-2802, R.C.M. 1947, is amended to read as follows:

"**80-2802. Duties of department.** The department shall:

(1) take cognizance of matters affecting the mental health of the citizens of the state;

(2) initiate preventive mental health activities of the statewide mental health programs, including but not limited to the implementation of mental health care and treatment, prevention, and research as can best be accomplished by *community-centered* services. Such means shall be utilized to initiate and operate these services in cooperation with local agencies as established under this act.

(3) make scientific and medical research investigations relative to the incidence, cause, prevention, treatment, and care of the mentally ill;

(4) collect and disseminate information relating to mental health;

(5) prepare and maintain a comprehensive plan for the development of public mental health services in the state. The public mental health services shall include but not be limited to community comprehensive mental health centers, mental health clinics, traveling service units, *and* consultative and educational services.

(6) provide by regulations for the examination of persons who apply for examination or who are admitted either as inpatients or outpatients into Warm Springs state hospital or other public mental health facilities;

(7) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;

(8) establish standards for public mental health facilities; *and*

(9) evaluate performance of public mental health facilities in compliance with federal and state standards."

Section 53. **Repealer.** Sections 38-210, 71-101, 71-107, 71-118, and 71-233.5, R.C.M. 1947, are repealed.

Approved March 18, 1977.

CHAPTER NO. 38

AN ACT TO STANDARDIZE THE GROUNDS FOR UNLAWFUL DISCRIMINATION TO INCLUDE THE TERMS RELIGION AND CREED AND TO DELETE THE TERM ANCESTRY WHICH IS INCLUDED IN THE TERM NATIONAL ORIGIN BY DEFINITION; AMENDING SECTIONS 11-3283, 11-3917, 16-4806, 37-104.10, 40-3512,

HeinOnline -- 1977 Vol. I 179 1977

64-301, 64-306, 64-307, 64-317, 64-318, 64-319, 64-320, 64-321, 64-323, 64-324, 71-2412, AND 80-2806, R.C.M. 1947; AND REPEALING SECTION 64-211, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-3283, R.C.M. 1947, is amended to read as follows:

"**11-3283. Persons in classified service not affected by political or religious opinions or race.** No person in the classified service or seeking admission thereto *may* be appointed, reduced, removed, or in any way favored or discriminated against, because of political opinions or affiliations or because of race, color, *creed,* or *religion.*"

Section 2. Section 11-3917, R.C.M. 1947, is amended to read as follows:

"**11-3917. Prohibition against discrimination.** For all of the purposes of this act, no person *may be subjected to discrimination* because of race, *religion,* creed, color, or national origin."

Section 3. Section 16-4806, R.C.M. 1947, is amended to read as follows:

"**16-4806. Discrimination in employment prohibited.** No contract of employment *may* be entered into except in compliance with the Equal Opportunity Act of 1966 and executive order of 1966, providing that there be no discrimination in the employment of persons *because of* race, *religion,* creed, color, or national origin."

Section 4. Section 37-104.10, R.C.M. 1947, is amended to read as follows:

"**37-104.10. Type of arguments to be excluded from pamphlet — liability for libel.** (1) The secretary of state shall reject *and shall not file or print in the voters' pamphlet* an argument or other matter:

(a) held by the attorney general to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter or *to contain* any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward or that tends to cast ridicule or shame upon a group of persons by reason of race, color, *creed,* religion, or sex; or

(b) not allowed to be sent through the mail.

(2) Nothing in this *section* relieves an author of an argument from civil or criminal responsibility for statements contained in an argument printed in the voters' pamphlet."

Section 5. Section 40-3512, R.C.M. 1947, is amended to read as follows:

"**40-3512. Unfair discrimination, rebates prohibited — property, casualty, surety insurances.** (1) No property, casualty, or surety insurer or any employee, representative, agent, or solicitor *thereof may, as an inducement to purchase insurance or after insurance has been effected,*

HeinOnline -- 1977 Vol. I 180 1977

pay, allow, or give or offer to pay, allow, or give, directly or indirectly, any rebate, discount, abatement, credit, or reduction of the premium named in the *insurance* policy; any special favor or advantage in the dividends or other benefits to accrue thereon; or any valuable consideration or inducement not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) No insured named in a policy *or* any employee of *the* insured *may* knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium; special favor or advantage; or valuable consideration or inducement.

(3) No such insurer *may* make or permit any unfair discrimination in the premium or rates charged for insurance, in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance *either between insureds or property having like insuring or risk characteristics or between insureds because of race, color, creed, religion, or national origin.*

(4) Nothing in this section *may* be construed as prohibiting the payment of commissions or other compensation to duly licensed agents or solicitors or as prohibiting *an* insurer from allowing or returning lawful dividends, savings, or unabsorbed premium deposits *to its participating policyholders, members, or subscribers.*"

Section 6. Section 64-301, R.C.M. 1947, is amended to read as follows:

"**64-301. Freedom from discrimination in employment and in places of public accommodation and amusement.** The right to be free from discrimination because of race, creed, *religion,* color, sex, physical or mental handicap, age, or national origin is recognized as and declared to be a civil right. This right shall include but not be limited to:

(1) *the* right to obtain and hold employment without discrimination; *and*

(2) *the* right to the full enjoyment of any of the accommodation facilities or privileges of any place of public resort, accommodation, assemblage, or amusement."

Section 7. Section 64-306, R.C.M. 1947, is amended to read as follows:

"**64-306. Specific discriminatory practices.** (1) It is an unlawful discriminatory practice for:

(a) an employer to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his race, *creed,* religion, marital status, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the position do not require an age, physical or mental handicap, or sex distinction;

(b) a labor organization or joint labor management committee controlling apprenticeship to exclude or expel any person from its membership or from an apprenticeship or training program or to discriminate in any way against a member of or an applicant to the labor organization or an

HeinOnline -- 1977 Vol. I 181 1977

employer or employee because of race, marital status, *creed,* religion, color, or national origin or because of his age, physical or mental handicap, or sex when the reasonable demands of the program do not require an age, physical or mental handicap, or sex distinction;

(c) an employer or employment agency to print or circulate or cause to be printed or circulated a statement, advertisement, or publication or to use *an employment* application which expresses, directly or indirectly, a limitation, specification, or discrimination as to sex, marital status, age, physical or mental handicap, race, creed, *religion,* color, or national origin or an intent to make the limitation, unless based upon a bona fide occupational qualification;

(d) an employment agency to fail or refuse to refer for employment, to classify, or otherwise to discriminate against any individual because of sex, marital status, age, physical or mental handicap, race, creed, *religion,* color, or national origin, unless based upon a bona fide occupational qualification.

(2) The exceptions permitted in subsection *(1)* based on bona fide occupational qualifications shall be strictly construed.

(3) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, agent, or employee of a public accommodation:

(a) to refuse, withhold from, or deny to a person any of its services, goods, facilities, advantages, or privileges because of sex, race, age, physical or mental handicap, *creed,* religion, color, or national origin;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any of the services, goods, facilities, advantages, or privileges of the public accommodation will be refused, withheld from, or denied to a person of a certain race, *creed,* religion, sex, age, physical or mental handicap, color, or national origin.

(4) Except when the distinction is based on reasonable grounds, it is an unlawful discriminatory practice for the owner, lessee, manager, or other person having the right to sell, lease, or rent a housing accommodation or improved or unimproved property:

(a) to refuse to sell, lease, or rent the housing accommodation or property to a person because of sex, race, *creed,* religion, color, age, physical or mental handicap, or national origin;

(b) to discriminate against a person because of sex, race, *creed,* religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the use, sale, lease, or rental of a housing accommodation or improved or unimproved property; or

(c) to make a written or oral inquiry or record of the sex, race, *creed,* religion, age, physical or mental handicap, color, or national origin of a person seeking to buy, lease, or rent a housing accommodation or improved or unimproved property. A private residence designed for *single-family* occupancy in which sleeping space is rented to guests *and* in which the landlord also resides *is* excluded from the provisions of this *subsection.*

HeinOnline -- 1977 Vol. I 182 1977

(5) It is an unlawful discriminatory practice for a financial institution, upon receiving an application for financial assistance, to permit an official or employee, during the execution of his duties, to discriminate against the applicant because of sex, marital status, race, *creed,* religion, age, physical or mental handicap, color, or national origin in a term, condition, or privilege relating to the obtainment or use of the institution's financial assistance, unless based on reasonable grounds.

(6) It is an unlawful discriminatory practice for the state or any of its political subdivisions:

(a) to refuse, withhold from, or deny to a person any local, state, or federal funds, services, goods, facilities, advantages, or privileges because of race, *creed,* religion, sex, marital status, color, age, physical or mental handicap, or national origin, unless based on reasonable grounds;

(b) to publish, circulate, issue, display, post, or mail a written or printed communication, notice, or advertisement which states or implies that any local, state, or federal funds, services, goods, facilities, advantages, or privileges of the office or agency will be refused, withheld from, or denied to a person of a certain race, *creed,* religion, sex, marital status, color, age, physical or mental handicap, or national origin or that the patronage of a person *of* a particular race, creed, *religion,* sex, marital status, color, age, or national origin or possessing a physical or mental handicap is unwelcome or not desired or solicited, unless based on reasonable grounds;

(c) to refuse employment to a person, to bar him from employment, or to discriminate against him in compensation or in a term, condition, or privilege of employment because of his political beliefs. However, this prohibition does not apply to policy-making positions on the immediate staff of an elected officer of the executive branch provided for in *Article* VI, section 1, of the Montana constitution, to the appointment by the governor of a director of a principal department provided for in *Article* VI, section 7, of the Montana constitution, or to the immediate staff of the majority and minority leadership of the Montana legislature.

(7) It is an unlawful discriminatory practice for an educational institution:

(a) to exclude, expel, limit, or otherwise discriminate against an individual seeking admission as a student or an individual enrolled as a student in the terms, *conditions, or* privileges of the institution because of race, *creed,* religion, sex, marital status, color, age, physical handicap, or national origin or because of mental handicap, unless based on reasonable grounds;

(b) to make or use a written or oral inquiry or form of application for admission that elicits or attempts to elicit information or to make or keep a record concerning the race, color, sex, marital status, age, *creed,* religion, physical or mental handicap, or national origin of an applicant for admission, except as permitted by regulations of the commission;

(c) to print, publish, or cause to be printed or published a catalog or other notice or advertisement indicating a limitation, specification, or

HeinOnline -- 1977 Vol. I 183 1977

discrimination based on the race, color, *creed,* religion, age, physical or mental handicap, sex, marital status, or national origin of an applicant for admission; or

(d) to announce or follow a policy of denial or limitation of educational opportunities of a group or its members *through a quota or otherwise* because of race, color, sex, marital status, age, *creed,* religion, physical or mental handicap, or national origin.

(8) It is an unlawful discriminatory practice for a creditor to discriminate on the basis of race, color, *religion,* creed, national origin, age, mental or physical handicap, sex, or marital status against any person in any credit transaction which is subject to the jurisdiction of any state or federal court of record.

(9) It is an unlawful discriminatory practice for a person to discharge, expel, blacklist, or otherwise discriminate against an individual because he has opposed any practices forbidden under this act or because he has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this act.

(10) Any grounds urged as a "reasonable" basis for an exemption under any section of this act shall be strictly construed."

Section 8. Section 64-307, R.C.M. 1947, is amended to read as follows:

"**64-307. When discrimination justified.** (1) Sex, marital status, age, physical or mental handicap, race, *creed,* religion, color, or national origin may not comprise justification for discrimination unless the nature of the service requires the discrimination for the legally demonstrable purposes of correcting a previous discriminatory practice.

(2) Age or mental handicap may represent a legitimate discriminatory *criterion* in credit transactions only as it relates to a person's capacity to make or be bound by contracts or other obligations.

(3) Separate lavatory, bathing, or dressing facilities based on the distinction of sex may be maintained for the purpose of modesty or privacy."

Section 9. Section 64-317, R.C.M. 1947, is amended to read as follows:

"**64-317. Employment of state and local government personnel — discrimination prohibited.** (1) State and local government officials and supervisory personnel shall recruit, appoint, assign, train, evaluate, and promote personnel on the basis of merit and qualifications without regard to race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin.

(2) All state and local governmental agencies shall:

(a) promulgate written directives to carry out this policy and to guarantee equal employment opportunities at all levels of state government;

(b) regularly review their personnel practices to assure compliance; and

(c) conduct continuing orientation and training programs with emphasis on human relations and fair employment practices.

HeinOnline -- 1977 Vol. I 184 1977

(3) The department of administration shall insure that the entire examination process, including *appraisal of* qualifications, is free from bias.

(4) Appointing authorities shall exercise care to insure utilization of minority group persons."

Section 10. Section 64-318, R.C.M. 1947, is amended to read as follows:

"**64-318. Nonparticipation in discriminatory practices.** *(1)* All services of every state and local governmental agency shall be performed without discrimination based upon race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin.

(2) No state or local facility *may* be used in the furtherance of any discriminatory practice, nor *may a* state or local agency become a party to *an* agreement, arrangement, or plan which has the effect of sanctioning discriminatory practices.

(3) Each state and local agency shall analyze all of its operations to ascertain possible instances of noncompliance with the policy of this act and shall initiate comprehensive programs to remedy any defect found to exist."

Section 11. Section 64-319, R.C.M. 1947, is amended to read as follows:

"**64-319. Public contracts.** Every state or local contract or subcontract for construction of public buildings or for other public work or for goods and services shall contain a provision that all hiring shall be on the basis of merit and qualifications and a provision that there *may* be no discrimination on the basis of race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin by the persons performing the contract. As used in this act, "qualifications" means such qualifications as are genuinely related to competent performance of the particular occupational task."

Section 12. Section 64-320, R.C.M. 1947, is amended to read as follows:

"**64-320. Employment requests — cooperation with commission — enforcement of policy.** (1) All state and local governmental agencies, including educational institutions, which provide employment referrals or placement services to public or private employers shall accept job orders on a fair practice basis. *A* job request indicating an intention to exclude *a* person because of race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin shall be rejected.

(2) All state and local governmental agencies shall cooperate in programs developed by the commission for human rights for the purpose of broadening the base of job recruitment and shall further cooperate with employers and unions providing such programs.

HeinOnline -- 1977 Vol. I 185 1977

(3) The department of labor shall cooperate with the commission for human rights in encouraging and enforcing *compliance by* employers and labor unions with the policy of this act and *promotion of* equal employment opportunities."

Section 13. Section 64-321, R.C.M. 1947, is amended to read as follows:

"**64-321. Licensing.** No state or local department, board, or agency *may* grant, deny, or revoke the license or charter of *a* person on the grounds of race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin. Each state and local agency shall take such appropriate action in the exercise of its licensing or regulatory power as will assure equal treatment of all persons, eliminate discrimination, and enforce compliance with the policy of this act."

Section 14. Section 64-323, R.C.M. 1947, is amended to read as follows:

"**64-323. State programs.** All education, counseling, and vocational guidance programs and all apprenticeship and on-the-job training programs of state or local agencies or in which state or local agencies participate shall be open to all persons, who shall be accepted on the basis of merit and qualifications without regard to race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin. Such programs shall be conducted to encourage the *full* development of the interests, aptitudes, skills, and capacities of all students and trainees, with special attention to the problems of culturally deprived, educationally handicapped, or economically disadvantaged persons. Expansion of training opportunities under these programs shall be encouraged to involve larger numbers of participants from those segments of the labor force where the need for upgrading levels of skill is greatest."

Section 15. Section 64-324, R.C.M. 1947, is amended to read as follows:

"**64-324. Distribution of funds — withholding state assistance.** Race, color, *religion,* creed, political ideas, sex, age, marital status, physical or mental handicap, *or* national origin *may* not be considered as limiting factors *with regard to applicants' qualifications for benefits authorized by law* in state or locally administered programs involving the distribution of funds; nor *may* state agencies provide grants, loans, or other financial assistance to public agencies, private institutions, or organizations which engage in discriminatory practices."

Section 16. Section 71-2412, R.C.M. 1947, is amended to read as follows:

"**71-2412. Discrimination forbidden.** The services provided under this act shall be made available without discrimination on the basis of race, color, creed, *religion,* or ability to pay and shall comply with the provisions of Title VI of the federal Civil Rights Act of 1964."

Section 17. Section 80-2806, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 186 1977

"**80-2806. Availability of services.** The services of the department and of the incorporated regional mental health centers are available without discrimination on the basis of race, color, creed, *religion,* or ability to pay and shall comply with Title VI of the Civil Rights Act of 1964."

Section 18. **Repealer.** Section 64-211, R.C.M. 1947, is repealed.

Approved March 18, 1977.

CHAPTER NO. 39

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MINERALS, OIL, AND GAS; AMENDING SECTIONS 50-202, 50-204, 50-205, 50-303, 50-304, 50-305, 50-429, 50-476, 50-480.7, 50-714, 50-805, 50-1043, 50-1203, 50-1209, 50-1404, 50-1503, 50-1504, 50-1505, 50-1506, 50-1507, 50-1508, 50-1509, 50-1510, 50-1511, 50-1512, 50-1513, 50-1514, 50-1515, 50-1516, 50-1516.1, 50-1517, 60-227, 60-606, 69-3303, 69-3305, AND 73-115, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-202, R.C.M. 1947, is amended to read as follows:

"**50-202. Samples of fifty pounds per ton to be retained until settlement.** *A* person, association, or corporation which *buys* any ores upon *an* agreement to pay for *them* in amount dependent upon *their* metallic contents or *smelts* any ore shall retain from the pulp or crushed ore, as the same is sampled, *a quantity of not less than 50 pounds out of each ton of ore, which quantity shall be* selected regularly and at equal intervals from any lot of ore so *bought* or to be smelted, and shall keep *this quantity* separate from any other ores or pulp for a period of *30* days or until full settlement is made and accepted by the shipper. *Until full* settlement is made and accepted, the ore shipper, his agents, or representatives *may* take from the quantity so retained any part thereof for the purpose of sampling or assaying *that part; however,* the value of any part so taken by *the* owner or shipper may be deducted from the total value of the ore delivered by him."

Section 2. Section 50-204, R.C.M. 1947, is amended to read as follows:

"**50-204. Umpire assayers — appointment, qualifications, and duties.** *A* person, association, or corporation engaged in the sampling of ores with intent to purchase or smelt *them,* whether for themselves or as the agent or agents for other purchasers, shall choose an assayer who *has* operated an assay office or chemical laboratory within this state *for at least 1 year. The person, association, or corporation* shall *submit to the selected assayer* all samples of ore over which there is a dispute as to metallic contents or value between the buyer or sampler and the seller of *the* ore. *The* chosen assayer shall be known as the umpire for *the* person, association, or corporation."

Section 3. Section 50-205, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 187 1977

"**50-205. Notice of selection.** Upon the selection of *the umpire*, who shall be actively engaged in the assaying business in this state, *the* person, association, or corporation selecting *him* shall, within *10* days after *the selection* is made, post a notice of *the selection* in a conspicuous place *within* and without the room or house where the sampling of ores is carried on by *the* person, association, or corporation."

Section 4. Section 50-303, R.C.M. 1947, is amended to read as follows:

"**50-303. Statement by purchasers of ore from leased mines.** *A person* or *corporation* buying or treating ores from leased mines or mining claims shall furnish the lessor and *the* lessee of *the* mines or mining claims a true and correct copy of the statement of returns of ores from *the* sale or shipment. *The* statement *shall* show both the gross and net proceeds derived from *the* sale or shipment of ores. Upon shipment of *the* ores from leased premises, either for sale or treatment, the shipper shall furnish to any sampling works or smelter buying or treating *them* the names and post-office *addresses* of the lessor *and the* lessee interested in *that* shipment of ores, and within 7 days after receipt of *the* statement from *the* sampling works or smelter, the shipper shall make settlement with *the* lessor *and the* lessee for *the* shipment or sale of ores, based upon *the* statement received by the parties from *the* sampling works or smelter."

Section 5. Section 50-304, R.C.M. 1947, is amended to read as follows:

"**50-304. Copy of statement to lessee.** *Sampling* works and smelters within this state shall mail a duplicate copy of any statement showing the gross and net proceeds of all ores bought *from* or treated *for* lessors of mines to the lessee of the mine or mining claim from which the *ores were* extracted at the same time *the* statement is furnished to the lessor of *the* mine or mining claim or shipper of *the* ore."

Section 6. Section 50-305, R.C.M. 1947, is amended to read as follows:

"**50-305. Shipper — penalty for violation.** *A* person or corporation who, as *the* shipper, *violates* 50-303 *as amended, is* liable to the lessor *and the* lessee for *10%* of the net returns from *the* shipment or sale of ores referred to in *that* section, in addition to the value of the interest of the lessor *and the* lessee in *the* shipment. *This amount may* be recovered in an action in any court of competent jurisdiction."

Section 7. Section 50-429, R.C.M. 1947, is amended to read as follows:

"**50-429. Underground survey.** For the underground working, the map shall show all power distribution and ventilation in *mines* and all shafts, slopes, tunnels, or other openings to the surface or to the workings of a contiguous mine; all excavations, entries, rooms, and crosscuts; the rise or dip of the seam from the bottom of the shaft, mouth of drift, or slope in either direction to the face of the workings; the location of the fan; the location of the permanent pumps, hauling engines, engine-planes, and *fire walls*; the location of any standing water which might prove a menace to life or danger to property from flood; and the line of any contiguous surface outcrop of the seam."

Section 8. Section 50-476, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 188 1977

"**50-476. Safety regulations — mine examiners.** (1) A person may not enter a mine *which is* generating firedamp *in great enough quantities* to be detected by a safety lamp until the mine examiners make a report to the division.

(2) A person, unless accompanied by the mine examiner, may not go beyond a danger signal until all standing gas discovered has been removed or diluted and rendered harmless by a current of air. A person ordered to withdraw by the mine foreman or mine examiner from the mine on account of the interruption of the ventilation may not *reenter* the mine until given permission to do so by the mine foreman.

(3) A person other than the mine examiner may not remove any caution board or danger signal placed at the entrance to any working place or at the entrance to any old workings in a mine.

(4) A person may not erase or change a mark of reference or monument made in connection with a measurement, change marks or dates *on* any caution board, or erase or change the dates at room or entry face, when made by the mine examiner, or take for his use a life check not issued to him under rules adopted by the division or change the checks on cars, wrongfully check a car, or do any act with intent to defraud.

(5) A person may not take anything containing fire, except as provided for in rules adopted by the division, into an underground mine.

(6) A person may not place refuse in or obstruct an airway or breakthrough used as an airway. A worker or other person may not damage or alter a water gauge, barometer, air-course, brattice equipment, machinery, or livestock, obstruct or throw open any airway, handle or disturb any part of the machinery of the hoisting engine of a mine, open a door of a mine and neglect to close it, endanger the miners or those working therein, disobey an order given in pursuance of law, or do a willful act endangering the lives or health of persons working there or the security of a mine or machinery."

Section 9. Section 50-480.7, R.C.M. 1947, is amended to read as follows:

"**50-480.7. Review of order.** An operator notified of an order made under *50-480.3, as amended,* may apply to the division for a hearing or revision of the order. If the division finds that there was no violation, it shall make an order rescinding the order under review. If the division finds that there was a violation but the violation has since been abated, it shall make an order rescinding the order under review. If the division finds that the violation was not totally abated, it shall make an order consistent with its findings."

Section 10. Section 50-714, R.C.M. 1947, is amended to read as follows:

"**50-714. Effect of patent.** The issuance of a United States patent for a mining claim *is considered* conclusive *evidence* that the requirements of the laws of this state relative to the location and record of such mining claim have been duly complied with. *However, if* questions of priority are

HeinOnline -- 1977 Vol. I 189 1977

involved, the date of the location shall be an issuable fact *when* it is claimed to have been prior to the date of the record of the location."

Section 11. Section 50-805, R.C.M. 1947, is amended to read as follows:

"**50-805. Court order and appointment of commissioners.** Upon the return of the summons or upon any day to which the hearing is adjourned, the defendants may answer, and issue must be joined, and the judge must hear the allegations and proofs of the respective parties. *If*, upon such hearing, *the judge* is satisfied that the claims of the plaintiff can be *worked* conveniently *only* by means of the privilege asked for, he must make an order adjudging and awarding to the plaintiff such *right-of-way* and must appoint three commissioners *who are* disinterested persons and residents of the county to assess the damages to the lands or claims affected by such order."

Section 12. Section 50-1043, R.C.M. 1947, is amended to read as follows:

"**50-1043. Submission and action on reclamation plan.** (1) As rapidly, completely, and effectively as the most modern technology and the most advanced state of the art will allow, each operator granted a permit under this act shall reclaim and revegetate the land affected by his operation, except that underground tunnels, shafts, or other subsurface excavations need not be revegetated. Under the provisions of this act and rules adopted by the board, an operator shall prepare and carry out a method of operation, plan of grading, backfilling, highwall reduction, subsidence stabilization, water control, topsoiling, and a reclamation plan for the area of land affected by his operation. In developing a method of operation and plans of backfilling, subsidence stabilization, water control, grading, highwall reduction, topsoiling, and reclamation, all measures shall be taken to eliminate damages to landowners and members of the public, their real and personal property, public roads, streams, and all other public property from soil erosion, subsidence, landslides, water pollution, and hazards dangerous to life and property.

(2) The reclamation plan shall set forth in detail the manner in which the applicant intends to comply with this section and 50-1044, 50-1045, and 50-1046, *as amended.* The plan shall be submitted to the department, and the department shall notify the applicant by *certified or* registered mail within 120 days after receipt of the plan and complete application if it is or is not acceptable. The department may extend the 120 days an additional 120 days upon notification of the operator in writing. If the plan is not acceptable, the department shall set forth the reasons why the plan is not acceptable, and it may propose modifications, delete areas, or reject the entire plan. A *landowner*, operator, or any person aggrieved by the decision of the department may by written notice request a hearing by the board. The board shall notify the person by *certified or* registered mail within 20 days after the hearing of its decision. Every reclamation plan shall be subject to annual review and modification.

(3) In addition to the method of operation, grading, backfilling, subsidence stabilization, water control, highwall reduction, topsoiling, and

HeinOnline -- 1977 Vol. I 190 1977

reclamation requirements of this act and rules adopted under this act, the operator, consistent with the directives of subsection (1) of this section shall:

(a) bury under adequate fill all toxic materials, shale, mineral, or any other material determined by the department to be acid producing, toxic, undesirable, or creating a hazard;

(b) *as directed by rules* seal off tunnels, shafts, or other openings or any breakthrough of water creating a hazard;

(c) impound, drain, or treat all runoff or underground mine waters so as to reduce soil erosion, damage to grazing and agricultural lands, and pollution of surface and subsurface waters;

(d) remove or bury all metal, lumber, and other refuse resulting from the operation;

(e) use explosives in connection with the operation only in accordance with department regulations designed to minimize noise, damage to adjacent lands, and water pollution *and* ensure public safety and for other purposes;

(f) adopt measures to prevent land subsidence unless the board approves a plan for inducing subsidence into an abandoned operation in a predictable and controlled manner with measures for grading, topsoiling, and revegetating the subsided land surface. In order for a controlled subsidence plan to be approved, the applicant must show that subsidence will not cause a direct or indirect hazard to any public or private buildings, roads, facilities, or use areas, constitute a hazard to human life or health, constitute a hazard to domestic livestock or to a viable agricultural operation, or *violate* any other restrictions the board may consider necessary.

(g) stockpile and protect from erosion all mining and processing wastes until *these* wastes can be disposed of according to the provisions of this act;

(h) deposit as much stockpiled waste material as possible back into the mine voids upon abandonment in such manner as to prevent or minimize land subsidence. The remaining waste material shall be disposed of as provided by this act and the rules of the board.

(i) seal all portals, entryways, drifts, shafts, or other openings between the surface and underground mine workings upon abandonment.

(4) An operator may not throw, dump, pile, or permit the dumping, piling, or throwing or otherwise placing any overburden, stones, rocks, mineral, earth, soil, dirt, debris, trees, wood, logs, or any other materials or substances of any kind or nature beyond or outside of the area of land which is under permit and for which a bond has been posted under 50-1039, *as amended,* or place the materials described in this section in such a way that normal erosion or slides brought about by natural physical causes will permit the materials to go beyond or outside of *that* area of land."

HeinOnline -- 1977 Vol. I 191 1977

Section 13. Section 50-1203, R.C.M. 1947, is amended to read as follows:

"**50-1203. Definitions.** As used in this act, unless the context indicates otherwise, *the following definitions apply*:

(1) "Surface mining" *means* and *includes* all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining *does* not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium *or* excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(2) "Unit of *surface-mined* area" *means* and *includes* that area of land and surface water included within an operating permit actually disturbed by surface mining during each *12-month* period of time, beginning at the date of the issuance of the permit, and *it comprises* and *includes* the area from which overburden or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which by virtue of such use are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(3) "Disturbed land" *means* and *includes* that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and *it comprises* that area from which the overburden or minerals have been removed *and* tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from *the* operation and which *have* not been previously reclaimed under the reclamation plan.

(4) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(5) "Underground mining" *means* and *includes* all methods of mining other than surface mining.

(6) "Person" *means* and *includes* any person, corporation, firm, association, partnership, or other legal entity engaged in exploration for or development or mining of minerals on or below the surface of the earth.

(7) "Mineral" *means* and *includes* any ore, rock, or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future *use*, refinement, or smelting.

(8) "Exploration" *means* and *includes* all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any,

HeinOnline -- 1977 Vol. I 192 1977

other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in 50-1220 and 50-1224.

(9) "Development" *means* and *includes* all operations between exploration and mining.

(10) "Mining" *commences* at such time as the operator first *mines* ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or first *takes* bulk samples for metallurgical testing in excess of aggregate of 10,000 short tons.

(11) "Reclamation plan" *means* and *includes* the operator's written proposal, as required and approved by the board, for reclamation of the land that will be disturbed, which proposal shall include, to the extent practical at the time of application for a developing or operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) *plans* for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed and *the* proposed method of accomplishment;

(c) *the manner* and type of revegetation or other surface treatment of disturbed areas;

(d) *procedures* proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) *the method* of disposal of mining debris;

(f) *the method* of diverting surface waters around the disturbed areas where necessary to prevent pollution of *those* waters or unnecessary erosion;

(g) *the method* of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) *such* maps and other supporting documents as may be reasonably required by the department; *and*

(i) *a* time schedule for reclamation that meets the requirements of 50-1209.

(12) "Vegetative cover" *means* the type of vegetation, grass, shrubs, trees, or any other form of natural cover *considered* suitable at time of reclamation.

(13) "Board" *means* the board of land commissioners or such state employee or state agency as may succeed to its powers and duties under this act.

(14) "Department" *means* the department of state lands.

(15) "Small miner" *means a* person, firm, or corporation engaged in the business of mining who does not remove from the earth during any *24*-hour period material in excess of 100 tons in the aggregate."

HeinOnline -- 1977 Vol. I 193 1977

Section 14. Section 50-1209, R.C.M. 1947, is amended to read as follows:

"**50-1209. Reclamation plan and specific reclamation requirements.** *(1)* The reclamation plan shall provide that reclamation activities, particularly those relating to control of erosion, to the extent feasible, *shall* be conducted simultaneously with mining and in any case shall be initiated promptly after completion or abandonment of mining on those portions of the mine complex that will not be subject to further disturbance by the mining operation. In the absence of an order by the board providing a longer period, the plan shall provide that reclamation activities shall be completed not more than 2 years after completion or abandonment of mining on *that* portion of mine complex.

(2) In the absence of emergency or suddenly threatened or existing catastrophe, an operator may not depart from an approved plan without previously *obtaining* from the department written approval of his proposed change.

(3) Provision shall be made to avoid accumulation of stagnant water in the mined area which may serve as a host or breeding ground for mosquitoes or other disease-bearing or noxious insect life.

(4) All final grading shall be made with nonnoxious, nonflammable, noncombustible solids unless approval has been granted by the board for a supervised sanitary fill.

(5) Where mining has left an open pit exceeding 2 acres of surface area and *the* composition of the floor or walls of *the* pit are likely to cause formation of acid, toxic, or otherwise pollutive solutions (hereinafter "objectionable effluents") on exposure to moisture, the reclamation plan *shall* include provisions which adequately provide for:

(a) insulation of all faces from moisture *or* water contact by covering to a depth of 2 feet or more with material or fill not susceptible itself to generation of objectionable effluents;

(b) processing of any objectionable effluents in the pit before their being allowed to flow or be pumped out of it to reduce toxic or other objectionable ratios to a level *considered* safe to humans and the environment by the board;

(c) drainage of any objectionable effluents to settling or treatment basins when the objectionable effluents must be reduced to levels *considered* safe by the board before release from the settling basin; or

(d) absorption or evaporation of objectionable effluents in the open pit itself; and

(e) prevention of entrance into the open pit by persons or livestock lawfully upon adjacent lands by fencing, warning signs, and such other devices as may reasonably be required by the board.

(6) Provisions for vegatative cover *shall* be required in the reclamation plan if appropriate to the future use of the land as specified in the reclamation plan.

HeinOnline -- 1977 Vol. I 194 1977

(7) The reclamation plan shall provide for the reclamation of all disturbed land. Proposed reclamation need not reclaim the areas to a better condition or different use than that which existed prior to development or mining.

(8) A reclamation plan *shall* be approved by the board if it adequately provides for the accomplishment of the activities specified *in this section.*"

Section 15. Section 50-1404, R.C.M. 1947, is amended to read as follows:

"**50-1404. Approved strip-mining plan required — effective period.** (1) No operator may engage in strip mining without first *obtaining* approval of a *strip-mining* plan from the department as provided for in 50-1405, *as amended.*

(2) Approved *strip-mining* plans shall be effective for 1 year from the date the plan is approved."

Section 16. Section 50-1503, R.C.M. 1947, is amended to read as follows:

"**50-1503. Contracts for reclamation.** The board is hereby authorized to enter into contracts *with operators* in the name of the state of Montana which will provide for the reclamation of lands on which *opencut* mining of bentonite, clay, scoria, phosphate rock, sand, and gravel has been or is to be conducted. The board is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and *the* board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts."

Section 17. Section 50-1504, R.C.M. 1947, is amended to read as follows:

"**50-1504. Definitions.** When used in this act, unless a different meaning clearly appears from the context, *the following definitions apply*:

(1) "Contract" means a mined land reclamation contract prepared by the *board* to meet the requirements of this act.

(2) "*Opencut* mining" means the mining of bentonite, clay, scoria, phosphate rock, sand, or gravel by removing the overburden lying upon natural deposits thereof and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality, or quantity of any natural deposit of bentonite, clay, scoria, phosphate rock, sand, or gravel.

(3) "Reclamation" means the reconditioning of the area of land affected by *opencut-mining* operations to make the area suitable for productive use, including but not limited to, forestry, agriculture, grazing, wildlife, recreation, *or* residential and industrial sites.

(4) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, clay, scoria, phosphate rock, sand, or gravel. "Spoil" is the overburden disturbed from its natural state in the process of *opencut* mining.

HeinOnline -- 1977 Vol. I 195 1977

(5) "Operator" means *a* person engaged in and controlling an *opencut-mining* operation.

(6) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(7) "*Board*" means the state board of land commissioners.

(8) "Person" means *a* natural person or *a* firm, association, partnership, cooperative, *or* corporation or any department, agency, or instrumentality of the state or any governmental subdivision or any other entity *whatever*.

(9) "Landowner" means the owner of land directly or indirectly affected by an *opencut-mining* operation.

(10) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. *The* notice shall be given once a week for 3 successive weeks.

(11) "Soils materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities.

(12) "Refuse" means all waste material directly connected with the *opencut-mining* operations.

(13) "Final cut" means the last pit created in an *opencut-mined* area.

(14) "*Highwall*" means that side of the pit adjacent to unmined land.

(15) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas, and *an explanation of* proposed reclamation of the land with appropriate maps.

(16) "Progress report" means a report showing the land which the operator has affected by *opencut* mining during the year. *The* report shall show the number of acres of affected land and all reclamation accomplished."

Section 18. Section 50-1505, R.C.M. 1947, is amended to read as follows:

"**50-1505. Administration — delegation of functions.** The *board* is the administrator of this act and it has all the power necessary to implement and enforce it. The *board* may delegate to the commissioner of state lands such powers, duties, and functions under this act as it *considers* necessary for the performance of its duties."

Section 19. Section 50-1506, R.C.M. 1947, is amended to read as follows:

"**50-1506. Powers, duties, and functions of board.** The *board* has the following powers, duties, and functions *to*:

(1) enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by

HeinOnline -- 1977 Vol. I 196 1977

the *board* that the requirements of the act or rules will be observed and that the operation and the reclamation of the affected area can be carried out *consistently* with the purpose of the act;

(2) prepare and adopt rules pertaining to *opencut* mining to accomplish the purposes of this act;

(3) conduct hearings and, for the purposes of conducting such hearings, administer oaths and affirmations, subpoena witnesses, compel attendance of witnesses, hear evidence, and require the production of any books, papers, correspondence, memoranda, agreements, documents, or other records relevant or material to the inquiry;

(4) adopt uniform procedures for the filing of necessary records, the issuance of contracts, and for any other matters of administration not specifically enumerated in this act;

(5) reclaim any affected land with respect to which a bond has been forfeited; *and*

(6) make investigations or inspections which *are considered* necessary to insure compliance with any *provision* of this act."

Section 20. Section 50-1507, R.C.M. 1947, is amended to read as follows:

"**50-1507. Contract for reclamation required.** *After March 16, 1973,* no operator *may* conduct *opencut-mining* operations which *will* result in the removal of 10,000 cubic yards or more of product or overburden until he has entered into a contract with the *board* for the reclamation of the land affected. *An* operator conducting a number of operations, each of which result in the removal of less than 10,000 cubic yards of product or overburden but which result in the removal of 10,000 cubic yards or more of product or overburden in the aggregate *is* subject to the provisions of this act."

Section 21. Section 50-1508, R.C.M. 1947, is amended to read as follows:

"**50-1508. Application for contract — contents — issuance — amendment.** *(1)* Applications for a contract shall be made upon a form furnished by the *board*, which form *shall contain* the following:

(a) the name of the operator and, if other than the owner of the land, the name and address of the owner;

(b) the type of operation to be conducted;

(c) the volume of earth to be removed, as accurately as the *volume* may then be estimated, and the volume which has been previously removed, if any;

(d) the location of the operation by legal subdivision, section, township and range, and county;

(e) the date when *the* operation was or will be commenced; *and*

(f) a statement that the applicant has the right and power by legal estate owned to mine by *opencut* mining the lands so described.

HeinOnline -- 1977 Vol. I 197 1977

(2) The application shall be accompanied by:

(a) a bond or security meeting the requirements as set out in this act;

(b) a fee of $50; *and*

(c) the operator's plan of his operation and the method and manner of reclamation that will be used or followed.

(3) If, prior to applying for a contract, the operator notifies the board of his intention to submit a plan and requests the board to examine the area to be mined, the board shall cause the area to be examined and make recommendations to the operator regarding reclamation.

(4) Upon receipt of *the* application, bond or security, and fee due from the operator and upon agreement to the terms of the contract by the parties, the *board* may issue a contract to the applicant which *entitles* him to continue in or engage in *opencut* mining *on the* land therein described.

(5) An operator desiring to have his contract amended to cover additional contiguous or nearby land may file an amended application with the *board.* Upon receipt of the amended application and such additional bond as may be required and upon agreement to the terms of the amendment by the parties, the *board* may issue an amendment to the original contract covering the additional land described in the amended application without the payment of any additional fee.

(6) An operator may withdraw any land covered by contract, except affected land, by notifying the *board* thereof, in which case the penalty of the bond or security filed by *the* operator pursuant to the provisions of this act shall be reduced proportionately."

Section 22. Section 50-1509, R.C.M. 1947, is amended to read as follows:

"**50-1509. Bond.** (1) *A* bond required to be filed in this act by the operator shall be in such form as the *board prescribes,* payable to the state of Montana and conditioned upon the operator's full compliance with all requirements of this act and all rules of the *board. The* bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety licensed to do business in the state of Montana, as surety. The penalty of *the* bond shall be in an amount not to exceed the costs of restoration required by this act as determined by the *board* but *may* not be less than $200 *or* more than $1,000 per acre.

(2) In lieu of *the* bond, the operator may deposit *with the board* cash and government securities or a bond with property sureties in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the *board,* surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety *may* be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this act. *The* bond or security *remains* in effect until the mined acreages have been reclaimed as provided under the contract and *the reclamation has been* approved and *the*

HeinOnline -- 1977 Vol. I 198 1977

bond or security has been released by the *board. The bond or security shall* cover only actual mined acreages and may be increased or reduced to cover only such acreages as *remain* unreclaimed.

(3) If the license of *a* surety upon a bond filed with the *board* pursuant to this act *is* suspended or revoked, the operator, within 30 days after receiving notice thereof from the *board,* shall substitute for *that* surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the *board may* suspend the contract of the operator to conduct operations upon the land described in *the* contract until *the* substitution has been made.

(4) The *board* shall cause *the reclamation of* any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator *has completed* all of the requirements under the provisions of this act as to any affected land, he shall notify the *board* thereof. If the *board releases* the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately."

Section 23. Section 50-1510, R.C.M. 1947, is amended to read as follows:

"**50-1510. Reclamation plan part of contract — requirements.** The contract shall meet the following requirements:

(1) The operator shall submit a reclamation plan to the *board* before commencing any *opencut* mining and may not commence mining before *the plan* receives approval from the *board.* The operator may request and receive a meeting with the *board* prior to submission of the plan. If the *board* does not notify the operator that it has approved or disapproved a plan within 30 days after the *board* has received the plan, the *board is considered* to have approved the plan. The *board,* however, for sufficient cause, *may* extend its period of consideration for an additional 30 days if it notifies the operator prior to the end of the original *30-day* period. The *board* shall submit *each* reclamation *plan* or amendments to the reclamation plan to the landowner for his recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The *board* may seek technical help from any state or federal agency. The *board shall* submit the plan immediately to the director *of the* university of Montana statewide archaeological survey for evaluation of possible archaeological or historical values in the area to be mined. The *board* may approve a reclamation plan only if the *board* has found that the plan provides for the best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed the affected land *will* be reclaimed to a productive use. Once the reclamation plan *is* accepted in writing by the *board,* it shall become a part of the contract but *is* subject to annual review and modification by the *board.*

(2) The *board* may not approve any reclamation plan unless the plan provides:

(a) *that* the land will be reclaimed for one or more specified uses,

HeinOnline -- 1977 Vol. I 199 1977

including but not limited to forest, pasture, orchard, cropland, residence, recreation, industry, habitat *for wildlife,* including food, cover, or water, or other uses;

(b) *that* to the extent reasonable and practicable, the operator *will* establish vegetative cover commensurate with the proposed land use;

(c) *whenever* operations result in a need to prevent acid drainage or sedimentation on or in adjoining lands or streams, for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices will not interfere with other landowners' rights or contribute to water pollution;

(d) *that* to accomplish practical utilization of soil materials, such material will be utilized for placement on affected areas, if required by the reclamation plan after completion or termination of that particular phase of the mining operations, at a depth sufficient for plant growth on slopes of 3:1 or less;

(e) that grading will be commensurate with the topography sought and land use designated;

(f) that metal and other waste *will* be removed or buried;

(g) that all access, haul, and other support roads *will* be located, constructed, and maintained in such a manner as to control and minimize channeling and other erosion;

(h) that the operator *will* submit *a progress report* annually to the *board*;

(i) that all operations *will* be conducted so as to avoid range and forest fires and spontaneous combustion *and that open* burning of carbonaceous materials *will* be in accordance with suitable practices for fire prevention and control;

(j) that archaeological and historical values in areas to be mined *will* be given appropriate protection;

(k) that except for rock faces, bench faces, and excavations used for water impoundments, each surface area of the mined premises which will be disturbed *will* be revegetated when its use for extractive purposes is no longer required;

(l) that seeding and planting *will* be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock, and retardation of erosion *and that all* seed will be drilled unless otherwise provided in the plan;

(m) that reclamation *will* be as concurrent with mining operations as feasible and *will* be completed within a specified length of time.

(3) If reclamation according to the plan has not been completed in the time specified, the *board* after 30 days' written notice *shall* order the operator to cease mining and, if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

HeinOnline -- 1977 Vol. I 200 1977

(4) (a) At any time during the period of reclamation the operator may for good reason submit to the *board* a new reclamation plan or amendment to the existing plan, including extensions of time.

(b) The *board* may approve the proposed new reclamation plan or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan and the proposed new plan or amendments to the existing plan will result in reclamation as *or more* desirable than the reclamation proposed under the existing plan; or

(ii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended.

(c) When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan *become* a part of the contract.

(5) The operator shall provide a performance bond or an alternative acceptable to the *board* in an amount commensurate with the estimated cost of reclamation, but in no case *may* the bond be less than $200 per acre. The estimated cost of reclamation shall be set forth in the reclamation plan.

(6) The contract, reclamation plan, and amendments accepted by the *board* shall be a public record and open to inspection.

(7) The contract shall become effective when signed by the *board* and the operator and shall remain in force until terminated by mutual consent or by the *board* upon *6-months'* notice."

Section 24. Section 50-1511, R.C.M. 1947, is amended to read as follows:

"**50-1511. Receipt and expenditure of funds.** *(1)* The *board* may receive any federal funds, state funds, or any other funds for the reclamation of land affected by *opencut* mining. The *board* may cause the reclamation work to be done by its own employees or by employees of other governmental agencies, soil conservation districts, or through contracts with qualified persons.

(2) Any funds or any public works programs available to the *board* shall be used and expended to reclaim and rehabilitate any lands that have been subject to *opencut* mining that have not been reclaimed and rehabilitated in accordance with the standards of this act."

Section 25. Section 50-1512, R.C.M. 1947, is amended to read as follows:

"**50-1512. Inspection of opencut mining by board.** The *board* or its accredited representatives may enter upon lands subjected to *opencut* mining at all reasonable times for the purpose of inspection to determine whether the provisions of this act have been complied with."

Section 26. Section 50-1513, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 201 1977

"**50-1513. Operation without contract — penalty.** Anyone required by this act to have a contract and who engages in *opencut* mining without previously securing a contract to do so as prescribed by this act is guilty of a misdemeanor and upon conviction thereof shall be fined not less than $500 and not more than $1,000. Each day of operation without a contract required by this act *is* a separate violation."

Section 27. Section 50-1514, R.C.M. 1947, is amended to read as follows:

"**50-1514. Reclamation of land on which bond forfeited.** *In keeping with the provisions of this act, the board may* reclaim any affected lands with respect to which a bond has been forfeited."

Section 28. Section 50-1515, R.C.M. 1947, is amended to read as follows:

"**50-1515. Board hearing.** (1) A person who is aggrieved by a final decision of the commissioner of state lands is entitled to a hearing before the *board.*

(2) The Montana Administrative Procedure Act (Title 82, chapter 42, R.C.M. 1947) governs hearings before the *board* and judicial review of decisions of the *board* under this act."

Section 29. Section 50-1516, R.C.M. 1947, is amended to read as follows:

"**50-1516. Exemption — operations covered by metal mine reclamation.** Nothing in this act *may* be construed to be applicable to mining or exploration operations which are regulated under the provisions of Title 50, chapter 12, R.C.M. 1947."

Section 30. Section 50-1516.1, R.C.M. 1947, is amended to read as follows:

"**50-1516.1. Chapter inapplicable to state and local government.** The provisions of this chapter relating to fees or bonds *do* not apply to the state of Montana, counties, cities, or towns."

Section 31. Section 50-1517, R.C.M. 1947, is amended to read as follows:

"**50-1517. Exemption — operations on federal lands.** This chapter *is not* applicable to operations on certain federal lands as specified by the board, provided it is first determined by the board that federal law or regulations issued by the federal agency administering *the* land impose controls for reclamation of *those* lands equal to or greater than those imposed by this chapter."

Section 32. Section 60-227, R.C.M. 1947, is amended to read as follows:

"**60-227. Petroleum and liquefied petroleum meter license fees.** *A petroleum or liquefied petroleum dealer shall pay license fees as follows:*

(1) for petroleum vehicle tank meters and bulk petroleum meters of 2 ½ inches and under, $6*;*

HeinOnline -- 1977 Vol. I 202 1977

(2) for 2 ½ inch and under petroleum meters for more than one fluid, $10*;*

(3) for bulk petroleum meters over 2 ½ *inches*, $10*;*

(4) for petroleum meters over 2 ½ *inches* for more than one fluid, $15*; and*

(5) for liquefied petroleum liquid meters, $15."

Section 33. Section 60-606, R.C.M. 1947, is amended to read as follows:

"**60-606. Expenses of representative.** The representative or the assistant representative appointed by the governor of the state of Montana to the oil compact commission shall be allowed and paid his reasonable expenses while engaged in the performance of his official duties, and *his* expenses and all other expense incurred in connection with the interstate oil compact and *the interstate oil compact* commission shall be paid out of the *board of oil and gas conservation revenue* fund in accordance with the provisions of *60-145, as amended.*"

Section 34. Section 69-3303, R.C.M. 1947, is amended to read as follows:

"**69-3303. Notice of intention to explore.** *A* person, firm, or corporation desiring to engage in geophysical exploration within the state of Montana *shall* file a notice of intention to engage in *the* exploration with the county clerk and recorder in each county in which exploration is to be carried on or engaged in. The notice shall be filed prior to the actual commencement of *the* exploration."

Section 35. Section 69-3305, R.C.M. 1947, is amended to read as follows:

"**69-3305. Exploration permit.** *(1) Upon* compliance with the provisions herein contained, namely the filing of a notice of intention to engage in *the* exploration *and* a certificate *(*or photostatic copy thereof*)* from the secretary of state certifying the name and address of the resident agent for service of process for *the* person, firm, or corporation desiring to engage in *the* exploration and certifying that the required surety bond has been filed with the secretary of state, *the county clerk and recorder shall issue* to *the* person, firm, or corporation a "geophysical exploration permit".

(2) The permit *shall* show*:*

(a) the *name* of the person, firm, or corporation *and* principal place of business;

(b) if a firm or corporation, the names and addresses of its officers;

(c) the name and address of the resident agent for service of process for *the* person, firm, or corporation;

(d) that a notice of intention to engage in geophysical exploration has been duly filed; *and*

(e) that a good and sufficient surety bond has been filed by the person, firm, or corporation, naming the surety company and giving its address.

(3) The permit *shall* be signed by the county clerk and recorder or his deputy and *bear* the official county seal. *The* permit shall be valid and effective for all geophysical crews of the permittee during the calendar year in which it is issued.

(4) The cost of the permit shall be $5 per calendar year or any portion thereof for which issued, and the revenues realized therefrom shall go to the county so issuing. Such funds as are realized shall be applied toward payment of the cost of printing *the* permits, which shall be printed at the county seat, and excesses shall go into the county's general fund.

(5) If printed forms are not available at the time any person, firm, or corporation desires *the* permit and qualifies for its issuance, typewritten or other form of reproduction of *the* permit may be used, the fee of $5 *nevertheless* shall be paid for its issuance, and *this* fee shall be disposed of in the same manner.

(6) The permit or *a* photostatic copy thereof shall be carried by the person or *by* the agent of the firm or corporation at all times during the period of *the* geophysical exploration and shall be exhibited upon demand *of* any county or state official."

Section 36. Section 73-115, R.C.M. 1947, is amended to read as follows:

"**73-115. Action to compel release.** *(1) If the lessee or assignee thereof neglects or refuses* to execute a release as provided by this act, the owner of the leased premises may sue in any court of competent jurisdiction to obtain *the* release, and *in such action* he *also* may recover *from* the lessee, his successor, or assigns the sum of $100 as damages, all costs, together with a reasonable attorney's fee for preparing and prosecuting the suit, and any additional damages that the evidence in the case *warrants. Writs* of attachment may issue as in other cases. If in *the* action the plaintiff fails to establish the forfeiture of the lease, an attorney's fee must be allowed to the *lessee or assignee* of the lease. Issues in regard to *attorney's* fees shall be determined in the same manner as other issues in such actions.

(2) When, by its terms, *an* oil or gas lease has expired and is subject to forfeiture for nonperformance and more than 3 years *have* elapsed since *the* expiration, the owner of the leased premises, in addition to all other remedies, *may* serve a written notice on *the* lessee or on the assignee thereof, which notice shall state*:*

(a) the *names* of the lessor, lessee, and assignee thereof if assigned;

(b) the date of the lease *and* the date of the expiration thereof;

(c) the description of the lands leased;

(d) the place, book, and page where *the lease is* recorded; and

(e) that if the lessee or assignee fails to execute a release of record of the lease or abstract of the lease, the lease shall be terminated and of no

effect and shall cease to be a lien upon the lands described therein, unless the lessee or the assignee thereof, within 60 days from the date of service *of the notice, files,* in the county clerk's office in the county *where the* lease or abstract of such lease is recorded, *an affidavit stating that the lease is in effect* and *delivers* a copy thereof to the owner of the leased lands.

(3) If the lessee *or* the assignee thereof resides in the county where *the* lease or abstract of *the* lease is recorded, the notice shall be personally served on *that* person. If *the* lessee or the assignee thereof does not reside in *that* county but his address appears on the records in that county clerk's office or is otherwise known, *the* notice shall be mailed by *certified* mail to *that* person at *that* address, and in addition thereto *the* notice shall be published once a week for *2* consecutive weeks in a newspaper of general circulation in the county in which *the* lands are situated. *If* the address of the lessee or assignee is unknown, *the notice shall be published in the manner provided above.* The date of service of *the* notice, if served personally, the date of mailing, if served by mail, and the first date of publication of *the* notice, if published, must be at least 60 days before the date of termination referred to in *the* notice.

(4) Upon the expiration of the time mentioned in *the* notice, if the affidavit of the lessee or assignee has not been filed as herein provided, the owner of the leased lands shall file an affidavit *of* service *of the notice* in the county clerk's office of *the* county *in which the lands are located,* and the affidavit shall be kept as a permanent file in his office, and *this* proof of notice when so filed *is* prima facie evidence of the sufficiency of the notice, and from the filing thereof *the* lease *is* terminated and the lands released from the lien thereof."

Approved March 18, 1977.

CHAPTER NO. 40

AN ACT TO REPEAL SECTIONS 84-2501 THROUGH 84-2508, R.C.M. 1947, THE TELEGRAPH COMPANIES LICENSE TAX.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 84-2501 through 84-2508, R.C.M. 1947, are repealed.

Approved March 18, 1977.

CHAPTER NO. 41

AN ACT REQUIRING NOTICE TO BE GIVEN THE DEPARTMENT OF LIVESTOCK OF ANY LIVESTOCK IMPORTED INTO THE STATE AND REQUIRING A BRAND INSPECTION OF SUCH LIVESTOCK AFTER ARRIVAL IN MONTANA BUT PRIOR TO BEING

HeinOnline -- 1977 Vol. I 205 1977

INTERMINGLED WITH NATIVE STOCK; AMENDING SECTION 46-801.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-801.1, R.C.M. 1947, is amended to read as follows:

"**46-801.1. Definitions.** Unless the context requires otherwise, in 46-801.2 through 46-806, *the following definitions apply*:

(1) "Livestock" means a cow, ox, bull, stag, calf, steer, heifer, horse, mule, mare, colt, foal, or filly.

(2) "State stock inspector" means an employee of the department of livestock designated by the department as a state stock inspector.

(3) "Deputy state stock inspector" means a person designated by the department as a deputy state stock inspector, who does not receive a salary or compensation from the department.

(4) "Person" means an individual, partnership, corporation, association, or any entity not enumerated capable of owning or controlling livestock."

Section 2. There is a new R.C.M. section numbered 46-801.5 that reads as follows:

46-801.5. Importation of livestock — notice to department — inspection. (1) Except as provided in subsections (2) and (3) of this section, any person owning livestock imported into this state or his agent must notify the department or a salaried employee of the department of the number, breed, type, and age of the livestock, their location, and the purpose for which they have been brought into the state. Such notification shall be made within 48 hours after the arrival of the livestock in the state. Livestock so moved may not be commingled with any livestock already in Montana until inspected for brands and marks in daylight by a state stock inspector or deputy state stock inspector. The fees for this inspection shall be the same as those imposed for county line or change of ownership inspections. The fees paid to state stock inspectors shall be remitted to the department for deposit in the earmarked revenue fund for the use of the department.

(2) Livestock consigned to a licensed livestock market or for immediate slaughter to a licensed slaughter facility at which pre-slaughter inspection is maintained are exempt from the requirements of this section.

(3) Livestock moved between Montana and an adjacent state for graze on a regular basis and as part of the usual operation of a farm or ranch shall be exempt from the notice and inspection requirements of this section provided a transportation permit for the entry of the livestock into Montana has been obtained by the owner or his agent from a state stock inspector prior to the entry of the livestock into Montana. The fee for the permit shall be $5 which shall be remitted by the department to the state treasury for credit to the earmarked revenue account of the depart-

HeinOnline -- 1977 Vol. I 206 1977

ment. The department shall provide by rule for the issuance and control of transportation permits authorized by this subsection.

Approved March 18, 1977.

CHAPTER NO. 42

AN ACT TO REPEAL THE ABORTION COUNSELORS AND COUNSELING SERVICES ACT, SECTIONS 69-6901 THROUGH 69-6908, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 69-6901 through 69-6908, R.C.M. 1947, are repealed.

Approved March 18, 1977.

CHAPTER NO. 43

AN ACT TO AMEND THE LAW RELATING TO GRAIN STANDARDS, STORAGE, AND INSPECTION AND REGULATION OF GRAIN WAREHOUSEMEN; AMENDING SECTIONS 3-209, 3-227, 3-228.1, 3-228.2, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-209, R.C.M. 1947, is amended to read as follows:

"**3-209. Establishment of standard grain grades — procedure.** (1) The department shall establish standard grades to apply to all grain bought or handled by public warehouses in this state. The department shall adopt as state grade standards all grades for grain established by the United States department of agriculture. Standards for grain shall be established by the department after notice and a public hearing. Notice shall be published in three newspapers of the state at least 20 days before the hearing.

(2) Grade standards, or any alteration or modification of those standards which the department may establish, are not effective *until* 30 days after publication, except for grades established by the United States department of agriculture, which are effective 10 days after publication.

(3) The grain standards adopted by the department do not apply to grain contracted for before their effective date."

Section 2. Section 3-227, R.C.M. 1947, is amended to read as follows:

"**3-227. Reports — penalty for failure to report.** *Every person licensed to merchandise grain* shall make *regular reports to the department,* under oath, *at intervals set by rule of the department, and* on forms pre-

HeinOnline -- 1977 Vol. I 207 1977

pared by it. The *reports* shall show the total weight of each kind of grain received and shipped, the amount of outstanding storage receipts on that date, and a statement of the amount of grain on hand to cover them. The department may also require *by rule* special reports at any time. The department may inspect the business of every *person licensed to merchandise grain,* whenever considered proper. The books, accounts, records, papers, and proceedings of every *person licensed to merchandise grain* are at all times during business hours subject to inspection. A person who knowingly falsifies any of *his* reports to the department, who fails to make the reports when requested by the department, or who refuses or resists inspection is guilty of a misdemeanor and shall be fined not less than $300 *or* more than $500."

Section 3. Section 3-228.1, R.C.M. 1947, is amended to read as follows:

"**3-228.1. Definitions.** Unless the context requires otherwise, as used in this act:

(1) "Person" means any person, merchandiser, grain dealer, firm, public warehouseman, commercial feed lot operator, trucker, exchange, broker, partnership, corporation, organization, commissionman, trust, association of persons, track buyer, shipper, hauler, contractor, cash buyer, unincorporated association, municipality, or society, however formed.

(2) "Grain" includes the natural products of the farm *including* flax.

(3) "Haul" means to transport grain or farm products by any vehicle on land or on water.

(4) "Merchandise" means to *store,* sell, buy, haul, ship, contract, cause a contract to be let, trade, carry on commerce, traffic, aid and distribute, abet in the movement of any commodity, and assemble and distribute farm products or grain.

(5) "For hire" means for remuneration of any kind, paid or promised either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements whereby a remuneration is obtained or derived for transportation service. Transportation by a person not in the transportation business is not a service for hire, even though the person owning the property transported shares in the cost or pays for the movement.

(6) "Department" means department of agriculture."

Section 4. Section 3-228.2, R.C.M. 1947, is amended to read as follows:

"**3-228.2. Licensing of grain merchandisers — fees — exemptions.** (1) A person may not merchandise grain without obtaining a license under this act and without obtaining a certificate of authority if that certificate is required under 15-2363.

(2) Licenses to engage in the business of merchandising of grains shall be issued by the department to reputable persons who apply in writing, submit the scheduled fee, and set forth under oath the place where the applicant intends to carry on the business for which the license is desired.

HeinOnline -- 1977 Vol. I 208 1977

A separate license is required for each place of business *and for each truck or tractor-trailer unit where or in which grain is merchandised.* Each vehicle or vessel used shall be noted on the application.

(3) A person merchandising grain shall before July 1 pay the department a minimum license fee of $15 for each year or part of a year, for each place of business *and for each truck or tractor-trailer unit* owned, operated, or conducted by that person *where or in which grain is merchandised.* The department may by rule establish the license fees, which may be graduated according to the volume of business conducted by a licensee and which shall bear a reasonable relationship to the cost of administering this act and section 3-229.

(4) All license fees shall be transmitted to the state treasurer, and shall be deposited in the general fund.

(5) All licenses expire on June 30 of each year.

(6) A person is exempt from the licensing requirement of this section if he:

(a) is a producer or a feed lot operator within Montana who buys and hauls grain for his own use, in his own vehicle, for his own *livestock* or his farm;

(b) hauls grain for hire, does not acquire title, and is hauling from an elevator or public warehouse previously licensed;

(c) hauls grain for hire for a producer or feed lot operator for the producer's or feed lot operator's own use within Montana, and does not acquire title to the grain;

(d) is a custom combiner hauling grain that he himself combines."

Approved March 18, 1977.

CHAPTER NO. 44

AN ACT TO AMEND THE LIVESTOCK AUCTION MARKET LAW TO REMOVE THE REQUIREMENT THAT MARKETS PAY AT LEAST 75% OF THE COST OF LIVESTOCK INSPECTION SERVICES PROVIDED AT THE MARKET BY THE DEPARTMENT OF LIVESTOCK; AMENDING SECTIONS 46-909 AND 46-912, R.C.M. 1947; AND REPEALING SECTION 46-910, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-909, R.C.M. 1947, is amended to read as follows:

"46-909. Hearing and procedure — limitation upon issuance of certificates. (1) Upon the filing of the application, the board shall fix a time and place for a hearing thereon, which shall not be less than 10 days after the filing. The board shall have a copy of the application and notice of hearing thereon served by mail upon: (a) the operators of any

HeinOnline -- 1977 Vol. I 209 1977

other livestock markets that in the opinion of the board might be affected by the granting of any such certificate; (b) the secretaries of the Montana stockgrowers association and the Montana woolgrowers association; (c) the secretary of the district livestock association, if any; and, (d) the secretary of the livestock association or associations, if any, at the place or within the vicinity of the proposed livestock market, if known to the board; and, (e) upon any railroad company operating into or through any town or city in which the proposed livestock market will be located, at least 10 days before the date of hearing.

(2) If, after hearing upon the application, the board finds from the evidence that public convenience and necessity require the authorization of the proposed livestock market, a certificate therefor shall be issued to the applicant. In determining whether public convenience and necessity require the livestock market, the board shall give reasonable consideration to the service rendered by other existing livestock markets in this state and the effect upon them if the proposed livestock market is authorized, and shall give due consideration to the likelihood of the proposed service being permanent and continuous throughout 12 months of the year."

Section 2. Section 46-912, R.C.M. 1947, is amended to read as follows:

"**46-912. Bond required — conditions.** Every person operating a livestock market in this state shall provide a bond in favor of this state, upon a form and with surety to be approved by the board, in the minimum penal sum of $10,000 or such greater sum as the board may determine, conditioned upon: (1) the payment immediately upon the sale of the livestock of all money received, less reasonable expenses and commissions, by the licensee and operator of the livestock market to the rightful owner of livestock so consigned and delivered to the licensee for sale; *and* (2) a full compliance with this act, including all rules adopted under this act. When approved the bond shall be filed with the board. Actions of law may be brought in the name of the state upon the bond for the use and benefit of a person who suffers loss or damage from violations thereof, and may be brought by the person suffering loss or damage in the county of his residence."

Section 3. **Repealer.** Section 46-910, R.C.M. 1947, is repealed.

Approved March 18, 1977.

CHAPTER NO. 45

AN ACT TO CHANGE THE COMPOSITION OF THE TEACHERS' RETIREMENT BOARD; AMENDING SECTION 82A-212, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-212, R.C.M. 1947, is amended to read as follows:

"**82A-212. Teachers' retirement board — composition — terms — allocated.** (1) There is a teachers' retirement board.

HeinOnline -- 1977 Vol. I 210 1977

(2) The board consists of *six* members appointed by the governor, *as follows*:

(a) *the* superintendent of public instruction;

(b) two persons appointed from the teaching profession who are members of the retirement system;

(c) two persons appointed as representatives of the public;

(d) one member who shall be a retired teacher who was a member of the retirement system at the time of retirement.

(3) Each appointed member of the board shall serve a term of 4 years. Each appointed member shall take and subscribe to the oath prescribed by section 3 of *Article* III of the constitution of the state. The oath shall be filed in the office of the secretary of state.

(4) The board is allocated to the department for administrative purposes only as prescribed in 82A-108. However, the board may hire its own personnel, and 82A-108(2)(d) does not apply."

Approved March 18, 1977.

CHAPTER NO. 46

AN ACT TO AMEND SECTIONS 89-318, 89-320, AND 89-322, R.C.M. 1947, TO PROVIDE THAT THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION RATHER THAN THE APPLICANT FOR A WEATHER MODIFICATION PERMIT SHALL PUBLISH THE NOTICE OF INTENTION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-318, R.C.M. 1947, is amended to read as follows:

"**89-318. Issuance of permits — requirements for permit — hearing.** (1) The permits shall be issued in accordance with procedures and subject to conditions the board may by rule establish to effectuate this chapter, only:

(a) if the applicant is licensed pursuant to this chapter;

(b) if sufficient notice of intention is published;

(c) if an applicant furnishes proof of financial responsibility in an amount to be determined by the board as required in 89-323;

(d) if the fee for the permit is paid as required in 89-324;

(e) if the weather modification and control activities to be conducted are determined by the board to be for the general welfare and the public good.

HeinOnline -- 1977 Vol. I 211 1977

(2) The department shall hold a public hearing in the area to be affected by the issuance of the permit, if the board determines that a hearing is necessary. The department may in its discretion assess the permit applicant for the costs incurred by the department in holding the hearing."

Section 2. Section 89-320, R.C.M. 1947, is amended to read as follows:

"**89-320. Notice of intention to apply for permit — activities limited by terms of permit.** Before undertaking any weather modification and control activities, the applicant for a permit shall file with the department a notice of intention. If a permit is issued, the holder of the permit shall confine his activities to the time and area limits set forth in the notice of intention, unless modified by the board. His activities shall conform to any conditions imposed by the board. The permit may not be sold or transferred."

Section 3. Section 89-322, R.C.M. 1947, is amended to read as follows:

"**89-322. Publication of notice of intention.** (1) The *department* shall have *the* notice of intention, or that portion thereof including the items specified in 89-321, published at least once a week for 2 consecutive weeks in a newspaper having a general circulation and published within any county in which the operation is to be conducted and in which the affected area is located, or, if the operation is to be conducted in more than one county or if the affected area is located in more than one county or is located in a county other than the one in which the operation is to be conducted, then in newspapers having a general circulation and published within each of the counties.

(2) *The applicant shall reimburse the department for the costs of publication of the notice of intention.*"

Section 4. **Effective date.** This act is effective on its passage and approval.

Approved March 18, 1977.

CHAPTER NO. 47

AN ACT RELATING TO THE COLLECTION OF THE ANNUAL LICENSE TAX FEE ON MOTOR VEHICLES POWERED BY LIQUEFIED PETROLEUM GASES; PROVIDING FOR AN ANNUAL LICENSE TAX, PRORATED QUARTERLY AND PAYABLE QUARTERLY, SEMIANNUALLY OR ANNUALLY; AMENDING SECTIONS 84-1862 AND 84-1863, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1862, R.C.M. 1947, is amended to read as follows:

"**84-1862. Tax to be collected on motor vehicles self-propelled by a liquefied petroleum gas.** The department of highways shall, under the

HeinOnline -- 1977 Vol. I 212 1977

rules issued by the department, collect or cause to be collected from owners or operators of motor vehicles powered by *any liquefied petroleum gas* an annual license tax fee on each such vehicle, *which license tax fee is prorated on a quarterly basis and may be paid quarterly, semiannually, or annually* according to the following schedule:

(1) Passenger cars and pickups, whose licensed gross vehicle weight is 10,000 pounds or less, $60.

(2) Motor trucks and truck tractors whose licensed gross vehicle weight is over 10,000 pounds and less than 18,000 pounds, $80.

(3) Motor trucks and truck tractors, whose licensed gross vehicle weight is 18,000 pounds or more and less than 48,000 pounds, $200.

(4) Motor trucks and truck tractors, whose licensed gross vehicle weight is 48,000 pounds or more, $1,000.

Upon payment of the tax required by this section, the department of highways shall provide a *certificate to be carried in* each vehicle, which *is* valid for a period *no less than a calendar quarter or for such further calendar period for which the tax is paid.*"

Section 2. There is a new R.C.M. section numbered 84-1862.1 that reads as follows:

84-1862.1. Temporary trip permit required. (1) Upon entering the state, a nonresident operating any motor vehicle powered by liquefied petroleum gas is required to purchase a liquid petroleum gas temporary trip permit. The permits will be issued by scale house personnel, gross vehicle weight patrol crews, Montana highway patrolmen, and such other enforcing agents as the department of revenue may prescribe.

(2) A temporary liquid petroleum gas permit shall cost $20. The permit is valid for a period of time not to exceed 72 hours and will be automatically void if the vehicle leaves the state during this period. Special liquid petroleum gas permits, remittance forms, and any other papers necessary for the enforcement of this act shall be furnished by the department of highways.

Section 3. Section 84-1863, R.C.M. 1947, is amended to read as follows:

"**84-1863. Certificate and fee nontransferable.** The identifying *certificate* and license fee paid for each vehicle shall not be transferable on the sale or change of ownership *to any person or vehicle other than that for which it was issued, with one exception. If the owner of a vehicle for which a current certificate has been issued replaces the vehicle, the remaining amount of tax paid for the unused calendar period may be credited to the tax payable for the issuance of a new certificate. The credit may not exceed the amount applicable to the unused period, and a refund is not allowed.*"

Approved March 18, 1977.

HeinOnline -- 1977 Vol. I 213 1977

CHAPTER NO. 48

AN ACT TO DEFINE AND PROVIDE A MANNER FOR COMPUTING THE AMOUNT OF NECESSARY EXPENSES OF LITIGATION REQUIRED BY SECTION 93-9921.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 93-9921.2 that reads as follows:

93-9921.2. Necessary expenses of litigation. (1) Necessary expenses of litigation as authorized by 93-9921.1 mean reasonable and necessary attorney fees, expert witness fees, exhibit costs, and court costs.

(2) Reasonable and necessary attorney fees are the customary hourly rates for an attorney's services in the county in which trial is held. Reasonable and necessary attorney fees shall be computed on an hourly basis and may not be computed on the basis of any contingent fee contract entered into after July 1, 1977.

(3) Reasonable and necessary expert witness fees may not exceed the customary rate for the services of a witness of such expertise in the county in which trial is held.

Approved March 18, 1977.

CHAPTER NO. 49

AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO MILITARY AFFAIRS AND CIVIL DEFENSE; AMENDING SECTIONS 53-106.10, 71-120, 75-8612, 77-501, 77-604, 77-707, 77-1601, 77-1606, 77-1705, 77-2102, 77-2106, 77-2305, 77-2306, AND 77-2404, R.C.M. 1947; AND REPEALING SECTION 77-2308, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-106.10, R.C.M. 1947, is amended to read as follows:

"**53-106.10. Disabled veteran — license plates.** No disabled veteran *is* entitled to free license plates for more than one *motor vehicle.*"

Section 2. Section 71-120, R.C.M. 1947, is amended to read as follows:

"**71-120. Burial allowance for military servicemen and servicewomen.** (1) *The* board of commissioners of each county in this state *shall* designate *a* person in the county, *preferably an honorably discharged serviceman or servicewoman,* as veterans' burial supervisor.

(2) The veterans' burial supervisor shall cause to be decently interred the body of any *serviceman* or *servicewoman* who *is a resident of the state of Montana and either:*

(a) served in any branch of the armed services of the United States, *was honorably discharged,* and may hereafter die;

(b) is now serving and dies while so serving;

(c) died while in service during any declared or undeclared war or

(d) is a resident of the Montana veterans' home *at time of death.*

(3) Such burial shall not be made in any burial grounds or cemetery or in any portion of any burial grounds or cemetery used exclusively for the burial of pauper dead.

(4) A sum not to exceed $250 to defer burial expense shall be paid by the county commissioners of the county in which the deceased was an actual bona fide resident at the time of death.

(5) The benefits hereof *are not* available in the case of any decedent whose executor, administrator, or heirs waive the benefits.

(6) Whenever burial *is* of a resident of the Montana veterans' home, *a sum not to exceed $250 to defer burial expenses shall* be paid by the county commissioners of the county in which the deceased person resided prior to admittance to the Montana veterans' home.

(7) If a person qualified under subsection (2)(a) dies while temporarily absent from the state or county of residence, the provisions of this *section* apply and the burial expenses not exceeding the amount herein specified shall be paid in the same manner as above provided.

(8) Whenever *a person qualified under subsection (2)(a) dies* at any public institution of the state of Montana, other than the *Montana* veterans' home, and burial for any cause *is* not made in the county of the former residence of the deceased, the officers of *the* state institution shall provide the proper burial herein prescribed. *The reimbursement for the* expense of each burial *may* not exceed *$250. The* expense shall be paid by the county in which the decedent resided at the time of entry into such institution.

(9) No such burial *may* be covered by any special or standing contract whereby the cost of burial is reduced below the maximum hereinbefore fixed, to the disparagement of proper interment."

Section 3. Section 75-8612, R.C.M. 1947, is amended to read as follows:

"**75-8612. Fee waiver — children of prisoners of war and persons killed in action.** (1) The board of regents of higher education may waive the charges for the matriculation, tuition, and any educational fees *at any of the units of the Montana university system* for the children of members of the armed forces of the United States who:

(a) served on active duty during World War II or the Korean or Vietnam conflicts;

(b) had legal residence in this state *at the time of entry into the service; and*

HeinOnline -- 1977 Vol. I 215 1977

(c) are killed in action or *die* as a result of injury, disease, or other disability incurred while in the service of the armed forces of the United States.

(2) The educational assistance to which an eligible person is entitled under this *section* may be afforded him during the period beginning on his *18th* birthday or on the successful completion of his secondary schooling, whichever first occurs, and ending on his *23rd* birthday.

(3) If he serves on duty with the armed forces as an eligible person after his *18th* birthday but before his *23rd* birthday, then the period *ends 5* years after his first discharge or release from duty with the armed forces. This period may not be extended beyond his *31st* birthday by reason of this *subsection.*

(4) The board of regents of higher education *may* waive the charges for the matriculation, tuition, and all educational fees for the spouse and children of any person who is a resident of Montana and who, either while serving in the armed forces of the United States *was* declared by the secretary of defense of the United States to be a prisoner of war or missing in action in connection with the conflict in Southeast Asia after January 1, 1961, or while serving the United States in a civilian capacity *was* declared by the secretary of state of the United States to be missing or captured in connection with the conflict in Southeast Asia after the same date.

(5) Any person who is eligible for the waiver of tuition and fees, upon being accepted for enrollment in any state-supported institution of higher education or state-supported technical or vocational school, shall continue to be eligible for such waiver until the completion of the bachelor of arts or equivalent degree or certification of completion as long as he remains enrolled in good standing at the school or institution. Any eligible person *may* not be disqualified by either the return of the prisoner of war or person missing in action or the reported death of the person."

Section 4. Section 77-501, R.C.M. 1947, is amended to read as follows:

"77-501. Purpose — definitions — preference. *(1)* The purpose of this *section* is to provide for preference of veterans, their unremarried surviving spouses and dependents, and certain disabled civilians in appointment and employment in every public department and upon all public works of the state of Montana and of any county and city thereof.

(2) For purposes of this section, the following definitions apply:

(a) The term "veterans" means *persons* who served in the armed forces of the United States in time of war or declared national emergency *and who have been separated from service upon conditions other than dishonorable or* who have served on active military duty for more than 180 days after January 31, 1955, or who were discharged or released because of a service-connected disability, including but not limited to those veterans serving because of the Vietnam *conflict.*

(b) The term "war or declared national emergency" includes:

HeinOnline -- 1977 Vol. I 216 1977

(i) the Civil War;

(ii) the Spanish American War;

(iii) the Philippine insurrection;

(iv) World War I, between April 6, 1917, and November 11, 1918, both dates inclusive;

(v) World War II, between September 16, 1940, and December 31, 1946, both dates inclusive; and

(vi) the Korean War, military expedition, or police action, between June 26, 1950, and January 31, 1955, both dates inclusive.

(c) The term "surviving spouse" means *an* unremarried surviving *spouse* of *a veteran.*

(d) The word *"percent"* means *percent* of the total aggregate points of the examination referred to.

(3) (a) In every public department and upon all public works of the state of Montana and of any county or city thereof, the following shall be preferred for appointment and employment: veterans, their spouses and surviving spouses, and the other dependents of disabled veterans *and* disabled civilians recommended by the *rehabilitative services division of the department of social and rehabilitation services.*

(b) Age, loss of limb, or other physical impairment which does not in fact incapacitate *does* not disqualify any disabled veteran or civilian provided he or she possesses the business capacity, competency, and education to discharge the duties of the position involved.

(c) Those of the *above-described* veterans who have disabilities admitted by the veterans administration of the United States to have been incurred in service in any of *the* wars, military expeditions, or police *actions, whenever* such disabilities do not in fact incapacitate, shall be given preference in employment over other veterans.

(4) (a) When written or oral examinations are required for employment, disabled veterans and their spouses, their unremarried surviving spouses, and other dependents shall have added to their examination ratings a credit of *10* points. *All* other veterans, their spouses, unremarried surviving spouses, and dependents shall have added to their examination ratings a credit of five points.

(b) The fact that an applicant has claimed a veterans' credit *may* not be made known to the examiners until ratings of all applicants have been recorded, after which such credits shall be added to the examination rating and the records shall show the examination rating and the veteran's credit.

(c) The benefits of this subsection are in addition to and not in derogation of the preference in appointment and employment *or both* given by subsection (2).

(5) (a) None of the benefits of this *section* accrue to any person who refused to serve on active duty in the military service to which attached or to take up arms in the defense of the United States.

HeinOnline -- 1977 Vol. I 217 1977

(b) No person who has not been a resident of Montana for at least 1 year immediately preceding an appointment *is* entitled to such preference.

(c) For city or county employment, no preference will be granted unless *an* applicant under this *section* is also a resident of the city or town or county in which employment is sought.

(6) Any person entitled to preference in this section who has applied for any appointment or employment upon public works of the state of Montana or any county and city thereof or in any public department of *the* state and who has been denied employment or appointment and feels that the spirit of this *section* has been violated and that such person is in fact qualified physically *and* mentally and possesses business capacity, competency, and education to discharge the duties of the position applied for *may* petition by verified petition the district court of the state of Montana in the county in which the work is to be performed. *The petition shall set* forth the facts of the application, qualifications, competency, and such person's honorable discharge or other qualifications warranting the applicant to preference under this *section. Upon* filing of such petition, any judge in *the* court shall issue an order to show cause to the appointing authority directing *the* appointing authority to appear in *the* court at a specified time and place, not less than 5 *or* more than 10 days after the filing of *the* verified petition, to show cause, if any exists, why *the* veteran or person entitled to preference should not be employed by *the* appointing authority. *The* district court *has* jurisdiction upon the proper showings to issue its order directing and ordering *the* appointing authority to comply with this law in giving the preference provided *for*."

Section 5. Section 77-604, R.C.M. 1947, is amended to read as follows:

"**77-604. Enforcement procedure.** In case any private employer refuses to *reemploy* any person entitled to *reemployment* under the provisions of *77-601 through 77-604*, the district court of the *judicial* district in which such private employer maintains his place of business *has* power, upon the filing of a motion, petition, or other appropriate pleading by the person entitled to such benefits, to specifically require such employer to comply with *77-601 through 77-604*, and, as an incident thereto, to compensate such person for any loss of wages or benefits suffered by such employer's unlawful action. Upon application to the county attorney of the county in which such private employer maintains a place of business by any person claiming to be entitled to redress under *77-601 through 77-604, the county attorney* shall appear and act as attorney for such person in the amicable settlement of the claim or in the filing of any motion, petition, or other appropriate pleading to specifically require such employer to comply with such provisions. No fees or court costs *may* be taxed against the person applying for such benefits."

Section 6. Section 77-707, R.C.M. 1947, is amended to read as follows:

"**77-707. Acting officer — how appointed.** The governor, in the case of district judges and officers elected from the state at large, and the board of county commissioners, in the case of members of either house of the *legislature* and county, township, or district officers elected from such

HeinOnline -- 1977 Vol. I 218 1977

county, shall appoint *an* "acting" officer to temporarily replace any elected officer, designated in 77-701*(b)*, who *enters* military service in the manner set forth in 77-701. "Acting" officers so appointed shall be appointed for a period not to exceed the unexpired term of the officer whose duties he assumes, and such appointment shall be subject to the right of the elected officer to the restoration of his position."

Section 7. Section 77-1601, R.C.M. 1947, is amended to read as follows:

"**77-1601. Definitions.** Unless the context requires otherwise, in *this title*:

(1) "Militia" means all the military forces of this state, whether organized or active or inactive.

(2) "National guard" means the army national guard and the air national guard.

(3) "Officer" means commissioned or warrant officer.

(4) "Department" means department of military affairs."

Section 8. Section 77-1606, R.C.M. 1947, is amended to read as follows:

"**77-1606. Powers and duties of department of military affairs.** Under the direction of the governor, the department shall:

(1) *keep* a roster of all *officers and enlisted persons of the militia of this state whether* active, inactive, *or* retired;

(2) *supervise*, administer, and *coordinate* civil defense and disaster control activities;

(3) *recruit*, mobilize, administer, train, discipline, equip, and supply the organized militia;

(4) *maintain* the archives and keep the records and documents required by law or regulation to be filed with the United States department of defense;

(5) establish and maintain the headquarters required for the militia;

(a) exercise the powers vested in it and perform any other duty and function required of it by the governor and by federal and state laws and regulations."

Section 9. Section 77-1705, R.C.M. 1947, is amended to read as follows:

"**77-1705. Vacating commissions or warrants.** The commission or warrant of an officer shall be vacated:

(1) *upon* acceptance by the governor of the resignation of the officer; or

(2) *by* an order of the governor discharging the officer:

(a) *for failure* to maintain his qualifications for federal recognition;

(b) *upon the* scheduled or actual termination or withdrawal of his federal recognition where federal recognition is a prerequisite for continued service;

(c) *upon a* change in federal reserve status which makes him ineligible to continue assigned to a unit of the organized militia;

(d) *for his* absence from duty without leave for more than 3 months; or

(e) *upon* the recommendation of a board of examination or the sentence of a *court-martial.*"

Section 10. Section 77-2102, R.C.M. 1947, is amended to read as follows:

"**77-2102. Right-of-way while performing military duty.** (1) The commanding officer of a unit of the organized militia parading or performing any military duty in a street or highway may require all persons on the street or highway to yield the *right-of-way* to troops. Motor vehicles traveling in military convoy shall be accorded the *right-of-way* on all streets and highways.

(2) The exercise of the *right-of-way* provided for in this section may not interfere with the carriage of the United States mail or with the progress of an ambulance or members of a police or fire department.

(3) A person who *fails to yield the right-of-way as prescribed by* this section is guilty of a misdemeanor."

Section 11. Section 77-2106, R.C.M. 1947, is amended to read as follows:

"**77-2106. Trespassers and disturbers may be arrested.** (1) The commanding officer may arrest or authorize the arrest of a person who trespasses upon a camp or parade ground, armory, arsenal, rifle range, or any other place devoted to or used for military purposes.

(2) The commanding officer may arrest a person who interrupts, molests, or disturbs the orderly discharge of duty by those under arms, disturbs or prevents the passage of troops going to or returning from any duty, or assaults a member of the uniformed militia while that member is performing any military duty.

(3) A person who is arrested under this section shall be transferred to the civil authorities in the county where the offense was committed.

(4) A person *committing an offense for which an arrest may be made pursuant to this section* is guilty of a misdemeanor."

Section 12. Section 77-2305, R.C.M. 1947, is amended to read as follows:

"**77-2305. Duties of department of military affairs.** The department shall:

(1) *prepare* a comprehensive plan and program for the civil defense

HeinOnline -- 1977 Vol. I 220 1977

of this state. This plan and program shall be integrated into and coordinated with the civil defense plans of the federal government, other states, and Canada to the fullest possible extent.

(2) coordinate the preparation of plans and programs for civil defense by the political subdivisions of this state;

(3) sponsor and develop mutual aid plans and agreements between the political subdivisions of the state, similar to the *mutual aid* arrangements with other states referred to above;

(4) in accordance with the plan and program for the civil defense of this state:

(a) ascertain the requirements of the state or *its* political subdivisions for food, clothing, or other necessities of life in the event of attack and plan for the procurement of supplies, medicine, materials, and equipment that may be necessary;

(b) make surveys of the industries, resources, and facilities within the state as are necessary to carry out the purposes of this act;

(c) institute training programs and public information programs; and

(d) take all other preparatory steps, including the partial or full mobilizations of civil defense organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of civil defense personnel in time of need."

Section 13. Section 77-2306, R.C.M. 1947, is amended to read as follows:

"**77-2306. Arrangements for mutual aid.** (1) The director of each local organization of civil defense may develop or cause to be developed *mutual aid* arrangements with other public and private agencies within this state for reciprocal civil defense aid and assistance in case of disaster too great to be dealt with unassisted. These arrangements shall be consistent with the state civil defense plan and program. *In* time of emergency, each local organization for civil defense shall render assistance in accordance with the provisions of the *mutual aid* arrangements.

(2) The director of each local organization for civil defense may assist in negotiation of reciprocal *mutual aid* agreements between the governor and adjoining states (including foreign states or provinces) or political subdivisions thereof and shall carry out arrangements *of* any such agreements relating to the local and political subdivision."

Section 14. Section 77-2404, R.C.M. 1947, is amended to read as follows:

"**77-2404. Proclamation of emergency.** (1) Following an attack, the governor, if he finds such action necessary to deal with the danger to the public safety caused thereby or to aid in the *postattack* recovery or rehabilitation of the United States or any part thereof, shall declare by proclamation the existence of a *postattack* recovery and rehabilitation emergency. Any such proclamation shall be ineffectual unless the legislature is then in session or the governor simultaneously issues an order convening the legislature in special session within 45 days.

HeinOnline -- 1977 Vol. I 221 1977

(2) During the period when the proclamation issued under subsection (1) of this section is in force or during the continuance of any emergency declared by the president of the United States or the congress calling for *postattack* recovery and rehabilitation activities, subject to the limitations set forth in this chapter and in a manner consistent with any rules or orders and policy guidance issued by the federal government, the governor may issue, amend, and enforce rules and orders to:

(a) *control*, restrict, and regulate by rationing, freezing, use of quotas, prohibitions on shipments, price fixing, allocation, or other means, the use, sale, or distribution of food, feed, fuel, clothing and other commodities, materials, goods, or services;

(b) *prescribe* and direct activities in connection with but not limited to use, conservation, salvage, and prevention of waste of materials, services, and facilities, including production, transportation, power, and communication facilities, training and supply of labor, utilization of industrial plants, health and medical care, nutrition, housing, including the use of existing and private facilities, rehabilitation, education, welfare, child care, recreation, consumer protection, and other essential civil needs; and

(c) *take* such other action as may be necessary for the management of resources following an attack.

(3) All rules and orders issued under authority conferred by this chapter have the effect of law during the continuance of a proclamation or declaration of emergency as contemplated by this section when a copy of the rule or order is filed in the office of the secretary of state or, if issued by a local or area official, when filed in the office or offices of the county clerk and recorder. If, by reason of destruction or disruption attendant upon or resulting from attack, the filing requirements of this subsection cannot be met, public notice by such means as may be available shall be considered a complete and sufficient substitute. All existing laws, ordinances, rules and orders inconsistent with the provisions of this chapter or any rule or order issued under the authority thereof shall be inoperative during the period of time and to the extent such inconsistency exists.

(4) Any authority exercised under a proclamation *of* emergency contemplated by this section may be exercised with respect to the entire territory over which the governor or other official, as the case may be, has jurisdiction or to any specified part thereof.

(5) The governor's power and authority to issue a proclamation following an attack shall be terminated by the passage of a joint resolution of the legislature or by declaration of the termination of the emergency by the president or by the congress, however, the proclamation shall terminate automatically 6 months after issuance and a similar proclamation may not be issued unless concurrence is given thereto by a joint resolution of the legislature."

Section 15. **Repealer.** Section 77-2308, R.C.M. 1947, is repealed.

Approved March 19, 1977.

HeinOnline -- 1977 Vol. I 222 1977

CHAPTER NO. 50

AN ACT TO AMEND SECTION 75-7003, R.C.M. 1947, TO DELETE THE REQUIREMENT THAT SCHOOL BUS DRIVERS BE EXAMINED BY A MONTANA PHYSICIAN BEFORE QUALIFYING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7003, R.C.M. 1947, is amended to read as follows:

"**75-7003. School bus driver qualifications.** Any driver of a school bus shall be qualified to drive such school bus by compliance with the following requirements:

(1) he is not less than 21 years of age;

(2) he is of good moral character;

(3) he is the holder of a chauffeur's license;

(4) he has filed with the district a satisfactory medical examination report signed by *any* physician *licensed in the United States, or if acceptable to an insurance carrier, any licensed physician* on a blank provided by the superintendent of public instruction;

(5) he has completed a standard first-aid course and holds a valid standard first-aid certificate from an authorized instructor. The issuance of such certificate shall be governed by rules and regulations established by the superintendent of public instruction, provided that such rules may suspend this requirement for a reasonable period of time where there has been an inadequate opportunity for securing the first-aid course and certificate;

(6) he has complied with any other qualifications established by the board of education; and

(7) he has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven certifying compliance with the several driver qualifications enumerated in this section."

Approved March 19, 1977.

CHAPTER NO. 51

AN ACT TO AMEND SECTIONS 25-507.1 AND 25-507.2, R.C.M. 1947, RELATING TO THE STATE CENTRAL PAYROLL SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-507.1, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 223 1977

"**25-507.1. Central payroll system for state agencies authorized — state auditor to provide for inclusion of agencies — exceptions.** The state auditor shall install and operate a uniform state central payroll system for all state agencies. The auditor may provide for the orderly inclusion of state agencies into such system, and may make exceptions from the operation thereof for such periods as he determines necessary. *By January 1, 1979, all state central payroll systems shall be based upon actual payroll figures submitted after the end of the payroll period and may not be based upon estimated payroll.*"

Section 2. Section 25-507.2, R.C.M. 1947, is amended to read as follows:

"**25-507.2. Payroll periods — pay dates — uniformity of dates — dates to be within ten days after close of payroll period.** *All* state payroll systems *shall* provide for the fixing of payroll periods and designated days on which salaried employees shall be paid for the preceding payroll period. Such pay date shall be uniform for all employees of each state agency employed in the same geographic area and *payroll warrants shall be distributed or mailed within* 10 *business* days following the close of the payroll period."

Approved March 19, 1977.

CHAPTER NO. 52

AN ACT FOR A STANDARD DEFINITION OF THE WORD "PERSON" IN THE TAXATION STATUTES; DELETING INCONSISTENT DEFINITIONS FROM TITLE 84, R.C.M. 1947; AMENDING SECTIONS 84-202, 84-704, 84-1601, 84-2301, 84-2401, 84-2402, 84-2404, 84-2405, 84-2410, 84-2411, 84-3501, 84-3502, 84-3510, 84-3512, 84-4155, 84-4166, 84-5402, 84-5410, 84-5413, 84-6201, 84-6401, AND 84-7003, R.C.M. 1947; REPEALING SECTIONS 84-1101, 84-1201, 84-2001, 84-2201, AND 84-5901, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section in Title 84 numbered 84-102, that reads as follows:

84-102. "Person" defined. As used in this title (except chapters 15 and 49), unless the context indicates otherwise, the term "person" means an individual, corporation (domestic or foreign), partnership, association, joint-stock company, or syndicate.

Section 2. Section 84-202, R.C.M. 1947, is amended to read as follows:

"**84-202. Exemptions from taxation.** (1) (a) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably

HeinOnline -- 1977 Vol. I 224 1977

necessary for convenient use of such buildings owned by a church, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" shall mean only such art galleries and observatories, whether of public or private ownership, as are open to the public without charge or fee at all reasonable hours and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors, or marines who served in army or navy of United States is used exclusively for educational, fraternal, benevolent, or purely public charitable purposes rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes or for furnishing or equipping the family residence, are exempt from taxation.

(4) *(a)* Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

(b) Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged.

(c) Any person or other group seeking to qualify its property for inclusion in this class shall make application to the department of revenue in such manner or form as may be required by the department.

HeinOnline -- 1977 Vol. I 225 1977

(5) The following agricultural products are exempt from taxation:

(a) *all* unprocessed, perishable fruits and vegetables in farm storage and owned by the producer;

(b) *all* nonperishable unprocessed agricultural products, except livestock, held in possession of the original producer for less than 7 months following harvest;

(c) *livestock*, defined as cattle, sheep, horses, or mules, which have not attained the age of 9 months as of the last day of any month.

(6) Moneys and credits are exempt from taxation.

(7) A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under 84-7403."

Section 3. Section 84-704, R.C.M. 1947, is amended to read as follows:

"84-704. Definitions. (1) The term "state board" or "board" when used in this act without other qualification shall mean the state tax appeal board.

(2) The phrase "municipal corporation" or "municipality" or "taxing unit" when used in this act shall be deemed to include a county, city, incorporated town, township, school district, irrigation district, drainage district, or any person, persons, or organized body authorized by law to establish tax levies for the purpose of raising public revenue."

Section 4. Section 84-1601, R.C.M. 1947, is amended to read as follows:

"84-1601. Electrical energy producers' license tax. *In* addition to the license tax now provided by law, each *person* or other organization now engaged in the generation, manufacture, or production of electricity and electrical energy in the state of Montana, either through water power or by any other means, for barter, sale, or exchange, and hereinafter referred to as the "producer", shall on or before the *15th* day of each calendar month render a statement to the department of revenue showing the gross amount of money received on account of sales of electricity and electrical energy during the preceding calendar month without any deduction and shall pay a license tax thereon in the sum of 1.438% of such gross amount as shown on such statement in the manner and within the time hereinafter provided. *Such* tax shall be effective for the taxable year commencing April 1, 1969, and also for each taxable year thereafter."

Section 5. Section 84-2301, R.C.M. 1947, is amended to read as follows:

"84-2301. Definitions. *(1)* The term "department" when used in this act shall mean the state department of revenue.

(2) Any person, company, association, or corporation (not being a railroad company or a lessee of a railroad company) wherever organized or incorporated, owning and operating or operating any cars known as dining, buffet, chair, parlor, palace, or sleeping cars which are used upon railroads within this state, unless the ownership of such cars be identical

HeinOnline -- 1977 Vol. I 226 1977

with that of the lines of railroads on which they are operated, shall be deemed a "sleeping car company" for the purposes of this act."

Section 6. Section 84-2401, R.C.M. 1947, is amended to read as follows:

"**84-2401. Store license from department of revenue required.** *It* shall be unlawful for any person to open, establish, operate, or maintain any store or stores in this state without first having obtained a license to do so from the department of revenue, as hereinafter provided."

Section 7. Section 84-2402, R.C.M. 1947, is amended to read as follows:

"**84-2402. Application and fee for license.** *(1)* Any person or group desiring to open, establish, operate, or maintain a store in the state of Montana prior to September 1 of that calendar year shall apply to the department of revenue for license to do so. The application shall be made upon a form which shall be prescribed and furnished by the department and shall set forth the name of the owner, manager, trustee, lessee, stockholders, receiver, or other persons desiring said license; the name of such store; the location, including street number; and all such other facts as the department may require.

(2) If the applicant desires to open, establish, operate, or maintain more than one such store, he shall make a separate application for a license to operate, maintain, open, or establish each such store.

(3) Each such application shall be accompanied by the license fee as prescribed in 84-2405 and 84-2407."

Section 8. Section 84-2404, R.C.M. 1947, is amended to read as follows:

"**84-2404. Expiration and renewal of licenses.** *(1)* All licenses shall be so issued so as to expire December 31 of each calendar year. On or before December 31 of each calendar year, every person having a license shall apply to the department of revenue for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the department.

(2) Each such application for a renewal license shall be accompanied by the license fee as prescribed in 84-2405 and 84-2407.

(3) If, by December 31, an application for a renewal license for the calendar year next ensuing has not been made, the fee charged shall be double the rate prescribed in 84-2405 and 84-2407."

Section 9. Section 84-2405, R.C.M. 1947, is amended to read as follows:

"**84-2405. Retailers subject to act — license fees for.** *(1)* Every person or group opening, establishing, operating, or maintaining one or more retail stores or mercantile establishments within this state under the same general management, supervision, or ownership, where a stock of goods is maintained during any portion of the year regardless of whether the stock is held by ownership, consignment, agency, or any other

HeinOnline -- 1977 Vol. I 227 1977

means, shall pay the license fee hereinafter prescribed for the privilege of opening, establishing, operating, or maintaining such stores or mercantile establishments, provided that the members of any group, association, or consumer *cooperative* composed of independent units owning their own business and grouped or associated together by agreement or otherwise for the purpose of purchasing or selling merchandise or service for the mutual benefit of the members shall not be grouped for computing the license fee to be paid by the person or retailer under this act, but the units or members shall be taxed as individual units. The license fee herein prescribed shall be paid annually.

(2) The annual license fees herein prescribed for retail stores or mercantile establishments which have gross receipts in excess of $350,000 per year shall be as follows:

(a) Upon one store, the annual license fee shall be $11.

(b) Upon the second store, the annual license fee shall be $56.

(c) Upon the third store, the annual license fee shall be $106.

(d) Upon the fourth store, the annual license fee shall be $156.

(e) Upon the fifth store and on each store in excess of five stores, the annual license fee shall be $206.

(3) The annual license fees herein prescribed for retail stores or mercantile establishments which do not have gross receipts in excess of $350,000 per year shall be as follows:

(a) Upon one store, the annual license fee shall be $11.

(b) Upon the second store, the annual license fee shall be $13.50.

(c) Upon the third store, the annual license fee shall be $21.

(d) Upon the fourth store, the annual license fee shall be $28.50.

(e) Upon the fifth store, the annual license fee shall be $36.

(f) Upon the sixth store and each store in excess of six, the annual license fee shall be $44.50.

(4) For the purpose of determining the number of stores or units in the chain, all stores or units in the chain shall be included regardless of size even though one or more stores or units may be included in a different category for this license, provided the larger stores or units shall be counted last."

Section 10. Section 84-2410, R.C.M. 1947, is amended to read as follows:

"**84-2410. Store defined.** The term "store" as used in this act shall be construed to mean and include any store or stores or any mercantile establishment or establishments which are owned, operated, maintained, or controlled by the same person or group in which goods, wares, or merchandise of any kind are sold, either at retail or wholesale, and subject to the classification contained in 84-2405 and 84-2407. Vending machines

HeinOnline -- 1977 Vol. I 228 1977

shall not be considered as places of business per se and are not required to be licensed under the provisions of this act."

Section 11. Section 84-2411, R.C.M. 1947, is amended to read as follows:

"**84-2411. Penalty.** Any person or group who shall violate any of the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum of not less than $25 *or* more than $200, and each day that such violation shall continue shall constitute a separate and distinct offense."

Section 12. Section 84-3501, R.C.M. 1947, is amended to read as follows:

"**84-3501. Definitions.** The following words, terms, and phrases in this act are, for the purposes hereof, defined as follows:

(1) A "public contractor" within the meaning of this act shall include any person who submits a proposal to or enters into a contract for performing all public construction work in the state with the federal government, state of Montana, or with any board, commission, or department thereof or with any board of county commissioners or with any city or town council or with any agency of any thereof or with any other public board, body, commission, or agency authorized to let or award contracts for any public work when the contract cost, value, or price thereof exceeds the sum of $1,000.

(2) The term "public contractor" includes subcontractors undertaking to perform the work covered by the original contract or any part thereof, the contract cost, value, or price of which exceeds the sum of $1,000.

(3) "Gross receipts" means all receipts from sources within the state, whether in the form of money, credits, or other valuable consideration, received from, engaging in, or conducting a business, without deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, taxes, losses, or any other expense whatsoever. However, "gross receipts" shall not include cash discounts allowed and taken on sales and sales refunds, either in cash or by credit, uncollectible accounts written off from time to time, *or* payments received in final liquidation of accounts included in the gross receipts of any previous return made by the person."

Section 13. Section 84-3502, R.C.M. 1947, is amended to read as follows:

"**84-3502. Unlawful to engage in public contracting business without license.** *It* shall be unlawful for any person or any combination of *persons* to engage in the business or act in the capacity of public contractor as herein defined within the state of Montana without having a license therefor as herein provided."

Section 14. Section 84-3510, R.C.M. 1947, is amended to read as follows:

"**84-3510. Complaints against licensee — grounds — investigation**

HeinOnline -- 1977 Vol. I 229 1977

— hearing — suspension of license — appeals. *(1)* Any person or other organization may file a duly verified complaint with the registrar charging that the licensee is guilty of one or more of the following acts or omissions:

(a) abandonment of any contract without legal excuse;

(b) diversion of funds or property received under express agreement for prosecution or completion of a specific contract under this act or for a specified purpose in the prosecution or completion of any contract and their application or use for any other contract, obligation, or purpose with intent to defraud or deceive creditors or the owner;

(c) the doing of any willful fraudulent act by the licensee as a public contractor in consequence of which another is substantially injured;

(d) the making of any false statement in any application for a license or renewal thereof;

(e) the failure to comply with the provisions of 82-1926 requiring preference of products manufactured or produced in this state by Montana industry and labor.

(2) Upon the filing of such complaint, the registrar shall investigate the charge and within *60* days after the filing of such complaint shall render and file said registrar's decision with said registrar's reasons therefor. If the registrar's decision be that the licensee has been guilty of any of such acts or omissions, said registrar shall suspend the contractor's license. At any time within *20* days thereafter the complainant or the contractor may petition the registrar for a rehearing. In the order granting or denying such rehearing, the registrar shall set forth a statement of the particular grounds and reasons for said registrar's actions on such petition and shall mail a copy of such order to the parties who have appeared in support of or in opposition to the petition for rehearing. If a rehearing be granted, the registrar shall set the matter for further hearing on due notice to the parties and, within *30* days after submission of the matter, serve said registrar's decision after rehearing in like manner as an original decision.

(3) The filing of such petition for rehearing as to the registrar's actions in suspending or canceling such license shall suspend the operation of such action and permit the licensee to continue to do business as a public contractor pending final determination of the controversy.

(4) Within *30* days after the decision on rehearing, any party aggrieved by such decision of the registrar may appeal therefrom to the district court in and for the county in which the licensee under this act resides or does business as a public contractor by serving upon the registrar a notice of such appeal. The matter shall thereupon be heard de novo by the district court. An appeal may be taken from the decision of the district court in the same manner as appeals in other civil cases.

(5) In all cases where the licensee has filed his notice of appeal from the decision of the registrar or from the decision of the district court, such licensee shall be entitled to continue to do business as a public contractor pending final decision of the controversy."

HeinOnline -- 1977 Vol. I 230 1977

Section 15. Section 84-3512, R.C.M. 1947, is amended to read as follows:

"**84-3512. Penalty for acting without license.** Any person or other organization acting in the capacity of public contractor within the meaning of this act without a license as herein provided shall be guilty of a misdemeanor and shall upon conviction thereof, if *an individual*, be punished by a fine of not to exceed $500 or by imprisonment in the county jail for a term not to exceed *6* months or by both such fine and imprisonment, in the discretion of the court. The same penalties shall apply upon conviction to any member of a *partnership* or to any construction, managing, or directing officer of any corporation or other organization consenting to, participating in, or aiding or abetting any such violation of this act."

Section 16. Section 84-4155, R.C.M. 1947, is amended to read as follows:

"**84-4155. Piecemeal redemption of land sold for taxes.** *(1)* Whenever any person shall desire to redeem from a tax sale and pay all subsequent taxes upon any lots, piece, or parcel of real estate which said person shall own or hold a mortgage or other lien against or when such person shall be the owner of or have some interest in such property, it shall be the duty of the county treasurer of the county in which such real estate is situated to permit such redemption and payment; and in case the real estate shall have been assessed and sold, together with other real estate, or in case the tax assessed against any other property shall be a lien thereon, then it shall be the duty of said county treasurer to compute and apportion the tax that should have properly been assessed against the real estate sought to be redeemed and upon which the taxes are sought to be paid the same as if said property had been separately assessed.

(2) Any personal property tax which is a lien upon said real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned."

Section 17. Section 84-4166, R.C.M. 1947, is amended to read as follows:

"**84-4166. Defense to action — redemption of parcels.** Any defendant may appear in said action within the time provided by law for appearances in civil actions and may set up any defense to the action he may have and may therein question the legality, validity, or the sufficiency of any act had in connection with the assessment or sale of said land. *Any* defendant to said action may make redemption of said lands from said tax sale by paying the total amount of delinquent taxes and penalties, with interest thereon at 8% per annum from date of payment, which plaintiff shall have paid, together with costs of the action. *Upon* such payment a certificate of redemption therefrom shall be issued by the county treasurer of said county to the defendant so paying, and thereupon the action shall be dismissed. *Whenever* a defendant shall desire to redeem from a tax sale and pay all subsequent taxes upon any lots, piece, or parcel of real estate, which person shall own or hold a mortgage or other lien against or have any interest in such property, it shall be the duty of the

HeinOnline -- 1977 Vol. I 231 1977

county treasurer of the county in which such real estate is situated to permit such redemption and payment. *In* case the real estate shall have been assessed against any other property *and is* a lien thereon, then it shall be the duty of said county treasurer to compute and apportion the tax that should have properly been assessed against the real estate sought to be redeemed and upon which the taxes are sought to be paid, the same as if said property had been separately assessed. Any personal property tax which is a lien upon said real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned."

Section 18. Section 84-5402, R.C.M. 1947, is amended to read as follows:

"**84-5402. Net proceeds tax — statement of yield, penalty, extension of time.** Every person engaged in mining, extracting or producing from any quartz vein or lode, placer claim, dump, or tailings or other place or sources whatever precious stones or gems, gold, silver, copper, lead, petroleum, natural gas, or other valuable mineral, except coal, must on or before March *31* each year make out a statement of the gross yield of the above-named metals or minerals from each mine owned or worked by such person during the year preceding January *1* of the year in which such statement is made and the value thereof. Such statement shall be in the form prescribed by the department of revenue and must be verified by the oath of such person or the manager, superintendent, agent, president, or vice-president, *if a* corporation, association, or partnership, and must be delivered to the department on or before March *31.* Such statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore, barrels of petroleum, cubic feet of natural gas, or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of such ores, mineral products, or deposits and the yield of such ores, mineral products, or deposits from such mine in constituents of commercial value; that is, the number of ounces of gold or silver, pounds of copper or lead, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas or other commercially valuable constituents of said ores, mineral products, or deposits, measured by standard units of measurement, yielded to such person so engaged in mining and to said royalty holders and each of them, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) cost of extracting same from mine;

HeinOnline -- 1977 Vol. I 232 1977

(7) cost of transporting to place of reduction or sale;

(8) cost of reduction or sale;

(9) cost of marketing the product and conversion of same into money;

(10) cost of construction, repairs, and betterments of mines and cost of repairs and replacements of reduction works;

(11) the assessed valuation of reduction works for the calendar year for which such return is made;

(12) cost of fire insurance and *workers'* compensation insurance.

If any person shall fail, neglect or refuse to file the statement required by this section within the time required, or within any extended period of time allowed, the state department of revenue when transmitting the net proceeds valuations to the counties shall inform the county assessor of such failure, neglect or refusal and the county assessor in addition to the net proceeds tax, if any, shall assess a penalty of ⅔ of 1% of such tax for each calendar month or fraction thereof that the required statement is not filed, deducting therefrom any moneys collected by the state department of revenue required by this section. The state department of revenue shall assess a penalty of $25 for each calendar month or fraction thereof, not exceeding four months, that the required statement is not filed, to be collected by the state department of revenue and deposited to the credit of the general fund of the state of Montana.

The state department of revenue shall, upon a showing of reasonable cause, grant an extension of time for filing the statement required by this section. This penalty shall be in addition to penalties provided in section 84-5410."

Section 19. Section 84-5410, R.C.M. 1947, is amended to read as follows:

"**84-5410. Penalty for failure to make statement — estimate of net proceeds.** *(1)* If any person shall refuse or neglect to make and deliver, under oath, to the department of revenue any statement required by this act or to comply with any requirements of this act, the department must cause such refusal to be noted upon the assessment roll opposite the name of such person, make an estimate of the ores, mineral products, or deposit mined and treated or sold by such person, and, upon such estimate, fix and determine the value of the net proceeds of said mine or mining claim.

(2) In making an estimate of the value of the net proceeds under this section, the department shall have the power to subpoena and examine, under oath, any *individual*, members of a partnership or association, officers or agents of a corporation, and the employees of such person, and every person who refuses or neglects to appear and testify, when required so to do by the *department*, for each and every refusal shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than *$1,000* or by imprisonment in the county jail for not more than *1* year or both such fine and imprisonment."

Section 20. Section 84-5413, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 233 1977

"**84-5413. Lien of tax — enforcement of payment.** *(1)* The taxes on such net proceeds must be levied as the levy of other taxes is provided for, and every such tax is a lien upon the mine or mining claim from which the ore or mineral products or deposits are mined or extracted and is a prior lien upon all personal property and improvements used in the process of extracting such ore or mineral products or deposits, provided such personal or real property is owned by or under lease by the person who extracted said ore, mineral products, or deposits.

(2) The tax on such net proceeds may be collected and the payment thereof enforced by the seizure and sale of the personal property upon which the tax is a lien, in the same manner as other personal property is seized and sold for delinquent taxes, or by the sale of the mine or mining claim and improvements, as provided for the sale of real property for delinquent taxes, or by the institution of a civil action for its collection in any court of competent jurisdiction. A resort to any one of the methods of enforcing collection, as herein provided for, shall not bar the right to resort to either or both of the other methods, but any two or all of the methods herein provided for may be used until the full amount of such tax is collected."

Section 21. Section 84-6201, R.C.M. 1947, is amended to read as follows:

"**84-6201. Definitions.** The terms "operator" and "producer" shall mean any person who engages in the business of mining, drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil."

Section 22. Section 84-6401, R.C.M. 1947, is amended to read as follows:

"**84-6401. Definitions.** The following words and phrases, when used in this act, unless the context clearly indicates otherwise, shall have the meanings ascribed to them in this section:

(1) "Scheduled airline company" means any person who undertakes directly or indirectly to engage in the business of scheduled air commerce.

(2) "Aircraft" means any contrivance now known or hereafter invented, used, or designed for navigation of or flight in the air.

(3) "Flight property" means aircraft fully equipped ready for flight used in air commerce.

(4) "Air commerce" means the transportation by aircraft of persons or property for hire in interstate, intrastate, or international transportation on regularly scheduled flights.

(5) "Equated plane hours" means hours spent by aircraft in flight or on the ground weighted according to the cargo capacity of each aircraft.

(6) "Operating" or "operated" means landings or *takeoffs* during interstate flight."

Section 23. Section 84-7003, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 234 1977

"**84-7003. Definitions.** As used in this act:

(1) "Mineral" means any precious stones or gems, gold, silver, copper, coal, lead, petroleum, natural gas, oil, uranium, or other nonrenewable merchantable products extracted from the surface or subsurface of the state of Montana.

(2) "Gross value of product" means the market value of any merchantable mineral extracted or produced during the taxable year.

(3) "Total environment" means air, water, soil, flora, *and* fauna and the social, economic, and cultural conditions that influence communities and individual citizens.

(4) "Department" means department of revenue."

Section 24. **Repealer.** Sections 84-1101, 84-1201, 84-2001, 84-2201, and 84-5901, R.C.M. 1947, are repealed.

Approved March 19, 1977.

CHAPTER NO. 53

AN ACT TO AMEND SECTION 52-409, R.C.M. 1947, TO REQUIRE SHERIFFS AND CONSTABLES TO POST NOTICES OF SALE UPON REQUEST OF A TRUSTEE IN THE CASE OF A FORECLOSURE OF A TRUST INDENTURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 52-409, R.C.M. 1947, is amended to read as follows:

"**52-409. Notice of sale to be mailed, posted, and published.** (1) The trustee shall give notice of the sale in the following manner:

(a) At least 120 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be mailed by registered or certified mail to:

(i) *the* grantor, at the grantor's address as set forth in the trust indenture or (in the event no address of the grantor is set forth in the trust indenture) at the grantor's last known address;

(ii) *each* person designated in the trust indenture to receive notice of sale whose address is set forth therein, at such address;

(iii) *each* person who has filed for record a request for a copy of notice of sale within the time and in the manner hereinafter provided, at the address of such person as set forth in such request;

(iv) *any* successor in interest to the grantor whose interest and address appear of record at the filing date and time of the notice of sale, at such address;

(v) *any* person having a lien or interest subsequent to the interest of

HeinOnline -- 1977 Vol. I 235 1977

the trustee and whose lien or interest and address appear of record at the filing date and time of the notice of sale, at such address.

(b) At least 20 days before the date fixed for the trustee's sale, a copy of the recorded notice of sale shall be posted in some conspicuous place on the property to be sold. *Upon request of the trustee, the notice of sale shall be posted by a sheriff or constable of the county wherein the property to be sold is located.*

(c) A copy of the notice of sale shall be published in a newspaper of general circulation published in any county in which the property, or some part thereof, is situated, at least once each week for 3 successive weeks. If there is no such newspaper, then copies of the notice of sale shall be posted in at least *three* public places in each county in which the property, or some part thereof, is situated. The posting or the last publication shall be made at least 20 days before the date fixed for the trustee's sale.

(2) On or before the date of sale, there shall be filed for record in the office of the clerk and recorder of each county where the property, or some part thereof, is situated, affidavits of mailing, posting, and publication showing compliance with the requirements of this section. On the date and at the time and place designated in the notice of sale, the trustee or his attorney shall sell the property at public auction to the highest bidder. The property may be sold in one parcel or in separate parcels, and any person, including the beneficiary under the trust indenture but excluding the trustee, may bid at the sale. The person making the sale may, for any cause he deems expedient, postpone the sale for a period not exceeding 15 days by public proclamation at the time and place fixed in the notice of sale. No other notice of the postponed sale need be given.

(3) The purchaser at the sale shall pay the price bid in cash, and, upon receipt of payment, the trustee shall execute and deliver a trustee's deed to the purchaser. In the event the purchaser refuses to pay the purchase price, the person conducting the sale shall have the right to *resell* the property at any time to the highest bidder. The party refusing to pay shall be liable for any loss occasioned thereby, and the person making the sale may also, in his discretion, thereafter reject any other bid of such person."

Approved March 19, 1977.

CHAPTER NO. 54

AN ACT TO REMOVE THE REQUIREMENT OF HEADGEAR FOR MOTORCYCLE RIDERS EIGHTEEN YEARS OF AGE OR OLDER; AMENDING SECTION 32-21-105.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-21-105.1, R.C.M. 1947, is amended to read as follows:

"**32-21-105.1. Headgear required for minor motorcycle riders — noise suppression devices.** (1) *An* operator and passenger *under 18*

years of age of any motorcycle operated upon the streets or highways of this state shall wear protective headgear upon the head. *The* headgear shall meet standards established by the department of justice.

(2) All motorcycles operated on the streets and highways of this state shall be equipped at all times with noise suppression devices, including an exhaust muffler, in good working order, and in constant operation. In addition, all motorcycles operating on streets and highways shall meet the following noise decibel limitations, on the standard A scale, such decibel limitations to be measured at 50 feet distant from the closest point to the motorcycle:

(a) Any motorcycle manufactured prior to 1970	92 db(A)
(b) Any motorcycle manufactured after 1969 but prior to 1973	88 db(A)
(c) Any motorcycle manufactured after 1972 but prior to 1975	86 db(A)
(d) Any motorcycle manufactured after 1974 but prior to 1978	80 db(A)
(e) Any motorcycle manufactured after 1977 but prior to 1988	75 db(A)
(f) Any motorcycle manufactured after 1987	70 db(A).

(3) A person convicted of the violation of subsection (1) above shall be fined $5.

(4) A person convicted of the violation of subsection (2) above shall be punished by a fine of not less than $10 *or* more than $100 or by imprisonment for not more than 10 days or by both such fine and imprisonment for the first such conviction; for a second conviction within 1 year thereafter, such person shall be punished by a fine of not less than $25 *or* more than $200 or by imprisonment for not more than 20 days or by both such fine and imprisonment; upon a third or subsequent conviction within 1 year after the first conviction, such person shall be punished by a fine of not less than $50 *or* more than $500 or by imprisonment for not more than 6 months or by both such fine and imprisonment."

Approved March 19, 1977.

CHAPTER NO. 55

AN ACT AMENDING SECTION 53-114, R.C.M. 1947, TO REQUIRE A STATEMENT OF ORIGIN BEFORE LICENSING OF NEW MOTOR VEHICLES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-114, R.C.M. 1947, is amended to read as follows:

"53-114. Application for registration of motor vehicles and

HeinOnline -- 1977 Vol. I 237 1977

payment of license fees — requirement of statement of origin — assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file, or cause to be filed, in the office of the county treasurer wherein such motor vehicle is owned or taxable, an application for registration, or reregistration, upon blank form to be prepared and furnished by the registrar of motor vehicles, which application shall contain:

(a) Name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable.

(b) Name and address of conditional sales vendor, mortgagee or holder of other lien against said motor vehicle, with statement of amount owing under such contract or lien.

(c) Description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body and, if truck, the rated capacity.

(d) In case of reregistration, the license number for the preceding year.

(e) Such other information as the registrar of motor vehicles may require.

(2) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R.C.M., 1947, shall before filing such application with the county treasurer submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose, the full and true and the assessed valuation of said vehicle for the year for which said application for registration is made.

(3) Whoever files an application for registration or reregistration of a motor vehicle except of a mobile home as defined in section 84-101, R.C.M., 1947, shall upon the filing of said application (1) pay to the county treasurer the registration fee, as provided in section 53-122 and section 53-115, and shall also at such time (2) pay the personal property taxes assessed or the new motor vehicle sales tax against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or reregistration may be accepted by the county treasurer. The county treasurer is hereby empowered to make full and complete investigation of the tax status of said vehicle and any applicant for registration or reregistration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on said motor vehicle, except a mobile home as defined in section 84-101, R. C. M., 1947, shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration and such determination shall be entered on the application form in a space provided therefor.

(5) Motor vehicles, except mobile homes as defined in section 84-101,

HeinOnline -- 1977 Vol. I 238 1977

R.C.M., 1947, are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property, and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be subject to assessment, levy and taxation more than once in each year.

(6) *(a)* The applicant for original registration of any wholly new and unused motor vehicle except a mobile home as defined in section 84-101, R.C.M., 1947, acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by section 32-3315, R.C.M., 1947, irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

(b) No such motor vehicle may be registered or licensed under the provisions of this subsection unless the application for registration is accompanied by a statement of origin to be furnished by the dealer selling the vehicle, showing that the vehicle has not previously been registered or owned, except as otherwise provided herein, by any person, firm, corporation, or association that is not a new motor vehicle dealer holding a franchise or distribution agreement from a new car manufacturer, distributor, or importer.

(7) Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1 in any year, and upon payment of taxes, the county treasurer shall stamp on said application: "taxes on this vehicle due January 1 of current year paid by applicant, prior applicant or owner and this vehicle is eligible for registration."

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.

(9) Motor vehicles subject to anniversary date registration as provided in sections 53-154 through 53-162 are exempt from the provisions of (5) and (7) of this section."

Approved March 19, 1977.

CHAPTER NO. 56

AN ACT TO PROHIBIT THE EMPLOYMENT OF ALIENS NOT LAWFULLY AUTHORIZED TO ACCEPT EMPLOYMENT; PROVIDING A PENALTY; AND CREATING A CIVIL CAUSE OF ACTION.

HeinOnline -- 1977 Vol. I 239 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 41-121 that reads as follows:

41-121. Employment of aliens not lawfully authorized to accept employment prohibited. (1) No employer may knowingly employ an alien who is not lawfully authorized to accept employment.

(2) A person convicted of violating this section shall be fined no more than $300.

(3) The department of labor and industry or a person harmed by a violation of this section may sue to enjoin an employer from violating this section and to gain other appropriate relief.

Approved March 19, 1977.

CHAPTER NO. 57

AN ACT TO PROVIDE FOR THE TRAINING OF FACT FINDERS AND ARBITRATORS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 59-1614.1 that reads as follows:

59-1614.1. Training of fact finders and arbitrators. The board of personnel appeals shall establish a course of education for the training of fact finders and arbitrators. No person may serve as a fact finder or as an arbitrator under title 59, chapter 16 until he has successfully completed the course or equivalent education.

Approved March 19, 1977.

CHAPTER NO. 58

AN ACT TO INCREASE THE MAXIMUM PENSION THAT MAY BE PAID TO A RETIRED VOLUNTEER FIREMAN BY A FIRE DEPARTMENT RELIEF ASSOCIATION; AMENDING SECTION 11-1925, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1925, R.C.M. 1947, is amended to read as follows:

"**11-1925. Pensions to retired firemen.** Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service

HeinOnline -- 1977 Vol. I 240 1977

after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund," a "service pension" in an amount which shall be equal to one-half (½) of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of said fire department. However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one percent (1%) per year for each additional year of service completed, up to a maximum of sixty percent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department; provided that no member shall be eligible to receive a service pension prior to attaining the age of fifty (50) years. However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half (½) the regular monthly salary paid, excluding overtime and payments in lieu of sick leave and annual leave, to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In no event shall the monthly compensation paid to a member retiring prior to July 1, 1974 be less than two hundred dollars ($200). In case of volunteer men the compensation shall in no event exceed the sum of *$100 a* month.

A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act; provided, that a member of a pure volunteer fire department who has completed at least ten (10) years' service as an active member of such fire department, but who is prevented from completing at least twenty (20) years' service by dissolution or discontinuance of his volunteer fire department, or by personal relocation due to transfer or loss of employment, or by personal disability, or by any other factor beyond his reasonable control, may nevertheless qualify for partial or reduced pension, in such amount and to such extent as shall be determined by the board of trustees of the fire department relief association, without qualifying as to any provisions pertaining to an attained age."

Section 2. **Effective date.** This act is effective upon passage and approval.

Approved March 19, 1977.

CHAPTER NO. 59

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO SHERIFFS' RETIREMENT AND DEATH AND DISABILITY BENEFITS; AMENDING SECTIONS 68-2602, 68-2604, 68-2607, 68-2610, 68-2614, 68-2616, 68-2618, 68-2621, 68-2622, 68-2626, 68-2627, AND 68-2628, R.C.M. 1947.

HeinOnline -- 1977 Vol. I 241 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-2602, R.C.M. 1947, is amended to read as follows:

"**68-2602. Definitions.** *Unless the context requires otherwise, the following definitions apply in this chapter:*

(1) "Accumulated contributions" *or "accumulated deductions" means* the total amount deducted from the salary of a member during a period of membership service *plus the total amount deducted during a period of prior service and* transferred from the public employees' retirement system, standing to *the member's* credit in the account, together with the accrued interest.

(2) "Beneficiary" *means* a person who is nominated in an acknowledged document by the member, which is filed with the board.

(3) "Retired sheriff" *means* a person receiving a retirement allowance under this act.

(4) "Board" *means* the sheriffs' retirement board.

(5) "Member" *means* any person who has accumulated deductions in the account to his credit.

(6) "Final salary" *means* the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service from which contributions were deducted *or, in* the event that a member has not served 3 years, the total salary earned divided by the number of years served.

(7) "Actuarial equivalent" *means* a benefit computed using the mortality tables and interest rates adopted by the board, compounded annually.

(8) "Account" *means* the Montana sheriffs' retirement account administered by the sheriffs' retirement board.

(9) "Vested retirement" *means* a retirement not for cause and before retirement age.

(10) "Member's annuity" *means* payments for life derived from contributions made by the contributor while employed.

(11) "Retirement allowance" *means* the state annuity plus the member's annuity.

(12) "State annuity" *means* payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to *the* account.

(13) "Creditable service" *means* the aggregate of all of a member's current and prior service.

(14) "Membership service" *means* service for which an amount is deducted from the salary of a member and paid into the account.

HeinOnline -- 1977 Vol. I 242 1977

(15) "Prior service" *means* service for which credit was granted by the public employees' retirement system of the state of Montana.

(16) "Service" *means* employment as a sheriff.

(17) "Sheriff" *means* any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff."

Section 2. Section 68-2604, R.C.M. 1947, is amended to read as follows:

"**68-2604. Functions of the board.** The board is charged with the proper administration, operation, and enforcement of this act, *and it may establish such rules as it considers necessary.* The board shall prescribe the conditions under which persons may *become members of* and receive benefits under the retirement system. It shall keep the data necessary for actuarial valuation purposes. It shall have biennial actuarial investigations made into the mortality and service experience of the members and the beneficiaries of the account and shall adopt one or more mortality tables."

Section 3. Section 68-2607, R.C.M. 1947, is amended to read as follows:

"**68-2607. Membership.** Every sheriff *is* required to become a member of the *sheriffs'* retirement system on July 1, 1974, unless he was previously a member of the public employees' retirement system, in which case, he may at his option become a member of the *sheriffs'* retirement system. Contributions by members under this act shall commence with the first payroll after July 1, 1974. All sheriffs who become members of the *sheriffs'* retirement system *must* remain *members* so long as actively employed in such capacity."

Section 4. Section 68-2610, R.C.M. 1947, is amended to read as follows:

"**68-2610. Eligibility and application for service retirement.** *(1) A* sheriff in service who has completed at least 25 years of service and who has reached the age of 55 years may retire on *a* service retirement allowance upon written application to the board, *submitted* not less than 30 days *or* more than 90 days from *the* desired date of retirement. The application *must* state the date he desires to be retired.

(2) Retirement *is* compulsory for any nonelected sheriff at age 65, *except in the case of undersheriffs.*"

Section 5. Section 68-2614, R.C.M. 1947, is amended to read as follows:

"**68-2614. Involuntary retirement allowance.** *If* a member *is* involuntarily discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing an application, be paid in one of the following ways:

(1) *the* full amount of *his* accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumu-

HeinOnline -- 1977 Vol. I 243 1977

lated deductions plus *an annuity which is* the actuarial equivalent of the present value of *the* state annuity."

Section 6. Section 68-2616, R.C.M. 1947, is amended to read as follows:

"**68-2616. Reinstatement after withdrawal of contributions.** *(1) A* member may deposit in the retirement fund, in one sum or in *no more than* 12 monthly or 24 semimonthly payments, an amount equal to that which was withdrawn at the last termination of membership plus an amount equal to the interest which would have been credited to the account had the member not withdrawn the contributions upon termination of membership, subject to minimum monthly or semimonthly payments as fixed by the board.

(2) If a member *who is* reentering the retirement system after a termination of membership does not elect to make or does not make the redeposit, *he must* reenter as a new member without credit for any service except the prior service credited before the termination. If a member does make *the* redeposit, his membership *is* continuous and unbroken by the last termination.

(3) Regardless of whether *the* redeposit is made, the documents held by the retirement system, as executed by *the* member prior to termination of membership, shall be held by the system for the same purposes as prior to *the* termination, and beneficiaries nominated shall remain unchanged."

Section 7. Section 68-2618, R.C.M. 1947, is amended to read as follows:

"**68-2618. Payments in case of death before retirement.** *(1)* If a member dies before retirement, his beneficiary *is* entitled to elect among those of the following options for which the member *qualified*:

(a) a lump-sum payment of the accumulated deductions standing to the member's credit at his death;

(b) if the member *was* not eligible to retire at the time of death, a retirement allowance commencing on the member's death which is the actuarial equivalent of a retirement *allowance* in the amount of 2% of the final salary for each year of service *up* to a maximum of 25 years;

(c) if the member *was* eligible to retire at the time of death, a retirement allowance commencing on the member's death in the amount of 2% of the final salary for each year of service *up* to a maximum of 25 years;

(d) if the board *finds* that the member died as a direct and proximate result of injuries received in the course of employment, a retirement allowance commencing on the member's death in the amount of 50% of the final salary, less the amount paid to *the* beneficiary under the *Workers'* Compensation Act of the state of Montana, during the period such compensation is paid or payable.

(2) A beneficiary may not be paid for a period longer than the time it would have taken the deceased member to reach the age of 65 years or *longer* than 15 years, whichever is greater."

HeinOnline -- 1977 Vol. I 244 1977

Section 8. Section 68-2621, R.C.M. 1947, is amended to read as follows:

"**68-2621. Designation of beneficiary.** Every *member may* name a beneficiary by a written acknowledged designation properly filed with the board and change the beneficiary in like manner. *The* designation and *any* changes *may* be filed with the board up until, but not after, the time of retirement."

Section 9. Section 68-2622, R.C.M. 1947, is amended to read as follows:

"**68-2622. Military service.** *(1) A* member now on active duty in or hereafter inducted into the armed forces of the United States *has* the option *to*:

(a) continue payments into the account; or

(b) allow the board to make the payments during *his* military service, in which event *he must* repay the account the full amount of *the* payments *within 2 years after his* return to *his* former status as a sheriff.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall be given credit for his service in the armed forces of the United States *as if it were service as a sheriff.*"

Section 10. Section 68-2626, R.C.M. 1947, is amended to read as follows:

"**68-2626. Optional retirement allowance.** *(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2), at any time before* the first payment on account of any retirement allowance is made. *If a* member dies after retirement and within 30 days from the date upon which *his* election or changed election *was* received *by* the board, *the* election is void and the death *will* be considered as that of a member before retirement.

(2) A member or beneficiary may elect *or, prior to the approval of a previous election,* revoke or change a previous election *and elect* to receive the actuarial equivalent of *his* retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 1—upon his death, *the* lesser retirement allowance *will* be continued throughout the life of and paid to *the* person *that he nominated* by written designation, duly executed and filed with the board at the time of retirement.

(b) Option 2—upon his death, one-half of the lesser retirement allowance *will* be continued throughout the life of and paid to *the* person *that he nominated* by written designation, duly executed and filed with the board at the time of retirement.

(c) Option 3—such other benefits *will* be paid, either to the beneficiary or *to any* other person *that he nominated*, as, together with *the lesser* retirement *allowance,* are the actuarial equivalent of *his* retirement allowance and *have been* approved by the board."

HeinOnline -- 1977 Vol. I 245 1977

Section 11. Section 68-2627, R.C.M. 1947, is amended to read as follows:

"**68-2627. Transfer of dormant accumulated deductions.** The board may, in its discretion, transfer the accumulated deductions of a member to the employer's account in the sheriffs' retirement account if the member's account has been dormant for a period of 10 years. *However,* no right of the member *may* be jeopardized by *the* transfer, and the accumulated *deductions must* be transferred *back* to the member's name upon *his* subsequent reentry *into the system.*"

Section 12. Section 68-2628, R.C.M. 1947, is amended to read as follows:

"**68-2628. Ineligibility for membership in public employees' retirement system.** *(1)* After July 1, 1974, no sheriff *is* eligible to *become a member of* the public employees' retirement system and the provisions of *The Public Employees' Retirement System Act do* not apply to sheriffs, *except as provided in 68-2607.*

(2) No provision of this act is to be construed as to deny any sheriff any benefits accrued under provisions of the public employees' retirement system prior to July 1, 1974."

Approved March 21, 1977.

CHAPTER NO. 60

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO DEFERRED COMPENSATION PLANS FOR PUBLIC EMPLOYEES; AMENDING SECTIONS 68-2701, 68-2702, AND 68-2708, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-2701, R.C.M. 1947, is amended to read as follows:

"**68-2701. Deferred compensation programs permitted.** The state or any county, city, town, or other political subdivision may establish, after reaching agreement with any employee or the employee's representative, if one has been designated or certified, a program for *the employee* to defer any portion of *his* compensation up to the maximum allowed by the Internal Revenue Code in a plan qualified for exemption under applicable sections of the Internal Revenue Code."

Section 2. Section 68-2702, R.C.M. 1947, is amended to read as follows:

"**68-2702. Department of administration authorized to make contracts.** The department of administration is hereby authorized to enter into *a* contractual *agreement* with *any employee* or *his* representative, if one has been designated or certified, on behalf of the state to defer

HeinOnline -- 1977 Vol. I 246 1977

a portion of *the* employee's compensation through *a* qualified plan agreed upon by the employee or his representative. The department of administration may establish rules for the proper operation of plans *agreed upon under this section.*"

Section 3. Section 68-2708, R.C.M. 1947, is amended to read as follows:

"**68-2708. What private businesses may provide services.** *Qualified* deferred compensation plans *may* be established only with companies, trusts, or agents licensed to do business in the state of Montana."

Approved March 21, 1977.

CHAPTER NO. 61

AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO STATE FINANCE; AMENDING SECTIONS 78-1018, 78-1019, 78-1028, 78-1029, 79-208, 79-305, 79-603, 79-1012, 79-2707, AND 82-1117, R.C.M. 1947; AND REPEALING SECTIONS 59-705, 78-737 THROUGH 78-746, 78-1001 THROUGH 78-1010, 78-1202, 78-1203, 78-1209, 79-110, 79-802, 79-811, 79-812, 79-1102, 79-1103, 79-1104, 79-1603, 79-2701, 82-1104, AND 82A-209, AND CHAPTER 17 OF TITLE 79, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 78-1018, R.C.M. 1947, is amended to read as follows:

"**78-1018. Employment security commission building account.** To provide for the payment of the interest and principal of the bonds authorized by *78-1011 through 78-1020,* there is created *an* employment security commission building *account within the sinking fund in the state treasury. All* sums of money dedicated and appropriated to the payment of the principal and interest of *the* bonds and the erection of *the* addition to the employment security building including the landscaping and paving around it *shall be paid into that account.*"

Section 2. Section 78-1019, R.C.M. 1947, is amended to read as follows:

"**78-1019. Purchase of bonds.** The *board of investments* is authorized to purchase the bonds provided for by *78-1011 through 78-1020* with moneys from the investment *funds,* notwithstanding the provisions of *79-310.*"

Section 3. Section 78-1028, R.C.M. 1947, is amended to read as follows:

"**78-1028. Employment security commission building account.** To provide for the payment of the interest and principal of the bonds authorized by *78-1021 through 78-1030,* there is created *an* employment security

commission building *account within the sinking fund in the state treasury. All* sums of money dedicated and appropriated to the payment of the principal and interest of *the* bonds and the erection of *the* buildings including the landscaping and paving around them *shall be paid into that account.*"

Section 4. Section 78-1029, R.C.M. 1947, is amended to read as follows:

"**78-1029. Purchase of bonds.** The *board of investments* is authorized to purchase the bonds provided for by *78-1021 through 78-1030* with moneys from the investment *funds,* notwithstanding the provisions of *79-310.*"

Section 5. Section 79-208, R.C.M. 1947, is amended to read as follows:

"**79-208. Payment, registry, and interest.** *(1) The* state treasurer *shall* on the presentation of state warrants regularly issued pay the same out of any funds available for such payments, and in the event there are no funds available for such payment, he must register each warrant in a book or register to be kept for *that* purpose, entering the date of issue, date of registration, name in whose favor warrant is drawn, *and* the number and amount thereof and endorse on each warrant so registered, on its face, "*presented* for payment and not paid for want of funds and registered in this office this .... day of ....", inserting the date of registration, and he shall affix his signature as such treasurer thereto. *All* warrants so registered and endorsed on and after March *1,* 1927, shall bear interest at the rate of *4% a year* until called for payment, after date of which call interest shall cease. *All* warrants shall be redeemed and paid in the order of their registration."

Section 6. Section 79-305, R.C.M. 1947, is amended to read as follows:

"**79-305. Investment of bond receipts.** The board of investments shall invest, under the direction and control of the state board of examiners, *all funds* not immediately needed by that board."

Section 7. Section 79-603, R.C.M. 1947, is amended to read as follows:

"**79-603. Retention of agency moneys.** The department of administration may, in its discretion, permit any state agency to retain in its possession, under conditions the department of administration may prescribe, moneys that would otherwise be deposited in the agency fund as defined in *79-410.* The department of administration may cancel this permission and require the deposit of the moneys with the state treasurer. However, the state treasurer, with the consent of the *board of investments,* shall designate depositories for the moneys and securities and require indemnifying bonds or pledged securities sufficient to adequately and properly secure the amounts deposited in the depositories."

Section 8. Section 79-1012, R.C.M. 1947, is amended to read as follows:

"**79-1012. Governor chief budget officer — appointment of budget director.** The governor shall be the chief budget officer of the state and shall appoint a budget director, who shall hold office at the pleasure of the governor and *perform the duties assigned by law or by the governor.*"

HeinOnline -- 1977 Vol. I 248 1977

Section 9. Section 79-2707, R.C.M. 1947, is amended to read as follows:

"**79-2707. Expenditure — approved budget amendment.** Approval of a state agency application under 79-2706 shall not constitute authority to expend any federal assistance program funds subsequently granted. Financing for new or expanded programs from federal assistance program sources may be made available only by approved budget amendment."

Section 10. Section 82-1117, R.C.M. 1947, is amended to read as follows:

"**82-1117. Disqualifications.** No member of the board *may* act *on* any claim in which he is interested or for expenditures incurred in his office *or* be present when the decision is made."

Section 11. **Repealer.** Sections 59-705, 78-737 through 78-746, 78-1001 through 78-1010, 78-1202, 78-1203, 78-1209, 79-110, 79-802, 79-811, 79-812, 79-1102, 79-1103, 79-1104, 79-1603, 79-2701, 82-1104, 82A-209 and chapter 17 of Title 79, R.C.M. 1947, are repealed.

Approved March 21, 1977.

CHAPTER NO. 62

AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO CORPORATIONS, PARTNERSHIPS, AND ASSOCIATIONS; AMENDING SECTIONS 9-107, 9-119, 9-804, 9-1003, 9-1004, 9-1006, 9-1013, 14-312, 15-2105, 15-2212, 15-2274, 15-2352, 15-2504, 63-504, 63-702, 63-803, 63-901, AND 63-905; AND REPEALING SECTIONS 14-221 AND 14-222, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 9-107, R.C.M. 1947, is amended to read as follows:

"**9-107. Powers and duties of trustees — officers.** The affairs and property of *the* association shall be managed by the trustees, a majority of whom *is* a *quorum* for the transaction of business. The trustees shall annually appoint from among their number a president, vice-president, secretary, and treasurer who shall hold their offices during the pleasure of the board of trustees. *The* trustees may require the treasurer to give security for the faithful performance of the duties of his office."

Section 2. Section 9-119, R.C.M. 1947, is amended to read as follows:

"**9-119. Transfer of lots.** *(1)* Whenever the lands of such *an* association are laid out in lots and *the* lots or any of them are transferred to individual proprietors and there has been an interment in *a* lot so transferred, *that* lot from the time of such interment shall forever be inalienable and shall, upon the death of the proprietor, descend to *his* heirs. *However,* any one or more of *those* heirs may release to any other of the heirs his or their interest in the *lot. A* copy of *the* release shall be filed

with the secretary of *the* association or with the county clerk and recorder of the county within which *the* lot *is* situated. *Except by consent of all persons having an interest in the lot, the* body of *a* deceased person *may* not be interred in *that* lot unless it is the body of:

(a) a person having *an interest in that lot* at the time of *his* decease;

(b) a relative of some person having such interest;

(c) the wife *or husband* of such *a* person; or

(d) *a* relative of such husband or wife.

(2) However, the person or persons *in whom* the title to such lot or lots or part thereof *is vested* may at any time sell, convey, and release *the* lots or parts thereof to the cemetery association maintaining the cemetery in which *the* lots are *situated. A* copy of the instruments of such conveyance *shall* be filed *in the same manner* provided *for release* from one heir to another. *The* cemetery association *may* use any funds under its control for such purposes and shall hold and *may* convey such lots or parts thereof to other *purchasers* in the same manner and with the same effect as it holds and *conveys* any other of its cemetery lots. *This* proviso *does* not allow or authorize the conveyance to *the cemetery* association of *a* piece of ground in which the body of *a* deceased person lawfully interred actually *remains* interred at the time of *the* attempted conveyance."

Section 3. Section 9-804, R.C.M. 1947, is amended to read as follows:

"**9-804. Amended map or plat.** Any part *or* subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as *the* change does not disturb the interred remains of any deceased person."

Section 4. Section 9-1003, R.C.M. 1947, is amended to read as follows:

"**9-1003. Attachment of remains — misdemeanor.** *A* person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand or upon any pretended lien or charge is guilty of a misdemeanor."

Section 5. Section 9-1004, R.C.M. 1947, is amended to read as follows:

"**9-1004. Destruction or mutilation of mausoleum or columbarium — interference with interment — misdemeanor.** *(1) A* person is guilty of *criminal mischief and is punishable as provided in 94-6-102* who without right *knowingly* does any of the following:

(a) *destroys,* cuts, mutilates, effaces, or otherwise injures, tears down, or removes *a* crypt, niche, monument, memorial, or marker in a mausoleum or columbarium or *a* gate, door, fence, wall, post, or railing or *an* inclosure for the protection of a crypt or niche or any other property in a mausoleum or columbarium;

(b) *destroys,* cuts, breaks, removes, or injures *a* building, statuary, ornamentation, tree, shrub, flower, or plant within a mausoleum or columbarium or within the limits of any grounds within which *a* mausoleum or columbarium is located.

HeinOnline -- 1977 Vol. I 250 1977

(2) A person is guilty of a misdemeanor who without right knowingly disturbs, obstructs, detains, or interferes with *a* person carrying or accompanying human remains to a mausoleum, columbarium, or funeral establishment or *a person who is* engaged in a funeral service or an interment."

Section 6. Section 9-1006, R.C.M. 1947, is amended to read as follows:

"**9-1006. Exceptions.** *(1)* The provisions of 9-1004 do not apply to the removal or unavoidable breakage or injury, by a mausoleum-columbarium authority, of anything placed in or upon any portion of its mausoleum or columbarium or the grounds within which the same are situated in violation of any of the rules of the mausoleum-columbarium authority.

(2) The provisions of 9-1004 do not apply to the removal *of* anything placed in *a* mausoleum or columbarium or the grounds within which *it is* situated, by or with the consent of the mausoleum-columbarium authority, which has become wrecked, unsightly, or dilapidated."

Section 7. Section 9-1013, R.C.M. 1947, is amended to read as follows:

"**9-1013. Construction in violation of act a public nuisance — penalty.** *An* owner or operator of a mausoleum or columbarium erected in violation of this act is guilty of maintaining a public nuisance and upon conviction is punishable by a fine of not less than $500 *or* more than $5,000 *in the case of a corporation, or as provided in 94-8-107 in the case of an individual. In* addition, *the owner or operator* is liable for all costs, expenses, and disbursements paid or incurred in prosecuting the case. The costs, expenses, and disbursements shall be fixed by the court having jurisdiction of the case."

Section 8. Section 14-312, R.C.M. 1947, is amended to read as follows:

"**14-312. Bylaws — recording and amending.** *(1)* The bylaws *and all amendments and additions thereto* shall be recorded.

(2) The bylaws may be repealed or amended or new bylaws may be adopted at the annual meeting, or at any other meeting of the members called for that purpose by the directors, by a vote representing two-thirds of the stock or other evidences of membership or by two-thirds of the members. The written assent of the holders of two-thirds of the stock or other evidences of membership or of two-thirds of the members is effective to repeal or amend a bylaw or to adopt additional bylaws. The power to repeal and amend the bylaws and to adopt new bylaws may, by a similar vote at any such meeting or by similar written assent, be delegated to the board of directors or trustees. That power, when delegated, may be revoked by a similar vote at any such meeting of the members."

Section 9. Section 15-2105, R.C.M. 1947, is amended to read as follows:

"**15-2105. Permissible purposes for incorporation.** An individual or group of individuals licensed or otherwise authorized to render the same professional services within this state may organize and become a shareholder or shareholders of a professional corporation for pecuniary profit under the provisions of *Title 15, chapter 22,* for the sole and specific purpose of rendering the same and specific professional service."

HeinOnline -- 1977 Vol. I 251 1977

Section 10. Section 15-2212, R.C.M. 1947, is amended to read as follows:

"**15-2212. Change of registered office or registered agent.** *(1)* A corporation may change its registered office or change its registered agent, or both, upon filing in the office of the secretary of state a statement setting forth:

(a) *the* name of the corporation;

(b) *the* address of its then registered office;

(c) *if* the address of its registered office *is* changed, the address to which the registered office is to be changed;

(d) *the* name of its then registered agent;

(e) *if* its registered agent *is* changed, the name of its successor registered agent;

(f) *that* the address of its registered office and the address of the business office of its registered agent, as changed, will be identical;

(g) *that* such change was authorized by resolution duly adopted by its board of directors.

(2) Such statement shall be executed for the corporation by any officer thereof, verified by him, and delivered to the secretary of state. If the secretary of state finds that such statement conforms to the provisions of this act, he shall, when all fees have been paid as in this act prescribed, file such statement in his office. *Upon* filing, the change of address of the registered office or the appointment of a new registered agent, or both, as the case may be, *is* effective.

(3) A registered agent of a corporation may resign as *registered* agent upon filing a written notice *of resignation*, executed in duplicate, with the secretary of state, who shall *immediately* mail a copy thereof to the corporation at its registered office. The appointment of *the* agent shall terminate *30* days after receipt of such notice by the secretary of state.

(4) If a registered agent changes his or its business address to another place within the same county, he or it may change such address and the address of the registered office of any corporations of which he or it is registered agent by filing a statement as required above, except that it need be signed only by the registered agent and need not be responsive to *(1)*(e) or *(1)*(g) and must recite that a copy of the statement has been mailed to each such corporation."

Section 11. Section 15-2274, R.C.M. 1947, is amended to read as follows:

"**15-2274. Rights of dissenting shareholders.** *(1)* A shareholder electing to exercise such right of dissent shall file with the corporation, prior to or at the meeting of shareholders at which *the* proposed corporate action is submitted to a vote, a written objection to *the* proposed corporate action. If *the* proposed corporate action *is* approved by the required vote and such shareholder *does* not *vote* in favor thereof, *he* may, within 10

HeinOnline -- 1977 Vol. I 252 1977

days after the date on which the vote was taken, or *in the case of a merger without shareholder vote* within 15 days after the plan of merger *is* mailed to *him*, make written demand on the corporation or, in the case of a merger or consolidation, on the surviving or new corporation, domestic or foreign, for payment of the fair value of *his* shares. *If the* proposed corporate action is effected, *the* corporation shall pay to *the* shareholder, upon surrender of the certificate or certificates representing *his* shares, the fair value thereof as of the day prior to the date on which the vote was taken approving the proposed corporate action, excluding any appreciation or depreciation in anticipation of such corporate action. *A* shareholder failing to make demand within the *prescribed* period *is* bound by the terms of the proposed corporate action. *A* shareholder making such demand *is* thereafter entitled only to payment as *provided* in this section and *is* not entitled to vote or to exercise any other rights of a shareholder.

(2) No such demand may be withdrawn unless the corporation *consents* thereto. *The right of a shareholder to be paid the fair value of his shares shall cease and his status as a shareholder shall be restored, without prejudice to any corporate proceedings which may have been taken during the interim, if:*

(a) the shareholder's demand *is* withdrawn upon consent;

(b) the proposed corporate action *is* abandoned or rescinded or the shareholders revoke the authority to effect such action;

(c) in the case of a merger, on the date of the filing of the articles of merger the surviving corporation is the owner of all the outstanding shares of the other corporations, domestic and foreign, that are parties to the merger;

(d) no demand or petition for the determination of fair value by a court *is* made or filed within the time provided in this section; or

(e) a court of competent jurisdiction *determines* that *the* shareholder is not entitled to the relief provided by this section.

(3) Within 10 days after *the* corporate action is effected, the corporation or, in the case of a merger or consolidation, the surviving or new corporation, domestic or foreign, shall give written notice thereof to each dissenting shareholder who has made demand as herein provided and shall make a written offer to each such shareholder to pay for *his* shares at a specified price *considered* by *the* corporation to be the fair value thereof. *The* notice and offer shall be accompanied by a balance sheet of the corporation, the shares of which the dissenting shareholder holds, as of the latest available date and not more than 12 months prior to the making of such offer, and a profit and loss statement of *that* corporation for the *12-month* period *ending* on the date of such balance sheet.

(4) If within 30 days after the date on which *the* corporate action was effected, the fair value of such shares is agreed upon between *the* dissenting shareholder and the corporation, payment therefor shall be made within 90 days after the date on which *the* corporate action was effected, upon surrender of the certificate or certificates representing *the* shares. Upon payment of the agreed value, the dissenting shareholder *ceases* to have any interest in *the* shares.

HeinOnline -- 1977 Vol. I 253 1977

(5) If within such *30-day* period a dissenting shareholder and the corporation do not so agree, the *dissenting shareholder may, within 60 days after the date on which the corporate action was effected, make written demand on the corporation for the filing of a petition, in the district court for the county in this state where the corporation's registered office is located, to have the fair value of his shares determined. The corporation must file the petition within 30 days after receipt of the written demand or at its election may file the petition at any time within 60 days after the date on which the corporate action was effected.* If, in the case of a merger or consolidation, the surviving or new corporation is a foreign corporation without a registered office in this state, *the* petition shall be filed in the county where the registered office of the domestic corporation was last located. If the corporation *fails* to *file the petition*, any dissenting shareholder may do so in the name of the corporation. All dissenting shareholders, wherever residing, shall be made parties to the proceeding as an action *on* their shares quasi in rem. Each dissenting shareholder shall be served personally or by publication as provided by the Montana Rules of Civil Procedure. The jurisdiction of the court *is* plenary and exclusive. All shareholders who are parties to the proceeding *are* entitled to judgment against the corporation for the amount of the fair value of their shares.

(6) The court may, if it so elects, appoint one or more persons as *appraisers* to receive evidence and recommend a decision on the question of fair value. The appraisers have such power and authority as *is* specified in the order of their appointment or *in* an amendment thereof. The judgment *is* payable only upon and concurrently with the surrender to the corporation of the certificate or certificates representing *the* shares. Upon payment of the judgment, the dissenting shareholder *ceases* to have any interest in *the* shares.

(7) The judgment shall include an allowance for interest, at such rate as the court may find to be fair and equitable *under* all the circumstances, from the date on which the vote was taken on the proposed corporate action to the date of payment.

(8) The costs and expenses of any such proceeding shall be determined by the court and shall be assessed against the corporation, but all or any part of *the* costs and expenses may be apportioned and assessed as the court *considers* equitable against any or all of the dissenting shareholders who are parties to the proceeding *and* to whom the corporation made an offer to pay for the shares, if the court *finds* that the action of such shareholders in failing to accept such offer was arbitrary or vexatious or not in good faith. *The* expenses include reasonable compensation for and reasonable expenses of the appraisers but *do not include* the fees and expenses of counsel for and experts employed by any party. *However,* if the fair value of the shares as determined materially exceeds the amount which the corporation offered to pay therefor or if no offer was made, the court in its discretion may award to any shareholder who is a party to the proceeding such sum as the court *determines* to be reasonable compensation to any expert or experts employed by the shareholder in the proceeding.

HeinOnline -- 1977 Vol. I 254 1977

(9) Within 20 days after demanding payment for his shares, each shareholder demanding payment shall submit the certificate or certificates representing his shares to the corporation for notation thereon that such demand has been made. His failure to do so shall, at the option of the corporation, terminate his rights under this section unless a court of competent jurisdiction, for good and sufficient cause shown, otherwise *directs*. If shares represented by a certificate on which notation has been made *are* transferred, each new certificate issued therefor shall bear similar notation, together with the name of the original dissenting holder of *the* shares. *A* transferee of such shares *acquires* by *the* transfer no rights in the corporation other than those which the original dissenting shareholder had after making demand for payment of the fair value thereof.

(10) Shares acquired by a corporation pursuant to payment of the agreed value therefor or to payment of the judgment entered therefor, as in this section provided, may be held and disposed of by *the* corporation as in the case of other treasury shares, except that in the case of a merger or consolidation, they may be held and disposed of as the plan of merger or consolidation otherwise *provides*."

Section 12. Section 15-2352, R.C.M. 1947, is amended to read as follows:

"**15-2352. Notification to attorney general.** *(1)* The secretary of state, on or before December *31* each year, shall certify to the attorney general the names of all corporations which have failed to file their annual reports in accordance with the provisions of this act. He shall also certify from time to time the names of all corporations which have given other cause for dissolution as provided in this act, together with the facts pertinent thereto.

(2) Whenever the secretary of state *certifies* the name of a corporation to the attorney general as having given any cause for dissolution, the secretary of state shall concurrently mail to the corporation at its registered office a notice that *the* certification has been made.

(3) Upon the receipt of such certification, the attorney general shall file an action in the name of the state against such corporation for its dissolution. *Each* certificate from the secretary of state to the attorney general pertaining to the failure of a corporation to file an annual report shall be taken and received in all courts as prima facie evidence of the facts therein stated.

(4) If, before *the* action is filed, the corporation *files* its annual report or *appoints* or *maintains* a registered agent as provided in this act or *files* with the secretary of state the required statement of change of registered agent, such fact shall be *immediately* certified by the secretary of state to the attorney general and he *may* not file an action against *the* corporation for such cause. If, after *the* action is filed, the corporation *files* its annual report or *appoints* or *maintains* a registered agent as provided in this act or *files* with the secretary of state the required statement of change of registered agent and *pays* the costs of *the* action, the action for such cause shall abate."

Section 13. Section 15-2504, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 255 1977

"**15-2504. Required filings with the secretary of state — certified copy of trust instrument — filing.** *(1)* Any business trust desiring to transact business in this state shall file with the secretary of state:

(a) an executed copy of *its* articles, declarations of trust, or trust agreement by which the trust was created and all amendments thereto or a true copy thereof certified to be such by a trustee of the trust before an official authorized to administer oaths or by a public official of another state, territory, or country in whose office an executed copy thereof is on file. *The* true copy shall be verified within 60 days before it is filed with the secretary of state.

(b) a verified list of the names, residences, and post-office addresses of its trustees;

(c) an affidavit setting forth its assumed business name, if any.

(2) A foreign business trust shall file a verified *application* in the office of the secretary of state as provided in the case of foreign corporations under *15-22-103* and shall file a copy of its articles, declaration of trust, or trust agreement by which it was created, certified by *the* secretary of state, in the office of the county clerk of the county *where* its principal office or place of business in this state will be located. *The foreign* business trust shall also file, at the same time and in the same office, a certificate certifying that *it* has consented to all the license laws and other laws of the state of Montana relative to foreign corporations and has consented to be sued in the courts of this state, upon all causes of action arising against it in this state and that service of process may be made upon some person, a citizen of this state whose principal place of business *is* designated in such certificate. *Service of process*, when made upon such agent, *is* valid service on the business trust.

(3) Whenever a business trust has complied with the filing requirements as provided in *subsections (1) and (2)* of this section, the secretary of state shall issue to a domestic business trust a certificate of organization or to a foreign business trust a license to do business in this state, and *the* business trust may thereupon commence business."

Section 14. Section 63-504, R.C.M. 1947, is amended to read as follows:

"**63-504. Dissolution by decree of court.** (1) On application by or for a partner, the court shall decree a dissolution whenever:

(a) *a* partner *is* declared *seriously mentally ill* in *a* judicial proceeding or is shown to be *mentally incompetent;*

(b) *a* partner becomes in any other way incapable of performing his part of the partnership contract;

(c) *a* partner has been guilty of such conduct as tends to affect prejudicially the carrying on of the business;

(d) *a* partner willfully or persistently commits a breach of the partnership agreement or otherwise so conducts himself in matters relating to the partnership business that it is not reasonably practicable to carry on the business in partnership with him;

HeinOnline -- 1977 Vol. I 256 1977

(e) *the* business of the partnership can only be carried on at a loss; *or*

(f) *other* circumstances render a dissolution equitable.

(2) On the application of the purchaser of a partner's interest under 63-404 or 63-405, *the court shall decree a dissolution*:

(a) *after* the termination of the specified term or particular undertaking;

(b) *at* any time if the partnership was a partnership at will when the interest was assigned or when the order *charging such interest* was issued."

Section 15. Section 63-702, R.C.M. 1947, is amended to read as follows:

"**63-702. Formation.** (1) Two or more persons desiring to form a limited partnership shall *sign* and swear to a certificate, which shall state:

(a) the name of the partnership;

(b) the character of the business;

(c) the location of the principal place of business;

(d) the name and place of residence of each member, general and limited partners being respectively designated;

(e) the term for which the partnership is to exist;

(f) the amount of cash, and a description of and the agreed value of the other property, contributed by each limited partner;

(g) the additional contributions, if any, agreed to be made by each limited partner and the times at which or events on the happening of which they *are to* be made;

(h) the time, if agreed upon, when the contribution of each limited partner is to be returned;

(i) the share of the profits or the other compensation by way of income which each limited partner *is to* receive by reason of his contribution;

(j) the right, if given, of a limited partner to substitute an assignee as contributor in his place and the terms and conditions of the substitution;

(k) the right, if given, of the partners to admit additional limited partners;

(l) the right, if given, of one or more of the limited partners to priority over other limited partners, as to contributions or as to compensation by way of income, and the nature of such priority;

(m) the right, if given, of the remaining general partner or partners to continue the business on the death, retirement, or *serious mental illness* of a general partner; and

HeinOnline -- 1977 Vol. I 257 1977

(n) the right, if given, of a limited partner to demand and receive property other than cash in return for his contribution.

(2) Those persons shall file the certificate in the office of the county clerk and recorder of the county in which the principal place of business is located and in the office of the secretary of state.

(3) A limited partnership is formed if there has been substantial compliance in good faith with the requirements of *subsections* (1) *and (2).*"

Section 16. Section 63-803, R.C.M. 1947, is amended to read as follows:

"**63-803. Rights, powers, and liabilities of a general partner.** A general partner *has* all the rights and powers and *is* subject to all the restrictions and liabilities of a partner in a partnership without limited partners, except that without the written consent or ratification of the specific act by all the limited partners, a general partner or all of the general partners *may not:*

(1) do an act in contravention of the certificate;

(2) do an act which would make it impossible to carry on the ordinary business of the partnership;

(3) confess a judgment against the partnership;

(4) possess partnership property or assign their rights in specific partnership property for other than a partnership purpose;

(5) admit a person as a general partner;

(6) admit a person as a limited partner, unless the right so to do is given in the certificate;

(7) continue the business with partnership property on the death, retirement, or *serious mental illness* of a general partner, unless the right to do *so* is given in the certificate."

Section 17. Section 63-901, R.C.M. 1947, is amended to read as follows:

"**63-901. Effect of retirement, death, or serious mental illness of a general partner.** The retirement, death, or *serious mental illness* of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

(1) under a right to do *so* stated in the certificate; or

(2) with the consent of all members."

Section 18. Section 63-905, R.C.M. 1947, is amended to read as follows:

"**63-905. When certificate to be canceled or amended.** (1) The certificate shall be canceled *if* the partnership is dissolved or *if* all limited partners cease to be such.

(2) A certificate shall be amended *if:*

HeinOnline -- 1977 Vol. I 258 1977

(a) there is a change in the name of the partnership or in the amount or character of the contribution of any limited partner;

(b) *a* person is substituted as a limited partner;

(c) *an* additional limited partner is admitted;

(d) *a* person is admitted as a general partner;

(e) *a* general partner retires, dies, or becomes *seriously mentally ill* and the business is continued under 63-901;

(f) *there* is a change in the character of the business of the partnership;

(g) *there* is a false or erroneous statement in the certificate;

(h) *there* is a change in the time as stated in the certificate for the dissolution of the partnership or for the return of a contribution;

(i) *a* time is fixed for the dissolution of the partnership, or the return of a contribution, no time having been specified in the certificate; or

(j) *the* members desire to make a change in any statement in the certificate *so* that it accurately *represents* the agreement between them."

Section 19. **Repealer.** Sections 14-221 and 14-222, R.C.M. 1947, are repealed.

Approved March 21, 1977.

CHAPTER NO. 63

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO RETIREMENT OF AND DEATH AND DISABILITY BENEFITS FOR JUDGES OF DISTRICT COURTS AND JUSTICES OF THE SUPREME COURT; AMENDING SECTIONS 93-1107, 93-1110, 93-1111, 93-1112, 93-1113, 93-1116, 93-1120, 93-1128, AND 93-1131, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 93-1107, R.C.M. 1947, is amended to read as follows:

"**93-1107. Definitions.** *Unless* a different meaning is plainly implied by the context, *the following definitions apply in this act*:

(1) "Accumulated deductions" *means* the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

(2) "Beneficiary" *means the* person *who the contributor nominates* by written designation, duly acknowledged and filed with the board.

(3) "Retired judge" *means* any *judge or justice* in receipt of a retirement allowance under this act.

(4) "Board" *means* the Montana judges' retirement board.

(5) "Penalty retirement age" *means* 70 years of age.

(6) "Contributor" *means* any person who has accumulated deductions in the fund standing to his credit.

(7) "Final salary" *means* the annual current salary for the office retired from.

(8) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(9) "Fund" *means* the Montana judges' retirement *system agency account.*

(10) "Involuntary retirement" *means* a retirement not for cause and before retirement age.

(11) "Member's annuity" *means* payments for life derived from contributions made by the contributor.

(12) "Retirement allowance" *means* the state annuity plus the member's annuity.

(13) "State annuity" *means* payments for life derived from contributions made by the state of Montana."

Section 2. There is a new R.C.M. section numbered 93-1107.1 that reads as follows:

93-1107.1. Retirement system. There is a retirement system known as the Montana judges' retirement system, which is governed by the provisions of 93-1107 through 93-1132.

Section 3. Section 93-1110, R.C.M. 1947, is amended to read as follows:

"**93-1110. Administrative expenses.** (1) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits, shall be paid from the *fund.*

(2) Before July 15, 1970, and before July 15 of each year thereafter, the board shall compute the administrative costs for the immediately preceding fiscal year and transfer that amount from the *fund* to the public employees' retirement system account in the *agency* fund."

Section 4. Section 93-1111, R.C.M. 1947, is amended to read as follows:

"**93-1111. Payments into fund.** All appropriations made by the state of Montana, all contributions by members, and all interest on and increase of the investments and moneys *in the fund* shall be paid to the *public employees' retirement division of the department of administration, which* shall credit *the* payments to the fund. *These* funds may be *commingled* with funds of the PERS, but *separate accounts shall be maintained for the Montana judges' retirement system.*"

HeinOnline -- 1977 Vol. I 260 1977

Section 5. Section 93-1112, R.C.M. 1947, is amended to read as follows:

"**93-1112. Powers and duties of board.** *(1)* The board may establish such rules as it *considers* necessary. *Within* the limitations of this act, *the board is charged with and is the authority as to* its proper administration, operation, and enforcement. *The board is* the authority as to the conditions under which persons may *become members of* and receive benefits under the retirement system.

(2) The board shall keep such data as *is* necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the fund and shall adopt for the retirement system one or more mortality tables."

Section 6. Section 93-1113, R.C.M. 1947, is amended to read as follows:

"**93-1113. Membership.** *(1) A* judge or justice who *was* a member of the PERS *prior to March 2, 1967,* may elect to remain under that system *by notifying the board of administration of the PERS in writing of the election on or before October 1, 1967.*

(2) Every other judge of a district court or justice of the supreme court must be a member of the Montana judges' retirement system.

(3) A judge or justice who was in service in either a district court or *the* supreme court of the state of Montana prior to July 1, 1967, may elect to make back payments to the date when he first entered the service of the judiciary. *The* back payments may be spread over a period of 5 years by having the regular payroll deduction of the contributor increased in an amount equal to the total of his back payments divided by 60. *The* deduction increase shall be credited to *the* back payments owing and shall be continued until the full amount of *the* back payments *has been paid. A* deduction increase may be anticipated in part or in full by the contributor at any time. *In order for the contributor to receive full credit for his service, it* must be anticipated in full at the time of retirement. *If it is* not so anticipated and paid in full, *the contributor's* retirement allowance *will* be calculated for the total years and months on which contributions have been made in accordance with 93-1118. Every contributor who *elects* to make back payments shall receive full credit for all contributions made into the fund and for all service credits to which he might thereby be entitled."

Section 7. Section 93-1116, R.C.M. 1947, is amended to read as follows:

"**93-1116. Contributions by the state.** The state of Montana shall contribute *monthly* to the fund a sum equal to 6% of the salary of each member. *In addition, on the first Monday of each month the clerk of each district court shall transmit one-fourth of the fees collected under 25-232 and 25-233 to the public employees' retirement division of the department of administration to be credited to the fund. The clerk of the supreme court shall pay one-fourth of the fees collected under 82-503 to the public*

HeinOnline -- 1977 Vol. I 261 1977

employees' retirement division of the department of administration to be credited to the fund. The full amount of *the* fund as created and accumulated is hereby set aside to be used exclusively for the purpose of paying the retirement *benefits* and expenses provided for herein."

Section 8. Section 93-1120, R.C.M. 1947, is amended to read as follows:

"**93-1120. Involuntary retirement allowance.** (1) *If* a contributor *is involuntarily* discontinued from service, after having completed 5 years of total service but before reaching retirement age, he shall, upon filing *an* application in the manner *prescribed by the board, be paid whichever of the following allowances that he elects*:

(a) the full amount of *his* accumulated deductions; or

(b) a member's annuity of equivalent actuarial value to his accumulated deductions, plus *an annuity which is* the actuarial equivalent of the present value of *the* state annuity then standing to his credit.

(2) *If* a contributor *is involuntarily* discontinued from service, after having completed 12 years of total service but before reaching retirement age, he shall, upon filing *an* application in the manner *prescribed by the board, be paid whichever of the following allowances that he elects*:

(a) the full amount of *his* accumulated deductions; or

(b) *a* member's annuity *of equivalent actuarial value to his accumulated deductions,* plus *a* state annuity *in* an amount which, when added to the member's annuity, will provide a total annuity equal to the allowance provided for in 93-1118."

Section 9. Section 93-1128, R.C.M. 1947, is amended to read as follows:

"**93-1128. Military service.** *(1) A* member of the Montana judiciary inducted into the armed forces of the United States *has* the option *to*:

(a) continue his payments into the fund; or

(b) allow the board to make his payments for him during *his* military service, in which event he *must* repay the fund the full amount of *the* payments *within 2 years after* his return to the Montana judiciary.

(2) If a member chooses one of the options in subsection (1) and meets its requirements, he shall be given credit for his service in the armed forces of the United States as if it were service in the judiciary."

Section 10. Section 93-1131, R.C.M. 1947, is amended to read as follows:

"**93-1131. Optional retirement allowance.** *(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before* the first payment on account of any retirement allowance is made. *If a member dies* after retirement and within 30 days from the date upon which his election or changed election *was* received *by the board the* election is void and the death *will* be considered as that of a member before retirement.

HeinOnline -- 1977 Vol. I 262 1977

(2) A member or a beneficiary may elect or, *prior to the approval of a previous election,* revoke or change *the* previous election *and elect* to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance payable throughout life with one of the following options:

(a) Option 1—*upon* his death, his lesser retirement allowance *will* be continued throughout the life of and paid to *the* person *that* he *nominated* by written designation, duly executed and filed with the board at the time of his retirement.

(b) Option 2—*upon* his death, one-half of his lesser retirement allowance *will* be continued throughout the life of and paid to *the* person *that* he *nominated* by written designation, duly executed and filed with the board at the time of his retirement.

(c) Option 3—*such* other benefits *will* be paid, either to *his* beneficiary or to *any* other person *that* he *nominated,* as, together with *the* lesser retirement allowance, are the actuarial equivalent of his retirement allowance and *have been* approved by the board."

Approved March 21, 1977.

CHAPTER NO. 64

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO COVERAGE FOR MONTANA PUBLIC EMPLOYEES UNDER FEDERAL SOCIAL SECURITY; AMENDING SECTIONS 59-1102, 59-1102.1, 59-1104, 59-1105, 59-1106, 59-1109, 59-1110, 59-1111, AND 59-1112, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-1102, R.C.M. 1947, is amended to read as follows:

"**59-1102. Definitions.** For the purposes of this act, *the following definitions apply:*

(1) The term "wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that *the* term *does* not include that part of remuneration which, even if it were for "employment" within the meaning of the Federal Insurance Contributions Act, would not constitute "wages" within the meaning of that act.

(2) (a) The term "employment" means any service performed by an employee in the employ of the state or any political subdivision thereof for such employer, except:

(i) service which in the absence of an agreement entered into under this act would constitute "employment" as defined in the Social Security Act; or

HeinOnline -- 1977 Vol. I 263 1977

(ii) service which under the Social Security Act may not be included in an agreement between the state and the secretary of health, education, and welfare entered into under this act.

(b) Service performed by civilian employees of national guard units is specifically included within the term "employment".

(c) Service which under the Social Security Act may be included in an agreement only upon certification by the governor in accordance with section 218(d)(3) of that act *is* included in the term "employment" if and when the governor issues, with respect to such service, a certificate to the secretary of health, education, and welfare pursuant to 59-1102.1*(5)*.

(3) The term "employee" includes an elective or appointive officer or employee of the state or a political subdivision thereof.

(4) The term "state agency" means the board of administration of the public employees' retirement system of the state of Montana.

(5) The term "secretary of health, education, and welfare" means the secretary of the United States department of health, education, and welfare; includes any individual to whom the secretary of health, education, and welfare has delegated any of his functions under the Social Security Act with respect to coverage under *that* act of employees of states and their political subdivisions; and, with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom *the* administrator had delegated any such function.

(6) The term "political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions, including leagues or associations thereof, but only if *the* instrumentality is a juristic entity which is legally separate and distinct from the state or subdivision and only if its employees are not by virtue of their relation to *the* juristic entity employees of the state or subdivision. The term *includes* special districts or authorities created by the legislature or local governments, such as, but not limited to, school districts, housing authorities, etc.

(7) The term "Social Security Act" means the act of *congress* approved August 14, 1935, chapter 531, 49 Stat. 620, officially cited as the "Social Security Act", including regulations and requirements issued pursuant thereto, as such act has been and may from time to time be amended.

(8) The term "Federal Insurance Contributions Act" means subchapter A of chapter 9 of the Federal Internal Revenue Code of 1939 and subchapters A and B of chapter 21 of the Federal Internal Revenue Code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of such Code of 1939 and section 3101 of such Code of 1954, and as such codes may from time to time be amended."

Section 2. Section 59-1102.1, R.C.M. 1947, is amended to read as follows:

"**59-1102.1. Referendum and certification.** *(1)* (a) Pursuant to

HeinOnline -- 1977 Vol. I 264 1977

section 218(d)(6) of the Social Security Act, the public employees' retirement system of the state of Montana *is*, for the purposes of this act, *considered* a separate retirement system with respect to the state and a separate retirement system with respect to each political subdivision having positions covered thereby.

(b) Pursuant to section 218(p)(1) of the Social Security Act, the highway patrolmen's retirement system of the state of Montana, the public employees' retirement system of the state of Montana, and each municipal police reserve fund and each unit of the statewide police reserve fund of the state of Montana are, for the purposes of this act, considered separate retirement systems with respect to the state and separate retirement systems with respect to each political subdivision having positions covered thereby.

(2) With respect to employees of the state *other than highway patrolmen and with respect to highway patrolmen,* the governor is empowered to authorize a referendum, and with respect to the employees of any political subdivision he shall authorize a referendum upon *the* request of the governing body of *the* subdivision.

(3) In either case the referendum shall be conducted, and the governor shall designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the Social Security Act, on the question of whether service in positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under this act.

(4) The notice of referendum required by section 218(d)(3)(C) of the Social Security Act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum *considers* necessary and sufficient, *informing* the employees of the rights which will accrue to them and their dependents and survivors and the liabilities to which they will be subject if their services are included under an agreement under this act.

(5) Upon receiving evidence satisfactory to him that with respect to any such referendum the conditions specified in section 218(d)(3) of the Social Security Act have been met, the governor shall so certify to the secretary of health, education, and welfare."

Section 3. Section 59-1104, R.C.M. 1947, is amended to read as follows:

"**59-1104. Plans for coverage of employees of political subdivisions.** *(1)* Each political subdivision of the state shall submit for approval by the state agency a plan for extending the benefits of *Title* II of the Social Security Act, in conformity with applicable provisions of such act, to employees of such political subdivision. *A* plan and any amendment thereof shall be approved by the state agency if it finds that *the* plan or *the* plan as amended is in conformity with such requirements as are provided in regulations of the state agency.

(2) No plan *may* be approved unless:

(a) it is in conformity with the requirements of the Social Security Act and with the agreement entered into under 59-1103;

HeinOnline -- 1977 Vol. I 265 1977

(b) it provides that all services which constitute employment as defined in 59-1102 and are performed in the employ of the political subdivisions by employees thereof *will* be covered by the plan, except that it may exclude services performed by individuals to whom section 218(c)(3)(C) of the Social Security Act is applicable;

(c) it specifies the sources from which the funds necessary to make the payments required by *subsections (4)(a) and (5)* are expected to be derived and contains reasonable assurance that *the* sources will be adequate for such purpose;

(d) it provides for such methods of administration of the plan by the political subdivision as are found by the state agency to be necessary for the proper and efficient administration of the plan;

(e) it provides that the political subdivision will make such reports, in such form and containing such information, as the state agency may from time to time require and *will* comply with such provisions as the state agency or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports;

(f) it authorizes the state agency, *in its discretion,* to terminate the plan in its entirety if it finds that there has been a failure to comply substantially with any provision contained in *the* plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the state agency and may be consistent with the provisions of the Social Security Act.

(3) The state agency *may* not finally refuse to approve a plan submitted by a political subdivision under subsection *(1)* and *may* not terminate an approved plan without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(4) (a) Each political subdivision as to which a plan has been approved under this section shall pay, *at such time or times as the state agency may prescribe by regulation, contributions* with respect to wages (as defined in 59-1102) in the amounts and at the rates specified in the applicable agreement entered into by the state agency under *59-1103.*

(b) Each political subdivision required to make payment under *subsection (4)(a)* shall, in consideration of the employee's retention in or entry upon employment after enactment of this act, impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in 59-1102), not exceeding the amount of the employee tax which would be imposed by the Federal Insurance Contributions Act if such services constituted employment within the meaning of that act and *shall* deduct the amount of such contributions from his wages as and when paid. Contributions so collected partially discharge the liability of *the* political subdivision or instrumentality under *subsection (4)(a).* Failure to deduct *the* contribution *does* not relieve the employee or employer of liability therefor.

(5) Delinquent payments due under *subsection (4)(a)* may, with interest at the rate of 6% *a year,* be recovered by action in a court of competent

HeinOnline -- 1977 Vol. I 266 1977

jurisdiction against the political subdivision liable therefor or may, at the request of the state agency, be deducted from any other moneys payable to *the* subdivision by any department, agency, or fund of the state."

Section 4. Section 59-1105, R.C.M. 1947, is amended to read as follows:

"**59-1105. Contribution account.** *(1)* There is hereby established, in place of the fund known as the contribution fund, *an agency account for the social security program* in the agency fund, *to be known as the contribution account.*

(2) The contribution account shall consist of and there shall be deposited in such account:

(a) all contributions, interest, and penalties collected under 59-1103.1 and 59-1104;

(b) all moneys appropriated thereto by the *legislature* of the state of Montana;

(c) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account; and

(d) all other moneys received for the account from any other source.

(3) All moneys in the account shall be mingled and undivided. Subject to the provisions of this act, the state agency is vested with full power, authority, and jurisdiction over the account, including all moneys and property or securities belonging thereto. *The board of investments* shall invest the *account* in investments of the same character as are permitted by *79-310* for the investment of moneys in the long-term investment fund. *The state agency* shall credit all interest and income earned *on the account* in excess of that which, in *its* judgment, may be needed for the purposes set forth in *subsection (4)* of this section to the earmarked revenue fund or funds of the state agency, to be used by it either to defray the costs of administering the state agency or for distribution pro rata to the contributing state departments, political subdivisions, school districts, and instrumentalities, as it may determine. *It* may perform any and all acts, whether or not specifically designated, which are necessary to the administration *of the account* and are consistent with the provisions of this act.

(4) The contribution account shall be used and administered exclusively for the purpose of this act. Subject to the provisions of *subsection (3)* of this section, withdrawals from *the* account shall be made for, and solely for, payment of amounts required to be paid to the secretary of the treasury of the United States pursuant to an agreement entered into under 59-1103, payment of refunds provided for in 59-1103.1, and refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(5) (a) From the contribution account the custodian of the account shall pay to the secretary of the treasury of the United States such amounts and at such time or times as may be directed by the state agency in accordance with any agreement entered into under *59-1103* and the Social Security Act.

HeinOnline -- 1977 Vol. I 267 1977

(b) The treasurer of the state shall pay all warrants drawn upon the state agency in accordance with the provisions of this section and with such regulations as the state agency may prescribe pursuant thereto.

(6) Each department of the state shall include in its operating budget for the next succeeding fiscal year, prepared and delivered to the department of administration in accordance with the provisions of law, an estimate of the amount which it will be required to contribute to the contribution account."

Section 5. Section 59-1106, R.C.M. 1947, is amended to read as follows:

"**59-1106. Costs of administration.** All costs allocable to the administration of this chapter shall be charged to the earmarked revenue fund, *retirement* division account. *So* much of *the* costs as are not defrayed by interest and income earned upon the *contribution account,* which has been credited to *the* earmarked revenue fund, *retirement* division account, as provided in 59-1105, shall be paid to the state agency for deposit to the earmarked revenue fund, *retirement* division account, by each department of the state and by the participating divisions, instrumentalities, and political subdivisions of the state pro rata according to their respective contributions."

Section 6. Section 59-1109, R.C.M. 1947, is amended to read as follows:

"**59-1109. Referendum by school district.** *A* school district of the state may, upon the approval thereof being voted by the board of trustees, conduct and supervise a referendum, pursuant to section 218 of the Federal Social Security Act, among the members of the staff and teachers of the school or schools under the jurisdiction of *the* board of trustees. If the majority of votes cast in *the* referendum indicates that *the* staff and teachers approve, then *the* board of trustees shall certify to the *department of administration* that the conditions for coverage by social security, required by section 218 of the Social Security Act, have been complied with."

Section 7. Section 59-1110, R.C.M. 1947, is amended to read as follows:

"**59-1110. Eligibility of staff and teachers — payroll deductions.** *(1) Upon the* certification *provided for in 59-1109,* the staff and teachers of *the* district *are* eligible for coverage under the provisions of the Federal Social Security Act.

(2) The fiscal officer of *the* district shall thereafter collect the contributions required under the Federal Social Security Act, section 218, from the staff and teachers *by payroll deduction* and from the school district as employer. *The* funds *collected* shall be deposited with the *department of administration* and held in the *contribution account* as provided by 59-1101 *through* 59-1108.

(3) For the purposes of this act, the contributions with respect to services, equivalent to the employer's tax established by the Federal Social

HeinOnline -- 1977 Vol. I 268 1977

Security Act, *are* the first obligation against any state funds received for school support by any school district, high school district, or county high school and shall be paid therefrom *before any other expenditure.*"

Section 8. Section 59-1111, R.C.M. 1947, is amended to read as follows:

"**59-1111. Participation of institutions of higher education.** *(1)* For the purposes of this section, *the teachers' retirement system of the state of Montana is considered* a separate retirement system *with respect to* each state institution of higher education in Montana, and each institution and the teachers therein shall be treated separately and independently from the other institutions and teachers.

(2) On request of the president of *an* institution, the governor shall designate an agency or individual to give notice of and supervise a referendum in the retirement system for that institution in compliance with the *requirements* prescribed by section 218 of the Social Security Act.

(3) If the majority of votes cast in *the* referendum indicates that the majority of voters desire it, the governor shall certify to the secretary of health, education, and welfare that the conditions set forth in section 218 of the Social Security Act *have* been complied with in respect to the retirement system voting in *the* referendum.

(4) Upon certification, the governor shall designate an official to enter into an agreement, or a modification or supplement to an existing agreement or both *a* modification and *a* supplement, with the appropriate officers of the federal government, pursuant to section 218 of the Social Security Act, to secure coverage thereunder for the retirement system with respect to which certification has been made. *An agreement* may be made retroactive to the extent permissible under the Social Security Act.

(5) The fiscal officer for *an* institution for whose retirement system an agreement has been made shall collect the contributions required by section 218, as follows:

(a) from the teachers in the retirement system of that institution, by payroll deductions; and

(b) from the state, from any appropriations *to the institution involved* for salaries or *other purposes.*

(6) In the absence of *a* specific provision in the appropriations for or budget of an institution for such contributions, the *board of regents of higher education* shall designate the funds from which *the* required contributions *will* be made and the budgetary items to which they *will* be allocated.

(7) In the event that any relevant provisions of federal law are amended or superseded, then the provisions hereof which relate to such law shall be applied to *the* amended law or *the* superseding law."

Section 9. Section 59-1112, R.C.M. 1947, is amended to read as follows:

"**59-1112. No effect on rights under other laws.** Nothing in this act

HeinOnline -- 1977 Vol. I 269 1977

may be construed to prejudice or otherwise affect any rights, benefits, or privileges heretofore accrued under any other law of this state. *It is* the intent of this legislation to permit supplementation of present retirement benefits under existing law with social security benefits. *It is also the intent* to permit *teachers and staff* in any district or institution of higher education, so electing, to become *members* of more than one retirement system, to receive credit under more than one system for the same service, and to receive benefits from more than one system. *No* benefits received under either system *may* be deducted from any other or separate system."

Approved March 21, 1977.

CHAPTER NO. 65

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HIGHWAY PATROL RETIREMENT AND DEATH AND DISABILITY BENEFITS; AMENDING SECTIONS 31-201, 31-207, 31-208, 31-213, 31-215, 31-222, 31-223, AND 31-228, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-201, R.C.M. 1947, is amended to read as follows:

"**31-201. Definitions.** Unless the context requires otherwise, in this act *the following definitions apply*:

(1) "Accumulated deductions" means the total of the amounts deducted from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

(2) "Department" means the *public employees' retirement division of the* department of administration.

(3) "Beneficiary" means a person *nominated to receive benefits under this chapter* by *a member's* written designation, duly acknowledged and filed with the department.

(4) "Retired patrolman" means a person in receipt of a retirement allowance under this act.

(5) "Board" means the board of administration provided for in 82A-210.

(6) "Compulsory retirement age" means *60* years of age.

(7) "Contributor" means a person who has accumulated deductions in the fund standing to his credit.

(8) "Final salary" means the average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total retirement compensation earned divided by the number of years served.

HeinOnline -- 1977 Vol. I 270 1977

(9) "Actuarial equivalent" means a benefit of equal value when computed on the basis of the actuarial tables in use by the system.

(10) "Account" means the Montana highway patrolmen's retirement account in the agency fund.

(11) "Involuntary retirement" means a retirement not for cause and before retirement age.

(12) "Member's annuity" means payments for life derived from contributions made by the contributor.

(13) "Optional retirement age" means the age at which a contributor may retire after 20 years' service.

(14) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol.

(15) "Retirement allowance" means the state annuity plus the member's annuity.

(16) "State annuity" means payments for life derived from contributions made by the state of Montana."

Section 2. There is a new R.C.M. section numbered 31-201.1 that reads as follows:

31-201.1. Retirement system. There is a retirement system known as the Montana highway patrolmen's retirement system, which is governed by the provisions of this chapter.

Section 3. Section 31-207, R.C.M. 1947, is amended to read as follows:

"**31-207. Membership.** *All members* of the Montana highway patrol, including the supervisor and assistant supervisors, *must* be *members* of the retirement system."

Section 4. Section 31-208, R.C.M. 1947, is amended to read as follows:

"**31-208. Computation of the service of a contributor.** In computing the length of service of a contributor for retirement purposes, full credit shall be given to each contributor for each year of service rendered to the patrol, including service rendered prior to July 1, 1945, *if there is compliance* with the provisions of this act. As soon as practicable, the board shall issue to each original member a certificate certifying the aggregate length of his service prior to July 1, 1945. *The* certificate *will* be final and conclusive as to his prior service unless thereafter modified by the board upon application of the contributor. The time during which a contributor is absent from service without pay *may* not be counted in computing *his* service *for retirement purposes,* except *as provided in 31-223 in regard to service with the armed forces of the United States.*"

Section 5. Section 31-213, R.C.M. 1947, is amended to read as follows:

"**31-213. Service retirement allowance.** Upon retirement from service a member shall receive a service retirement allowance which shall consist of the state annuity plus the member's annuity. The service

HeinOnline -- 1977 Vol. I 271 1977

retirement allowance shall be computed as follows: 20 through 25 years, 2% of his final salary for each year of service; *over 25* years, 2% of his final salary for each year of service through the *25th* plus 1% of his final salary for each year of service past 25."

Section 6. Section 31-215, R.C.M. 1947, is amended to read as follows:

"**31-215. Involuntary retirement allowance.** *If* a contributor *is involuntarily* discontinued from service after having completed 10 years of total service but before reaching retirement age, he shall, upon filing *a written* application *with the department*, be paid *whichever of the following allowances that he elects*:

(1) the full amount of *his* accumulated deductions; or

(2) a member's annuity of equivalent actuarial value to his accumulated deductions, plus *an annuity which is* the actuarial equivalent of the present value of *the* state annuity."

Section 7. Section 31-222, R.C.M. 1947, is amended to read as follows:

"**31-222. Nomination of beneficiary.** Every contributor may name his beneficiary by written designation, duly acknowledged and filed with the department, and *may* change the beneficiary in like manner."

Section 8. Section 31-223, R.C.M. 1947, is amended to read as follows:

"**31-223. Military service.** (1) *(a)* A member of the Montana highway patrol inducted into the armed forces of the United States *has* the option *to*:

(i) continue his payments into the fund; or

(ii) allow the department to make his payments for him during his military service, in which event he *must* repay the fund the full amount of the payments *within 2 years after* his return to the Montana highway patrol.

(b) If a member chooses one of the options in subsection (1)(a) and meets its requirements, he shall be given credit for his service in the armed forces of the United States as if it were service in the Montana highway patrol.

(2) A member with 15 years or more of service with the Montana highway patrol may at any time prior to his retirement make a written election with the department to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years, if he is not otherwise eligible to receive credit for this same service pursuant to subsection (1). To qualify this service he must contribute to the account the amount determined by the department due based on his compensation and normal contribution rate as of his *16th* year and as many succeeding years as are required to qualify this service, with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of this service than he has service with the Montana highway patrol in excess of 15 years."

Section 9. Section 31-228, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 272 1977

"31-228. **Optional retirement allowance.** *(1) A member or a beneficiary may elect one of the optional retirement allowances set forth in subsection (2) at any time before* the first payment on account of any retirement allowance is made. *If a member dies* after retirement and within 30 days from the date upon which his election or changed election *was* received *by* the department, the election is void and the death *will* be considered as that of a member before retirement.

(2) A member or a beneficiary may elect or *prior to the approval of a previous election,* revoke or change *the* previous election *and elect* to receive the actuarial equivalent of his retirement allowance as of the date of retirement in a lesser retirement allowance, payable throughout life with one of the following options:

(a) Option 1—*upon* his death, his lesser retirement allowance *will* be continued throughout the life of and paid to the person *that* he *nominated* by written designation, duly executed and filed with the department at the time of his retirement.

(b) Option 2—*upon* his death, one-half of his lesser retirement allowance *will* be continued throughout the life of and paid to the person *that* he *nominated* by written designation, duly executed and filed with the department at the time of his retirement.

(c) Option 3—*such* other benefits *will* be paid, either to the beneficiary or to *any* other person *that* he *nominated*, as, together with *the* lesser retirement allowance, are the actuarial equivalent of his retirement allowance and *have been* approved by the board."

Approved March 21, 1977.

CHAPTER NO. 66

AN ACT TO EXCLUDE THE PURCHASE OF OR PARTICIPATION IN LOANS SECURED BY MORTGAGES, TRUST INDENTURES, OR OTHER SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY FROM THE DEFINITION OF TRANSACTING BUSINESS IN THE STATE BY A FOREIGN CORPORATION; AMENDING SECTIONS 7-130 AND 15-2299, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-130, R.C.M. 1947, is amended to read as follows:

"7-130. **Application to other persons, corporations, associations, etc.** *(1)* The provisions of this *chapter* shall apply to and be enforceable against all corporations, persons, firms, partnerships, associations, trustees, or combinations of persons, whether foreign or domestic and whether citizens of this state or otherwise, that transact, or attempt to transact, a building and loan business or a business of like kind or character or where, by its or their charter, constitution, bylaws or by a declaration of trust or other device or by a contract or agreement, the members

HeinOnline -- 1977 Vol. I 273 1977

or customers are required to pay regular installments to a common fund or series from which loans are made to said members, customers, or to others for the purpose of building homes or buildings, purchasing building sites, paying off liens or debts against real estate, or for other purposes within the boundaries of this state.

(2) The name association when used in this *chapter* shall be deemed to include any of the above-named.

(3) This chapter does not apply to foreign associations with relation to the purchasing of or participating in loans secured by mortgages, trust indentures, or other security interests in real or personal property if there is no activity conducted by the out-of-state lender in Montana with respect to the loan except periodic inspection of the security."

Section 2. Section 15-2299, R.C.M. 1947, is amended to read as follows:

"15-2299. Admission of foreign corporation. *(1)* No foreign corporation *may* transact business in this state until it *procures* a certificate of authority to do *so* from the secretary of state. No foreign corporation shall be entitled to procure a certificate of authority under this act to transact in this state any business which a corporation organized under this act is not permitted to transact. A foreign corporation shall not be denied a certificate of authority by reason of the fact that the laws of the state or country under which such corporation is organized governing its organization and internal affairs differ from the laws of this state, and nothing in this act shall be construed to authorize this state to regulate the organization or the internal affairs of such corporation.

(2) Without excluding other activities which may not constitute transacting business in this state, a foreign corporation shall not be considered to be transacting business in this state, for the purposes of this act, by reason of carrying on in this state any one or more of the following activities:

(a) *maintaining* or defending any action or suit or any administrative or arbitration proceeding or effecting the settlement thereof or the settlement of claims or disputes;

(b) *holding* meetings of its directors or shareholders or carrying on other activities concerning its internal affairs;

(c) *maintaining* bank accounts;

(d) *maintaining* offices or agencies for the transfer, exchange, and registration of its securities or appointing and maintaining trustees or depositaries with relation to its securities;

(e) *effecting* sales through independent contractors;

(f) *soliciting* or procuring orders, whether by mail or through employees or agents or otherwise, where such orders require acceptance without this state before becoming binding contracts;

(g) *creating, as borrower or lender, or acquiring indebtedness or* mortgages or *other security interests in* real or personal property *if there is*

HeinOnline -- 1977 Vol. I 274 1977

no activity conducted by the out-of-state borrower or lender with respect to the loan except periodic inspection of the security;

(h) *securing* or collecting debts or enforcing any rights in property securing the same;

(i) *transacting* any business in interstate commerce;

(j) *conducting* an isolated transaction completed within a period of 30 days and not in the course of a number of repeated transactions of like nature."

Approved March 21, 1977.

CHAPTER NO. 67

AN ACT TO RESTRICT THE ENTITLEMENT OF DISABLED VETERANS TO FREE LICENSE PLATES TO ONE PASSENGER AUTOMOBILE OR ONE TRUCK UP TO, AND INCLUDING, THREE-QUARTER TON GVW-RATED CAPACITY; AMENDING SECTIONS 53-106.8 AND 53-106.10, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-106.8, R.C.M. 1947, is amended to read as follows:

"**53-106.8. Free license plates to disabled veterans.** Any person who is a veteran of the armed service of the United States and *100%* disabled because of an injury which has been determined by the veterans administration to be service connected and who is a citizen and resident of the state of Montana and who is the owner of a *passenger automobile or of a truck up to, and including, three-quarter ton GVW-rated capacity* shall be provided with free license plates upon payment of personal property tax equal to 1% of the taxable value for *such automobile or truck* upon proof of *100% service-connected* disability."

Section 2. Section 53-106.10, R.C.M. 1947, is amended to read as follows:

"**53-106.10. Veterans' free plates limited to one automobile or truck.** No disabled veteran *may* be entitled to free license plates for more than one *passenger* automobile *or one truck up to, and including, three-quarter ton GVW-rated capacity.*"

Approved March 21, 1977.

CHAPTER NO. 68

AN ACT TO PROHIBIT THE DISPOSAL IN MONTANA OF LARGE QUANTITY RADIOACTIVE MATERIALS PRODUCED IN OTHER STATES; DEFINING TERMS; AND PROVIDING A PENALTY.

HeinOnline -- 1977 Vol. I 275 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 69-5817 that reads as follows:

69-5817. Definitions. The definitions used in this act are intended to be consistent with those used in 10 CFR 1-199 and 49 CFR 173.389-173.399. As used in this act the following definitions apply:

(1) "Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Special nuclear material" means (a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States nuclear regulatory commission determines to be special nuclear material, or (b) any material artificially enriched by any of the foregoing.

(3) "Large quantity radioactive material" is that quantity of radioactive material defined in 49 CFR 173.389 (b).

(4) "Disposal" means burial in soil, release through the sanitary sewerage system, incineration, or permanent long-term storage with no intention of or provision for subsequent removal.

(5) "Person" means any individual, group, firm, partnership, corporation, cooperative, association, government subdivision, government agency, local government, or other organization or entity.

Section 2. There is a new R.C.M. section numbered 69-5818 that reads as follows:

69-5818. Disposal of radioactive material prohibited. No person may dispose of in Montana large quantity radioactive material produced in other states.

Section 3. There is a new R.C.M. section numbered 69-5819 that reads as follows:

69-5819. Exceptions. Byproduct material possessed, used, and transported for educational purposes, scientific research and development, medical research, diagnosis and treatment, geophysical surveying and other purposes licensed by the United States nuclear regulatory commission shall be excepted from 69-5817 through 69-5821 during the period of possession, use, and transportation prior to disposal.

Section 4. There is a new R.C.M. section numbered 69-5820 that reads as follows:

69-5820. Penalty. A person convicted of violating this act is guilty of a misdemeanor and shall be fined an amount not less than $250 for each offense. In this act, each day of violation constitutes a separate offense.

Section 5. There is a new R.C.M. section numbered 69-5821 that reads as follows:

HeinOnline -- 1977 Vol. I 276 1977

69-5821. Exclusion. Nothing in 69-5817 through 69-5821 precludes the construction of nuclear facility approved under the requirements of the Major Facility Siting Act.

Approved March 21, 1977.

CHAPTER NO. 69

AN ACT AMENDING SECTION 11-2003, R.C.M. 1947, TO PROVIDE THAT CERTIFICATES OF VOLUNTEER FIRE COMPANIES SHALL BE FILED ANNUALLY INSTEAD OF QUARTERLY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-2003, R.C.M. 1947, is amended to read as follows:

"**11-2003. Fire companies — how organized.** Fire companies in incorporated cities and towns are formed and organized under special laws, or under authority conferred upon the city or town government. Those in unincorporated towns and villages are organized by filing, with the county clerk of the county in which they are located, a certificate in writing, signed by the foreman or presiding officer and secretary, setting forth the date of the organization, name, officers, and roll of active and honorary members, which certificate and filing must be renewed *annually, on or before September 1 of each year.* There must not be allowed to any such towns or villages more than one company for each one thousand inhabitants, but one company must be allowed in any city, town, or village where the population is less than one thousand. There must not be allowed to any fire company more than twenty-eight certificate members."

Approved March 21, 1977.

CHAPTER NO. 70

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE XI OF THE MONTANA CONSTITUTION TO MAKE VOTER REVIEW OF LOCAL GOVERNMENT AN OPTIONAL PROCEDURE AND TO ALLOW THE PEOPLE TO EXERCISE THIS OPTION EVERY 10 YEARS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article XI, section 9, of the Montana constitution is amended to read as follows:

"**Section 9. Voter review of local government.** (1) The legislature shall, within four years of the ratification of this constitution, provide

HeinOnline -- 1977 Vol. I 277 1977

procedures requiring each local government unit or combination of units to review its structure and submit one alternative form of government to the qualified electors at the next general or special election.

(2) The legislature shall require *an election in each local government to determine whether a local government will undertake* a review procedure once every ten years after the first election. *Approval by a majority of those voting in the decennial general election on the question of undertaking a local government review is necessary to mandate the election of a local government study commission. Study commission members shall be elected during any regularly scheduled election in local governments mandating their election.*"

Section 2. **Implementation.** If not already implemented, the legislature shall implement this amendment with appropriate legislation in 1979, in order that the electors of each local government may indicate their preference "For" or "Against" the establishment of a study commission in 1984.

Section 3. **Submission to electors.** This amendment shall be submitted to the electors of the state of Montana at the general election to be held November 7, 1978, by printing on the ballot the full title, sections 1 and 2 of this act, and the following:

☐ FOR making voter review of local government optional.

☐ AGAINST making voter review of local government optional.

Approved (Constitutional Amendment).

CHAPTER NO. 71

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO BANKS, BUILDING AND LOAN ASSOCIATIONS, CREDIT UNIONS, DEVELOPMENT CREDIT CORPORATIONS, AND CONSUMER LOAN BUSINESSES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 5-102, R.C.M. 1947, is amended to read as follows:

"**5-102. Institutions to which act is applicable.** *(1)* The word "*bank*" as used in this *title, means* any corporation which *has* been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, *as defined in this title.*

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business *is* doing a commercial or savings bank business, whether such deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt, provided that nothing herein *applies* to or *includes* money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of his principal.

HeinOnline -- 1977 Vol. I 278 1977

(3) It *is* unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state, except by means of a corporation duly organized for such purpose.

(4) Banks are divided into the following classes:

(a) *commercial banks;*

(b) *savings banks;*

(c) *trust companies;*

(d) *investment companies.*

(5) This title does not apply to any investment company or corporation established *prior to March 8, 1927,* under authority of the law of Montana not accepting, receiving, *or* holding money on deposit."

Section 2. Section 5-202.1, R.C.M. 1947, is amended to read as follows:

"**5-202.1. Board to refuse or approve application.** The board may refuse or approve an application for a certificate of authorization in accordance with *5-610* through 5-614."

Section 3. Section 5-403, R.C.M. 1947, is amended to read as follows:

"**5-403. Scope of term "liquidating officer" — department of business regulation to file inventory with district court — report.** *(1) For the purpose of this section the term "liquidating officer" includes every person legally empowered to liquidate the business and affairs of a state bank, whether the liquidation is by the department of business regulation or its deputies and agents. The term also includes all receivers of state banks qualified to liquidate a state bank under any law of this state.*

(2) The liquidating officer of a bank may decide when the assets of a failed bank are not sufficient to pay the debts, contracts, engagements, and liabilities, and he may determine the question of the time when and the court where necessary legal proceedings shall be conducted, subject to the general provisions of law governing venue and place of trial.

(3) The provisions of this chapter do not impose any liability on a stockholder of a bank which is a member of the *federal deposit insurance corporation.*

(4) The department shall, within 90 days after taking charge of an insolvent bank, file with the district court having jurisdiction a complete inventory of all of the property and assets of the insolvent bank, such as furniture, fixtures, real estate, mortgages, bonds, and notes, secured and unsecured. It shall also every 6 months, or more often if required by the court, file with the court a report showing the *status* of the liquidation of the bank, the assets that have been liquidated and collected, the amounts and manner of payments made to creditors, the manner in which claims have been handled, and the assets on hand. The report shall contain other information the court requires, so that the court and the public may be apprised of the condition of the bank and the manner in which it is being liquidated with respect to the collection and sale of assets belonging to the bank and the manner in which claims are being paid.

HeinOnline -- 1977 Vol. I 279 1977

The report and account shall be set for hearing upon the notice the court may require and, if found to be correct, shall be approved by the court."

Section 4. Section 5-504, R.C.M. 1947, is amended to read as follows:

"**5-504. Real estate which banks may purchase, hold, or convey.** (1) A bank organized under the provisions of this act may purchase, hold, or convey real estate which:

(a) *is* necessary for the proper transaction of its business, but it shall not invest an amount exceeding 50% of its paid-up capital and surplus in the lot and building in which the business of the company is carried on, furniture, equipment and fixtures, vaults and safety vaults, and boxes necessary or proper to carry on its banking business;

(b) *is* mortgaged to it in good faith by way of security for loans previously made or moneys due to the *bank*;

(c) *is* conveyed to it in satisfaction of debts previously contracted in the course of its business;

(d) *it* purchases at sales under judgments, decrees, or mortgages held by the *bank*.

(2) Real estate acquired in the manner set forth in subsections (1)(c) and (1)(d) of this section may not be held longer than 5 years from the date of acquisition, unless special written permission to do so is granted by the department. The real estate shall be carried on the books of the bank for an amount not greater than its cost to the bank, including costs of foreclosure and other expenses of acquiring title."

Section 5. Section 5-506, R.C.M. 1947, is amended to read as follows:

"**5-506. Limitation on real estate loans.** (1) A bank organized under the laws of this state may make real estate loans secured by first liens upon improved real estate, including improved farm land and improved business and residential properties, and may purchase an obligation so secured when the entire amount of the obligation is sold to the bank. The amount of the loan may not exceed 50% of the appraised value of the real estate offered as security, and the loan may not be made for a longer period than 5 years, except that:

(a) *the* loan may be made in an amount not to exceed 60% of the appraised value of the real estate offered as security and for a term not longer than 20 years if the loan is secured by an amortized mortgage, deed of trust, or similar instrument, under the terms of which the installment payments are sufficient to amortize 40% or more of the principal of the loan within not more than 20 years; and

(b) *a* bank may not make those loans in an aggregate sum in excess of the amount of its capital stock paid in and unimpaired plus the amount of its unimpaired surplus or in excess of 60% of the amount of its time and saving deposits, whichever is greater.

(2) Loans made to finance the construction of residential or farm buildings and having maturities of not to exceed 6 months, whether or not secured by a mortgage or a similar lien on real estate upon which the

HeinOnline -- 1977 Vol. I 280 1977

residential or farm building is being constructed, are not loans secured by real estate within the meaning of this section but shall be classed as ordinary commercial loans. A bank may not invest in or be liable on any of those loans in an aggregate amount in excess of 50% of its actually paid-in and unimpaired capital.

(3) Loans made to establish rural or commercial businesses, which are in whole or in part discounted or loaned against as security by a federal reserve bank for any part of which a commitment has been made by a federal reserve bank or in which an agency of the federal government *cooperated* or *purchased* a participation in, are not subject to the restrictions or limitations of this section upon loans secured by real estate. A bank in this state has from time to time the same authority to make loans upon real estate which may be given by acts of *congress* or the federal reserve system to national banks or bank members of the federal reserve system.

(4) The limitations and restrictions imposed by this section do not prevent the renewal or extension of loans made before February 18, 1941, and do not apply to real estate loans which are insured under the provisions of any act of *congress*. Those limitations and restrictions do not apply to the making, extension, or renewal of any loans made under subchapter II of the act of *congress* known as the Servicemen's Readjustment Act of 1944 or any amendment or supplement to that act.

(5) This section, however, does not prevent a bank from taking another and immediately subsequent mortgage or deed of trust when it already holds a first mortgage or deed of trust on the real estate or from accepting a second lien on real estate to secure the repayment of a debt previously contracted in good faith. These provisions do not prevent subsequent liens of any kind from being taken to secure the payment of a debt previously contracted in good faith when, in the judgment of the directors of the bank, the subsequent liens are necessary further to secure the payment of any debts and save the bank from loss."

Section 6. Section 5-508, R.C.M. 1947, is amended to read as follows:

"5-508. When advertising as bank prohibited — trade names restricted. *(1)* A person, firm, company, *partnership*, or corporation, either domestic or foreign, not subject to the supervision of the department and not required by the provisions of this act to report to it and which has not received a certificate to do a banking business from the department, may not:

(a) advertise that he or it is receiving or accepting money or savings for deposit, investment, or otherwise and issuing notices or certificates of deposit therefor; or

(b) use an office sign at the place where the business is transacted having on it an artificial or corporate name or other words indicating that:

(i) the place or office is the place or office of a bank or trust company;

(ii) deposits are received there or payments made on *checks;* or

(iii) any other form of banking business *is* transacted *there.*

HeinOnline -- 1977 Vol. I 281 1977

(2) That person, firm, company, *partnership*, or corporation, domestic or foreign, may not use or circulate letterheads, *billheads*, blank notes, blank receipts, certificates, or circulars, or any written or printed or partly written and partly printed paper whatever, having on them an artificial or corporate name or other word or words indicating that the business is the business of a bank, savings bank, or trust or investment company.

(3) That person, firm, company, *partnership*, or corporation or any agent of a foreign corporation not having an established place of business in the state may not solicit or receive deposits or transact business in the way or manner of a bank, savings bank, trust, or investment company or in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company.

(4) A person, firm, company, *partnership*, or corporation, domestic or foreign, not subject to the supervision of the department and not required by the provisions of this act to report to it and which has not received from the department a certificate to do a banking business, may not transact business under a name or title which contains the word "bank", "banker", "banking", "savings bank", "saving", "trust", "trustee", "trust company", or "investment company".

(5) A person, firm, company, *partnership*, or corporation, domestic or foreign, violating a provision of this section shall forfeit to the state $100 a day for every day or part of a day during which the violation continues.

(6) Upon suit by the department, the court may issue an injunction restraining that person, firm, company, *partnership*, or corporation *during pendency of the action and permanently* from further using those words in violation of the provisions of this section or from further transacting business in a manner which leads the public to believe that its business is that of a bank, savings bank, trust, or investment company and may enter any other order or decree as equity and justice require."

Section 7. Section 5-517, R.C.M. 1947, is amended to read as follows:

"**5-517. Limit on amount of bond issue.** No commercial bank *may* purchase, agree to purchase, or underwrite any bond issue in excess of *10%* of its assets, except bonds of the United States, of the state of Montana, *or* of the cities, towns, counties, or school districts of this state."

Section 8. Section 5-519, R.C.M. 1947, is amended to read as follows:

"**5-519. Fraud by director, officer, or employee.** A director, officer, agent, or employee of a bank *is guilty of a felony* who:

(1) *knowingly* receives or possesses himself of any of its property, otherwise than in payment for a just demand, and with intent to defraud:

(a) omits to make or to cause or direct to be made a full and true entry of it in its books and account; or

(b) *concurs* in omitting to make any material entry thereof;

(2) *knowingly* concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement which is false; or

HeinOnline -- 1977 Vol. I 282 1977

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that corporation as required by law, to exhibit *them*, or allow them to be inspected and extracts to be taken from them by the department."

Section 9. Section 5-530, R.C.M. 1947, is amended to read as follows:

"**5-530. Deposit by minor.** Whenever any deposit shall be made in any bank by *or* in the name of any minor, the same shall be held for the exclusive right and benefit of such minor and free from the control or lien of all persons whatsoever, except creditors, and shall be paid, with any interest due thereon, to the person in whose name the deposit *was* made, and the receipt of such minor *is* a sufficient release or discharge for such deposit to the bank."

Section 10. Section 5-604, R.C.M. 1947, is amended to read as follows:

"**5-604. Director and employees not to be interested in banks.** Neither the director of *the department of* business regulation nor any bank examiner may be interested in or a borrower from any state bank, directly or indirectly."

Section 11. Section 5-609, R.C.M. 1947, is amended to read as follows:

"**5-609. State banking board — secretary — meetings — per diem.** *(1)* The *state banking board, established by 82A-407,* shall elect from its members a secretary to serve at the pleasure of the board.

(2) In performing its functions the board shall have use of the offices, equipment, and personnel of the department as it requires.

(3) The board shall hold regular meetings each quarter at a fixed date and time at the office of the department. Special meetings may be called at any time by the chairman upon 3 *days'* notice to the members.

(4) A quorum for all meetings shall be a majority of the board members, and action may be taken by a majority of the quorum present at any meeting.

(5) The chairman shall have a voice but no vote in all meetings except to break a tie.

(6) Any board member except the chairman may be removed by the governor without cause in any case.

(7) The board members, except the chairman, shall be paid $25 per day or any part thereof devoted to the performance of their duties and actual and reasonable expenses incurred in the performance of their duties and mileage as provided by law to state officers. The costs and expenses of the board shall be legitimate charges of the department."

Section 12. Section 5-610, R.C.M. 1947, is amended to read as follows:

"**5-610. Powers and duties of board.** The state banking board shall:

(1) make final determinations upon applications for certificates of authorization for new banks, mergers, consolidations, and relocations of banks;

HeinOnline -- 1977 Vol. I 283 1977

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the director *of the department* of business regulation as *the* duties and powers relate to banking."

Section 13. Section 5-611, R.C.M. 1947, is amended to read as follows:

"**5-611. Rules adopted by board — new banks.** The board shall adopt rules necessary for the administration of *5-609 through 5-614* in accordance with the Montana Administrative Procedure Act. In particular, the board shall adopt rules concerning the authorization of new banks. Such rules shall contain minimum standards under which an application for a new bank shall be determined, including the following:

(1) a persuasive showing that there is a reasonable public necessity and demand for a new bank at the proposed location;

(2) that the bank will be owned and managed by persons of good moral character and financial integrity and will be safely and soundly operated;

(3) a persuasive showing that the new bank will have a sufficient volume of business to assure solvency and that establishment of the new bank will be in the public interest."

Section 14. Section 5-702, R.C.M. 1947, is amended to read as follows:

"**5-702. Report of declaration of dividend.** In addition to the *report* required by 5-701, a bank shall report to the department within 10 days after declaring any dividend, showing the amount of the dividend and the amount of net earnings in excess of the dividend. The *report* shall be attested as provided in 5-701."

Section 15. Section 5-707, R.C.M. 1947, is amended to read as follows:

"**5-707. False statements and entries considered felony.** Every officer or other person authorized by this act who willfully and knowingly makes any false statement of facts, statement of account, or report and every officer, agent, or clerk of any bank who willfully and knowingly makes any false entries in the books of such bank or knowingly subscribes or exhibits false papers with the intent to deceive any person authorized to examine such bank and every person authorized by the provisions of this act to make statements or reports who willfully and knowingly subscribes or makes any false statement or report *is* guilty of a felony and upon conviction thereof shall be imprisoned in the state prison for a term of not less than 1 *or* more than 10 years."

Section 16. Section 5-802, R.C.M. 1947, is amended to read as follows:

"**5-802. Penalty for receiving deposits when insolvent or for making false statements.** Any officer, agent, or clerk of any bank, knowing such bank to be insolvent, who receives money, bank bills, notes of the United States, or currency or other bills or drafts circulating as money or currency, except in the manner set forth in the succeeding section; subscribes or makes any false statements or entries in the books of such bank; knowingly subscribes or exhibits any false paper with the intent to deceive any person authorized to examine as to the condition of such bank; or willfully subscribes or makes false reports *is* subject to imprisonment in the state prison for a term not exceeding 5 years."

HeinOnline -- 1977 Vol. I 284 1977

Section 17. Section 5-1002, R.C.M. 1947, is amended to read as follows:

"**5-1002. Change from state to national bank.** Any bank may become a corporation for the purpose of carrying on the business of banking in this state, under the act of *congress* "to provide a national currency secured by a pledge of United States bonds and to provide for the circulation and redemption thereof", approved June 3, 1864, and *under* Title 52 of the Revised Statutes of the United States, when stockholders owning two-thirds of the stock of the bank have voted to become such corporation or have executed a written consent authorizing its directors to make the certificate required therefor by the laws of the United States or when a majority of the directors of the bank, having been authorized in their discretion to make the change, shall, by a vote of the majority, decide to become such corporation. The cashier of the bank shall publish notice thereof for 30 days in the newspaper which the directors select and send a like printed notice by mail or otherwise to all nonvoting or dissenting stockholders and notify the department of business regulation that the bank has decided to become a corporation under the laws of the United States."

Section 18. Section 5-1019, R.C.M. 1947, is amended to read as follows:

"**5-1019. Special examination defined.** *A special examination is an* examination made by the department otherwise than in the ordinary routine of the department because, in its opinion, the condition of the bank requires the examination *or* an examination made at the request of the board of directors or stockholders of a bank."

Section 19. Section 5-1021, R.C.M. 1947, is amended to read as follows:

"**5-1021. Consolidation or merger of banks.** *(1) The words "bank" or "banks" as used in this section include commercial banks, savings banks, trust companies, investment companies, and other such corporations carrying on the business of banking, trust company, or investment company under the laws of this state or doing business in this state under the national banking laws of the United States.*

(2) Any two or more banks doing business in this state may, with the approval of the state banking board in the case of state banks, consolidate *or* merge into one bank, on such terms and conditions as may be lawfully agreed upon by a majority of the board of directors of each bank proposing to consolidate *or merge. Such consolidation or merger, before it becomes effective, must be ratified* by the consent in writing of the shareholders of each such bank owning at least two-thirds of its capital stock outstanding, provided that the capital stock of such consolidated *or merged* bank *may* not be less than that required under existing law for the organization of a bank of the class of the largest of the banks so consolidating.

(3) Upon such consolidation *or merger,* the corporate franchise, corporate life, being, and existence, and the corporate rights, powers, duties, privileges, franchises, and obligations, including the rights, powers,

HeinOnline -- 1977 Vol. I 285 1977

duties, privileges, and obligations as trustee, executor, administrator, guardian, and all and every right, power, duty, privilege, and obligation as fiduciary, together with title to every species of property, real, personal, and mixed, of such consolidating *or merging* bank and banks shall, without the necessity of any instrument of transfer, become *consolidated or* merged and continued in and held, enjoyed, and assumed by the consolidated *or merged* bank, and such bank shall have and enjoy the right equal as to priorities with any other applicant to appointment by the courts to the offices of executor, administrator, guardian, or trustee under any will or other instrument made prior to such consolidation *or merger* and by which will or instrument such consolidating *or merging* bank was nominated by the maker to such office."

Section 20. Section 5-1027, R.C.M. 1947, is amended to read as follows:

"**5-1027. Department may make rules.** The department *may* promulgate reasonable rules and orders *concerning* bookkeeping and accounting by state banks, including the keeping of reasonable credit information, information in connection with assets, *or* information in connection with *charged-off* items."

Section 21. Section 5-1032, R.C.M. 1947, is amended to read as follows:

"**5-1032. Bonding of employees.** *(1) The* board of directors of every bank *shall* require that all officers and employees of banks whose duty includes the handling of moneys, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the bank and its customers be bonded.

(2) The board of directors shall by order entered upon the *minute* books of the board designate the officers and employees to be bonded and the amount of bonds to be given. Such action as to the personnel, *the* amount *of bonds,* and the surety company or sureties *is* subject to approval by the department *and* the bonds *shall* be in such form as *is* provided or approved by the department.

(3) The bonds *shall* be approved by the president of the bank and his action reported to the board of directors.

(4) All bonds required by this section *shall* be kept in the custody of the bank subject to inspection by examiners from the department; provided, as far as possible, they *may* not be placed in the custody of the officer or employee for whom the same is given."

Section 22. Section 5-1039, R.C.M. 1947, is amended to read as follows:

"**5-1039. Giving security for deposit prohibited — exceptions.** It *is* unlawful for any bank to pledge, mortgage, or hypothecate to any depositor any of its real or personal property as security for any deposit, and any pledge, mortgage, or hypothecation made in violation thereof *is* unenforceable. *This* provision *does* not apply to any deposits of money of the United States, public funds deposited in accordance with the provisions of any depository act of this state or the United States, or bank-

HeinOnline -- 1977 Vol. I 286 1977

ruptcy estate funds or deposits, *including* deposits of receivers or trustees in bankruptcy, deposited under the direction and supervision of a court of record of the state of Montana or of the United States."

Section 23. Section 5-1055, R.C.M. 1947, is amended to read as follows:

"**5-1055. Closing on Saturdays authorized — Saturday treated as holiday.** Any bank as defined in 5-102 and any national bank or national banking association incorporated or organized under the laws of the United States of America and any federal reserve bank may, at its election, remain closed and refrain from the transaction of any business on Saturdays. *Any* Saturday on which any such bank remains closed shall be, with respect to such bank, a holiday and not a business day. Any act authorized, required, or permitted to be performed *on a Saturday* at or by or with respect to any bank, including any national bank or national banking association and any federal reserve bank may be performed on the next succeeding business day, and no liability or loss of any rights of any kind shall result from such closing on Saturday or from the nonopening of any bank *for the transaction of business* on any Saturday under the authority of this act."

Section 24. Section 5-1106, R.C.M. 1947, is amended to read as follows:

"**5-1106. Resumption after closing.** After the department has taken possession of a bank, it may permit that bank to resume business upon conditions which may be approved by *the department.*"

Section 25. Section 5-1115, R.C.M. 1947, is amended to read as follows:

"**5-1115. Claims — partial payments.** *(1)* The department need not await the expiration of the time allowed for filing claims, as fixed in the notice to the creditors, for the payment of dividends. It may, in its discretion and if under the circumstances of the particular case it considers it expedient and safe, at any time after taking possession of the bank and prior to the expiration of the period fixed for filing of claims, if it has on hand in cash sufficient funds over and above the expenses of liquidation, make pro rata distribution to any class of creditors next entitled to distribution, in the order of priority fixed in this chapter, making that payment to the creditors as they appear on the books and records of the bank and determining the priority and basing its apportionment on the amount shown to be due by the books and records.

(2) At any time after the expiration of the date fixed for the presentation of claims against the bank and from time to time thereafter when, in its discretion, there are sufficient funds available, the department shall, after making proper provisions for the payment of expenses of liquidation, declare and pay dividends to all creditors of the bank pro rata in the order of their priority. If, after the time fixed for presentation of claims against the bank has expired, it appears that a person, prior to the expiration of the period or at any other time, has been paid more than the *pro rata* amount due him as compared with the amounts then paid other creditors, nothing more may be paid that creditor until the payment made other creditors places them on equal footing.

HeinOnline -- 1977 Vol. I 287 1977

(3) In calculating dividends, all disputed claims and deposits shall be taken into account and the amount of dividends upon the disputed claims or deposits shall be held by the department until the validity of those claims or deposits has been finally determined.

(4) Claims against a bank in process of liquidation may be assigned in whole or in part subject to the approval of the department. Assignments of claims are binding upon the department only after they have been filed and allowed by the department and *are* subject to the payment of the assignor's liabilities to the bank. An assignment shall be made by filing written notice, signed by the original claimant, with the department or person in charge of the bank. No assigned claims may be offset against obligations due the bank. A check or draft drawn against a bank closed or taken possession of by the department, whether issued before or after closing, *may* not be recognized as a claim against the bank or as an assignment of any amount, whether protested or not protested."

Section 26. Section 5-1126, R.C.M. 1947, is amended to read as follows:

"**5-1126. Power of closed banks to borrow money from governmental agencies.** *After applying to and obtaining the approval of the department and the district court of the county in which the bank or trust or investment company is located, and notwithstanding* any other law, the liquidating agents of closed banks may borrow money from an agency of the federal government on behalf of commercial banks, savings banks, trust companies, and investment companies closed and in liquidation. *As* security for the loan *the liquidating agent* may pledge or mortgage the assets and properties thereof for the purpose of paying depositors or creditors in part or in full."

Section 27. Section 5-1508, R.C.M. 1947, is amended to read as follows:

"**5-1508. Transfer of fiduciary relationships between affiliated banks.** (1) Any bank which has received approval pursuant to 5-1506 to maintain a trust office in the same building with the main office of any affiliated bank may file its verified application in the district court of the county in which its main office is located requesting that it be substituted, except as may be expressly excluded in such application, in every fiduciary capacity for such affiliated bank, and such affiliated bank shall join in such application. Such application shall indicate the county wherein the main office of such affiliated bank is located and shall designate each fiduciary account existing at the date thereof with respect to which the applicant bank requests substitution, but fiduciary capacities in other cases need not be listed. Such application shall additionally set forth, with regard to each existing fiduciary account designated therein, the name and address last known to the applicant of each person entitled to mailed notice of hearing thereon, who shall be those persons specified in subsections *(1)*(a) *through (1)*(e) of 5-1507.

(2) When any such application *has* been filed, the clerk of the court where filed shall make an order fixing a date and time for hearing thereon and shall cause notice thereof to be given by publication and mailing in the manner required by 5-1507.

HeinOnline -- 1977 Vol. I 288 1977

(3) The notice to be published and mailed with respect to each application shall state the time and place of the hearing thereon, the name of the bank which has filed the application, the name of the affiliated bank which has joined in such application, that the application requests that the applicant bank be substituted in every fiduciary capacity for the affiliated bank specified in the application, and that any person beneficially interested in any affected fiduciary account may appear on or before the date of hearing and file his written objection to such substitution as to such affected fiduciary account, and such notice shall refer to such application for further particulars.

(4) On or before the date and time of hearing any such application, any person beneficially interested in any fiduciary account as to which substitution of the applicant bank is requested may appear and file objection to substitution and shall be entitled to be heard with respect to such objection.

(5) On such date of hearing, upon finding that due notice has been given as required by this act and upon finding that the applicant bank has received the requisite approval from the department or the comptroller of the currency if the applicant bank is a national banking association, the district court shall enter an order substituting the applicant bank in every fiduciary capacity for the affiliated bank designated in the application, excepting as may be otherwise specified in the application and excepting fiduciary capacities in any account with respect to which an objection has been filed pursuant to this section. Upon entry of such order, the applicant bank shall, without further act, be substituted in every such fiduciary capacity. Such substitution may be made a matter of record in any county of this state by filing a certified copy of the order of substitution in the office of the clerk of any district court in this state or by filing a certified copy of such order in the office of the clerk and recorder of any county in this state to be by such officer recorded and indexed in like manner and with like effect as other orders and decrees of court are recorded and indexed.

(6) Each designation, in a will or other instrument heretofore or hereafter executed, of a bank as fiduciary shall be deemed a designation of the applicant bank substituted for such bank pursuant to this section except where such will or other instrument is executed after such substitution and expressly negates the application of this section. Any grant in any such will or other such instrument of any discretionary power shall be deemed conferred upon the applicant bank deemed designated as the fiduciary pursuant to this section.

(7) A bank shall account jointly with the applicant bank which has been substituted as fiduciary for such bank pursuant to this section for the accounting period during which the applicant bank is initially so substituted. Upon substitution pursuant to this section, the affiliated bank for which substitution has been made shall deliver to such applicant bank all assets held by such affiliated bank as fiduciary (except assets held for accounts with respect of which there has been no substitution pursuant to this section) and upon such substitution all such assets shall become the property of such applicant bank without the necessity of any instrument of transfer or conveyance."

HeinOnline -- 1977 Vol. I 289 1977

Section 28. Section 7-102, R.C.M. 1947, is amended to read as follows:

"**7-102. Articles of incorporation — contents.** Whenever any number of persons, not less than five, desire to incorporate a building and loan association, having for its object the conduct and operation of such an association as defined in this act, they shall prepare and file articles of incorporation to that effect in the manner *specified* in this act. *Such* articles shall be signed, sealed, and acknowledged in the form now provided by the statutes of this state for the conveyance of real estate and shall include the following:

(1) the name of the association, *which may* not be the same as *or* too closely resemble that in use by any existing corporation established under the laws of this state. The words building and loan association or savings and loan association shall form a part of the name, and *a* corporation not organized under this act *may not* use a name embodying *that* combination of words, provided that the associations existing *as of May 1, 1927,* may continue their present names.

(2) the principal office or place of business of the association *which* shall be within this state;

(3) the amount of its capital stock and the number of shares into which the same shall be divided. *The* capital stock shall be divided into shares having a par value of $100.

(4) a provision that such association is organized under this act for the purposes herein expressed;

(5) the names and residences of the persons who subscribed and acknowledged the declaration, a majority of whom shall be citizens of this state and shall thereafter be called incorporators."

Section 29. Section 7-112, R.C.M. 1947, is amended to read as follows:

"**7-112. Proxies.** At least once every year the board of directors of every building and loan association shall, by resolution, *cause* the secretary of such association *to* mail to every stockholder of such association a blank form of proxy, and the stockholder *may withdraw* his former proxy and *substitute* another in its stead. Every proxy shall continue in force and be binding upon the stockholder until such proxy is revoked or another substituted."

Section 30. Section 7-139, R.C.M. 1947, is amended to read as follows:

"**7-139. Obtaining property by fraud — false report — refusal to permit inspection of books.** A director, officer, agent, or employee of a building and loan association *is guilty of a felony* who:

(1) *willfully* receives or possesses any of its property, otherwise than in payment for a just demand, and with intent to defraud:

(a) omits to make or *directs* to be made a full and true entry of it in its books and accounts;

(b) concurs in omitting to make a material entry thereof;

HeinOnline -- 1977 Vol. I 290 1977

(2) willfully makes or concurs in making or publishing a written report, exhibit, or statement of the association's affairs or pecuniary condition containing any material statement which is false; or

(3) having the custody or control of the association's books, willfully refuses or neglects to make a proper entry in the books as required by law or to exhibit or allow them to be inspected and extracts to be taken from them by the department."

Section 31. Section 7-156, R.C.M. 1947, is amended to read as follows:

"7-156. Conversion into federal savings and loan associations. Any building and loan association or other home financing organization, by whatever name or style it may be designated, eligible to become a federal savings and loan association may convert itself into a federal savings and loan association by following the procedure hereinafter outlined:

(1) At any regular meeting of the shareholders of any such association or at any special meeting of the shareholders of such association, in either case called to consider such action and held in accordance with the laws governing such association, such shareholders, by an affirmative vote of the majority of *the* shareholders, in person or by proxy, may declare by resolution the determination to convert *the* association into a federal savings and loan association.

(2) A copy of the minutes of *the* meeting of the shareholders verified by the affidavit of the president or vice-president and the secretary of the meeting shall be filed *with the department of business regulation* within *10* days after *the* meeting. *The* verified copy of the minutes of such meeting when so filed shall be presumptive evidence of the holding and of the action of such meeting.

(3) Within a reasonable time and without any unnecessary delay after the adjournment of such meeting of shareholders, such association shall take *any* action necessary to make it a federal savings and loan association, and within *10* days after receipt of the federal charter there shall be filed *with the department of business regulation* a copy of *the* charter issued to such association by the federal home loan bank board or a certificate showing the organization of such association as a federal savings and loan association certified by or on behalf of the federal home loan bank board. Upon the filing of such instrument such association shall cease to be a state association and shall thereafter be a federal savings and loan association."

Section 32. Section 14-605, R.C.M. 1947, is amended to read as follows:

"14-605. Amendments. (1) The articles of incorporation or the bylaws may be amended as provided in the bylaws. Amendments to the articles of incorporation or bylaws shall be submitted to the director of the department of business regulation who shall approve or disapprove the amendments within 60 days.

(2) Amendments shall become effective upon:

(a) approval in writing by the director, *for which* no fee *may* be charged; *and*

HeinOnline -- 1977 Vol. I 291 1977

(b) in the case of articles of incorporation, filing with the secretary of state."

Section 33. Section 14-665, R.C.M. 1947, is amended to read as follows:

"14-665. Liquidation. (1) A credit union may elect to dissolve voluntarily and liquidate its affairs in the manner prescribed in this section and the applicable Montana corporation laws.

(2) The board of directors shall adopt a resolution recommending the credit union be dissolved voluntarily and directing that the question of liquidation be submitted to the members.

(3) Within 10 days after the board of directors decides to submit the question of liquidation to the members, the president shall notify the director of the department of business regulation thereof in writing, setting forth the reasons for the proposed action. Within 10 days after the members act on the question of liquidation, the president shall notify the director in writing as to whether or not the members approved the proposed liquidation.

(4) As soon as the board of directors decides to submit the question of liquidation to the members, payment on shares, withdrawal of shares, making any transfer of shares to loans and interest, making investments of any kind, and granting loans shall be suspended pending action by members on the proposal to liquidate. On approval by the members of such proposal, all such business transactions shall be permanently discontinued. Necessary expenses of operation shall, however, continue to be paid on authorization of the board of directors or liquidating agent during the period of liquidation.

(5) For a credit union to enter voluntary liquidation, approval by a majority of the members in writing or by a two-thirds majority of the members present at a regular or special meeting of the members is required. *If* authorization for liquidation is to be obtained at a meeting of the members, notice in writing shall be given to each member, by *first-class* mail, at least 10 days prior to such meeting.

(6) A liquidating credit union shall continue in existence for the purpose of discharging its debts, collecting and distributing its assets, and doing all acts required in order to wind up its business and may sue and be sued for the purpose of enforcing such debts and obligations until its affairs are fully adjusted.

(7) The board of directors *or* the liquidating agent shall use the assets of the credit union to pay:

(a) expenses incidental to liquidating, including any surety bond that may be required;

(b) any liability due nonmembers; and

(c) special purpose thrift accounts as provided in this act. Assets then remaining shall be distributed to the members proportionately to the shares held by each member as of the date dissolution was voted.

HeinOnline -- 1977 Vol. I 292 1977

(8) As soon as the board of directors or the liquidating agent determines that all assets from which there is a reasonable expectancy of realization have been liquidated and distributed as set forth in this section, *he* shall execute a certificate of dissolution on a form prescribed by the department and file the same *with the department*, together with all pertinent books and records of the liquidating credit union, whereupon such credit union shall be dissolved."

Section 34. Section 15-2603, R.C.M. 1947, is amended to read as follows:

"**15-2603. Incorporators — general powers — capital stock — articles of incorporation.** Nine or more persons, a majority of whom shall be residents of this state, who desire to create a development credit corporation under the provisions of this act for the purpose of promoting, developing, and advancing the prosperity and economic welfare of the state and, to that end, to exercise the powers and privileges hereinafter provided, may be incorporated in the following manner:

(1) Such persons shall by articles of incorporation filed in the manner prescribed in Title 15, under their hands and seals, set forth:

(a) the name of the corporation, which shall include the words "Development Credit Corporation of Montana";

(b) the location of the principal office of the corporation, but such corporation may have offices in such other places within the state as may be fixed by the board of directors;

(c) the purposes for which the corporation is founded, which shall include the following:

(i) to elect, appoint, and employ officers, agents, and employees;

(ii) to make contracts and incur liabilities for any of the purposes of the corporation; provided that the corporation *may* not incur any secondary liability by way of guaranty or endorsement of obligations of any person, firm, corporation, joint-stock company, association, or trust or in any other manner;

(iii) to borrow money from the members, nonmember persons, firms, or corporations and state and federal agencies for any of the purposes of the corporation; to issue therefor its bonds, debentures, notes, or other evidences of indebtedness, whether secured or unsecured, and to secure the same by mortgage, pledge, deed of trust, or other lien on its property, franchises, rights, and privileges of every kind and nature or any part thereof or interest therein, without securing stockholder or member approval; provided that no loan to the corporation *may* be secured in any manner unless all outstanding loans to the corporation *are* secured equally and ratably in proportion to the unpaid balance of such loans and in the same manner;

(iv) to make loans to any person, firm, corporation, joint-stock company, association, or trust and establish and regulate the terms and conditions with respect to any such loans and the charges for interest and service

HeinOnline -- 1977 Vol. I 293 1977

connected therewith; provided, however, that the corporation *may* not approve any application for a loan unless the person applying for *the* loan *shows* that he has applied for the loan through ordinary banking channels and that the loan has been refused by at least one bank or other financial institution;

(v) to participate with any duly authorized private lending agency and city, state, and federal governmental lending agencies in the making of loans;

(vi) to purchase, receive, hold, lease, or otherwise acquire and to sell, convey, transfer, lease, or otherwise dispose of real and personal property, together with such rights and privileges as may be incidental and appurtenant thereto and the use thereof, including, but not restricted to, any real or personal property acquired by the corporation from time to time in the satisfaction of debts or enforcement of obligations;

(vii) to acquire the good will, business, rights, real and personal property, and other assets or any part thereof or interest therein of any persons, firms, corporations, joint-stock companies, associations, or trusts and to assume, undertake, or pay the obligations, debts, and liabilities of any such person, firm, corporation, joint-stock company, association, or trust;

(viii) to acquire improved or unimproved real estate for the purpose of constructing industrial plants or other business establishments thereon or for the purpose of disposing of such real estate to others for the construction of industrial plants or other business establishments;

(ix) to acquire, construct or reconstruct, alter, repair, maintain, operate, sell, convey, transfer, lease, or otherwise dispose of industrial plants or business establishments;

(x) to acquire, subscribe for, own, hold, sell, assign, transfer, mortgage, pledge, or otherwise dispose of the stock, shares, bonds, debentures, notes, or other securities and evidences of interest in or indebtedness of any person, firm, corporation, joint-stock company, association, or trust and while the owner or holder thereof exercise all the rights, powers, and privileges of ownership, including the right to vote thereon;

(xi) to mortgage, pledge, or otherwise encumber any property, right, or thing of value, acquired pursuant to the powers contained in *subsections (1)(c)(vi) through (1)(c)(x) of this section,* as security for the payment of any part of the purchase price thereof;

(xii) to cooperate with and avail itself of the facilities of the state planning and economic development *divisions of the department of community affairs* and any similar governmental agencies and to *cooperate* with, assist, and otherwise encourage organizations in the various communities of the state in the promotion, assistance, and development of the business prosperity and economic welfare of such communities or of this state or of any part thereof;

(xiii) to accept gifts, donations, bequests, devises, or grants from any person, corporation, association, or governmental agency, whether state, federal, or municipal;

HeinOnline -- 1977 Vol. I 294 1977

(xiv) to do all acts and things necessary or convenient to carry out the powers expressly granted in this act;

(d) the amount of total authorized capital stock and the number of shares in which it is divided, the par value of each share, the amount of capital stock with which it will commence business, and, if there is more than one class of stock, a description of the different classes, and the names and post-office addresses of the subscribers of stock and the number of shares subscribed by each. The aggregate of the subscription shall be the amount of capital with which the corporation will commence business.

(2) The articles of incorporation may also contain any provision consistent with the laws of this state for the regulation of the affairs of the corporation or creating, defining, limiting, and regulating its powers. The articles of incorporation shall be in accordance with the provisions of Title 15, so far as consistent with this act."

Section 35. Section 47-209, R.C.M. 1947, is amended to read as follows:

"**47-209. License renewal fee.** Every licensee shall, on or before December *1*, pay to the department the sum of $125 for each license held as a *license* fee for the succeeding calendar year. Failure to pay such license fee within the time prescribed shall automatically revoke such license."

Section 36. Section 47-211, R.C.M. 1947, is amended to read as follows:

"**47-211. Installment payment — contract period.** *(1)* No licensee *may* enter into any contract of loan:

(a) of $300 or less, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 21 calendar months from the date of making such contract;

(b) for more than $300 to and including $1,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 25 calendar months from the date of making;

(c) for more than $1,000 to and including $2,000, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 37 calendar months from the date of making; *or*

(d) for more than $2,000, to and including $2,500, exclusive of charges, under which the borrower agrees to make any scheduled repayment of principal more than 37 calendar months from the date of making.

(2) Every loan contract shall require payment of principal and charges in installments which shall be payable at approximately equal periodic intervals, except that payment dates may be omitted to accommodate borrowers with seasonal incomes. No installment contracted for *may* be substantially larger than any preceding installment. When a loan contract provides for monthly installments, the first installment may be payable at any time within 45 days of the date of the loan and the charges for

HeinOnline -- 1977 Vol. I 295 1977

the number of days in excess of 30 from the date of making may be added to the scheduled amount of *the* installments."

Section 37. Section 47-220, R.C.M. 1947, is amended to read as follows:

"**47-220. Wage assignments — limitations.** *(1)* The payment in money, credit, goods, or things in action as consideration for any sale or assignment of or order for the payment of wages, salary, commission, or other compensation for services, whether earned or to be earned, shall, for the purpose of regulation under this act, be *considered* a loan secured by such assignment, and the amount by which the assigned compensation exceeds the amount of the consideration actually paid shall, for the purposes of regulation under this act, be *considered* interest or charges upon the loan from the date of payment to the date the compensation is payable. Such transactions shall be governed by and be subject to the provisions of this act.

(2) Any assignment or other transfer to a licensee or for the benefit of a licensee of salary, wages, commissions, or other compensation for services must be limited to not exceeding 10% of such salary, wages, commissions, or other compensation owing at the time of the notice to the debtor's employer and thereafter to become owing. *However,* no such assignment or order *is* valid unless it is in writing, signed in person by the borrower or if the borrower is married, unless it is signed in person by both husband and wife, provided that written assent of a spouse *is not* required when husband and wife have been and are living separate and apart when such assignment or order is made. *Only* if the debtor defaults in payment of the whole or some part of the loan for which such assignment or transfer is security, *shall notice be given to the debtor's employer of such assignment or transfer.* Such notice must be served on the employer or a managing agent of such employer, must be verified by the oath of the licensee or his agent, and must include:

(a) *a* correct copy of the assignment;

(b) *a* statement of the amount of such loan and the amount due and unpaid thereon;

(c) *a* copy of this section.

(3) The acceptance and honoring of any assignment shall be at the option of the employer."

Section 38. Section 47-226, R.C.M. 1947, is amended to read as follows:

"**47-226. Access to records — witnesses.** For the purpose of this *chapter* the department or its duly authorized representatives shall be given free access to the offices and places of business, files, safes, and vaults of all such persons and *may* require the attendance of any person and examine him under oath relative to such loans or such business or to the subject matter of any examination, investigation, or hearing and *may* require the production of books, accounts, papers, and records. In the event of disobedience to any subpoena or other process issued by the department or failure to produce any books, accounts, papers, and records,

HeinOnline -- 1977 Vol. I 296 1977

the department may invoke the aid of any district court of this state in requiring the evidence and testimony of witnesses and the production of books, accounts, papers, and records."

Section 39. **Repealer.** Section 5-1125, R.C.M. 1947, is repealed.

Approved March 25, 1977.

CHAPTER NO. 72

AN ACT TO PROVIDE FOR THE ASSESSMENT OF COSTS TO PETITIONING PROPERTY OWNERS FOR DISCONTINUATION OF STREETS, ROADS, AND ALLEYS OWNED BY, OR DEDICATED TO, A MUNICIPALITY OR COUNTY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-2806 that reads as follows:

11-2806. Costs of discontinuation. Whenever a governing body discontinues, abandons, or vacates a street, alley, or road under Title 11, chapter 28 or Title 32, chapter 28, the costs of such process may be assessed against the petitioning property owner. Such costs may include costs of publication, engineering, and site viewing.

Approved March 25, 1977.

CHAPTER NO. 73

AN ACT TO CONTINUE CERTAIN IMMUNITIES FROM SUIT ESTABLISHED BY CERTAIN STATUTES BY REENACTING THESE STATUTES UNDER PROVISIONS OF ARTICLE II, SECTION 18, OF THE CONSTITUTION OF THE STATE OF MONTANA; AMENDING, CLARIFYING, AND REENACTING SECTIONS 28-603, 77-2308, 89-115, AND 89-3514, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-603, R.C.M. 1947, is amended to read as follows:

"**28-603. Powers of board.** (1) Boards of county commissioners may in their discretion establish fire seasons annually during which no person *may* ignite or set any forest fire, *slash-burning* fire, *land-clearing* fire, *debris-burning* fire, or open fire within any forest, range, or crop lands subject to the provisions of this act without having obtained an official written permit to ignite or set such fire from a county rural fire chief or from a district rural fire chief authorized by the board to issue such permits for such lands.

(2) Any person who *ignites* or *sets* any forest fire, *slash-burning* fire,

HeinOnline -- 1977 Vol. I 297 1977

land-clearing fire, *debris-burning* fire, or open fire within any forest, range, or crop land subject to the provisions of this act without first having obtained a written permit to ignite or set such fire *is* guilty of a misdemeanor.

(3) To augment rural crews in case of serious emergency, the boards may provide for the organization and training of voluntary urban fire crews to be used in rural areas.

(4) Any county rural fire chief or district rural fire chief *or his deputy* may enter private property *or direct the entry of* fire control crews for the purpose of suppressing fires. *A chief or deputy and the county or rural district are immune from suit for injury to persons or property resulting from actions taken to suppress fires under this subsection.*

(5) The board is authorized to appropriate from the general fund of the county not to exceed $15,000 per year for the purchase, care, and maintenance of *firefighting* equipment or for the payment of wages to skilled operators of heavy mechanized equipment in the suppression of fires when *considered* necessary; or if the general fund is budgeted to the full limit, the board may at any time fixed by law for levy and assessment of taxes levy a tax at such rate as in their judgment will be necessary to raise such needed sum not to exceed $15,000."

Section 2. Section 77-2308, R.C.M. 1947, is amended to read as follows:

"**77-2308. Immunity from liability.** (1) Neither the state nor any political subdivision of the state nor the agents or representatives of the state or any political subdivision thereof *are* liable for personal injury or property damage sustained by any person appointed or acting as a volunteer civilian defense worker or member of any agency engaged in civilian defense activity *during a disaster or catastrophe.* This section does not affect the right of any person to receive benefits or compensation to which he might otherwise be entitled under the *workers'* compensation law or any pension law or any act of *congress.*

(2) Neither the state nor any political subdivision of the state nor, except in cases of willful misconduct, gross negligence, or bad faith, the employees, agents, or representatives of the state or any political subdivision thereof nor any volunteer or auxiliary civilian defense worker or member of any agency engaged in civilian defense activity *during a disaster or catastrophe,* nor the owners of facilities used for civil defense shelters, pursuant to a fallout shelter license or privilege agreement and while complying with or reasonably attempting to comply with this chapter or any order *or* rule promulgated under the provisions of this chapter or pursuant to any ordinance relating to blackout or other precautionary measures enacted by any political subdivisions of the state, *are* liable for the death of or injury to persons or for damage to property as a result of any such activity."

Section 3. Section 89-115, R.C.M. 1947, is amended to read as follows:

"**89-115. Water funds — rates — sale of water — appeals to board — lease and sale of water rights and property.** (1) Subject to this act

HeinOnline -- 1977 Vol. I 298 1977

and 89-103.2, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this act may be sold and disposed of *and* enter into contracts and agreements and do those things which in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this act, under such general regulations, and upon such terms, limitations, and conditions as it prescribes. *The* department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works authorized by this act, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable. *This* act does not authorize any change, alteration, or revision of those rates, prices, or charges as established by any contract entered into under this act except as provided by the contract.

(2) An incorporated water users' association that is sustaining and responsible for the operations of a works is solely liable for any court action which may be brought against it for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions. *The state of Montana is not liable for injury to a person or property that occurs on a works as a result of a failure by a water users' association to maintain the works in a safe working and operating condition.*

(3) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of any property or facilities shall provide that in the event of a failure or default in the payment of moneys specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations thereunder. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit any remedy provided by the contract or by law for the recovery of moneys due or which may become due under the contract.

(4) (a) A person aggrieved by a decision of the department to terminate any contract under subsection (3) may appeal to the board and be heard thereon by filing written notice of the appeal with the department within 10 days after receiving notice of termination of the contract from the department. The termination of the contract *is* stayed if an appeal is taken.

(b) If a dispute arises between the department and another party regarding amounts owing or the terms and conditions under a water marketing or water purchase contract or under a contract for the construction or repair of works, that party may appeal to the board for a hearing thereon and a resolution of the dispute by filing written notice of the appeal with the department within 30 days after the final decision of the department regarding the dispute.

(5) Subject to the approval of the board under 89-103.2, the department may sell, transfer to water user associations, abandon, or otherwise dispose of any *rights-of-way*, easements, or property when it determines

HeinOnline -- 1977 Vol. I 299 1977

that they are no longer needed for the purposes of this act or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom. A determination shall be made by the department as to the market value of *rights-of-way*, easements, or property to be sold, transferred, abandoned, or otherwise disposed of. All income or profit and revenue of the works and all moneys received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of the works, property, and facilities acquired under this act shall be deposited to the state general fund."

Section 4. Section 89-3514, R.C.M. 1947, is amended to read as follows:

"**89-3514. Permit construed as added requirement — exception — immunity.** (1) The granting of a permit under this act does not affect any other type of approval required by any other statute or ordinance of the state, of any political subdivision, or of the United States but is an added requirement; however, if a political subdivision enacts, in harmony with the purposes of this act, permit issuance ordinances, regulations, or resolutions and land-use ordinances, regulations, or resolutions which meet or exceed the minimum standards of the board and if the administrative and enforcement procedures established for those ordinances, regulations, or resolutions are found acceptable by the board, no permit from the department is required; however, if the board determines that there is a failure by a political subdivision to comply with the intent, purposes, and provisions of this act and the minimum standards adopted thereunder, the powers of the political subdivision may be suspended after hearing and the minimum standards adopted by the board shall be enforced by the department until such time as the board determines that the political subdivision will comply. The grant or denial of a permit does not have an effect on a remedy of a person at law or in equity; however, where it is shown that there is a wrongful failure to comply with this act, there is a rebuttable presumption that the obstruction was the proximate cause of the flooding of the land of a person bringing suit.

(2) An action for damages sustained because of injury caused by an obstruction for which a permit has been granted under this act may not be brought against the state, the board, a member of the board, or the department. This act does not interfere with the right of the United States to regulate interstate commerce or the navigable waters of the United States."

Approved March 25, 1977.

CHAPTER NO. 74

AN ACT TO RAISE THE CEILING ON THE MILL LEVY FOR CEMETERY DISTRICTS FROM 2 MILLS TO 4 MILLS; AMENDING SECTION 9-209, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 9-209, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 300 1977

"**9-209. Budget and tax levy.** The board of cemetery trustees shall annually present a budget to the board of county commissioners at the regular budget meetings as prescribed by law. The board of county commissioners must annually, at the time of levying county taxes, fix and levy upon all property within said cemetery district, sufficient to raise the amount certified by the board of cemetery trustees to be raised by a tax on the property of said district. The tax so levied shall not exceed 4 mills on each dollar of taxable valuation on the property of said district. Expenditures made, liabilities incurred, or warrants issued by or in behalf of any cemetery district in excess of the annual budget presented to the board of county commissioners as provided herein and the amount appropriated for and authorized to be expended for each item in the budget shall not be a liability of the cemetery district. *Insofar* as the same can be made applicable, the county budget system, 16-1901 to 16-1911, shall govern the operation of cemetery districts created under this act."

Approved March 25, 1977.

CHAPTER NO. 75

AN ACT TO PROVIDE FOR DISTRIBUTION OF PROPERTY HELD IN JOINT TENANCY WHENEVER THE LAST SURVIVING JOINT TENANT FAILS TO SURVIVE THE OTHER JOINT TENANTS BY 120 HOURS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 67-308.1 that reads as follows:

67-308.1. Distribution of property whenever joint tenant fails to survive for one hundred twenty hours. (1) Whenever property is held in joint tenancy by two joint tenants and the joint tenants die within 120 hours of each other or it cannot be determined whether one survived the other by 120 hours, the property shall be distributed one-half to the estate of one joint tenant and one-half to the estate of the other joint tenant.

(2) Whenever property is held in joint tenancy by more than two joint tenants and the last surviving joint tenant does not survive all of the other joint tenants by 120 hours or it cannot be determined whether he so survived for 120 hours, the property shall be distributed equally among the estates of the last surviving joint tenant and the joint tenants which he failed to survive by 120 hours.

Section 2. **Retroactive application.** The act is effective retroactively to June 30, 1975.

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

HeinOnline -- 1977 Vol. I 301 1977

Section 4. **Effective date.** This act shall be effective upon its passage and approval.

Approved March 25, 1977.

CHAPTER NO. 76

AN ACT AMENDING SECTION 90-180, R.C.M. 1947, TO PROVIDE FOR THREE LIQUID QUART CONTAINERS IN THE PACKAGING OF FLUID DAIRY PRODUCTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 90-180, R.C.M. 1947, is amended to read as follows:

"**90-180. Fluid dairy products.** All fluid dairy products, including but not limited to whole milk, skimmed milk, cultured milk, sweet cream, sour cream, and buttermilk shall be packaged for retail sale only in *units of less than 1 gill,* units of 1 gill, one-half liquid pint, 10 fluid ounces, 1 liquid pint, 1 liquid quart, one-half gallon, *3 liquid quarts,* 1 gallon, 1 ½ gallons, 2 gallons, 2 ½ gallons, or multiples of 1 gallon."

Approved March 25, 1977.

CHAPTER NO. 77

AN ACT RELATING TO THE STANDARDS AND THE REGULATION OF MANUFACTURE AND DISTRIBUTION OF PETROLEUM PRODUCTS; REPEALING CHAPTER 2 OF TITLE 60, R.C.M. 1947, IN ITS ENTIRETY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 60-234 that reads as follows:

60-234. Definitions. As used in this act the following definitions apply:

(1) "Department" means the department of business regulation provided for in Title 82A, chapter 4.

(2) "Person" means an individual, trust, estate, partnership, corporation, joint-stock company, firm, agency, association, or any receiver appointed by law.

(3) "Dealer" means any person engaged in the petroleum business and includes petroleum dealers and liquefied petroleum dealers.

(4) "Petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or offering or

HeinOnline -- 1977 Vol. I 302 1977

advertising for sale, refining, manufacturing, or keeping for sale in this state any gasoline, kerosene, distillate, road oil, fuel oil, lubricating oil, or greases or any oil or gas or oil and gas product, except prepackaged petroleum products and except as otherwise defined as a liquefied petroleum dealer in subsection (5).

(5) "Liquefied petroleum dealer" means a dealer engaged, directly or indirectly, in the business of delivering or distributing to a consumer or of selling or offering or advertising for sale or refining or manufacturing or keeping for sale in this state any petroleum product composed predominately of any of the following hydrocarbons, or mixtures thereof: propane, propylene, butanes (normal butane or isobutane), and butylenes but excluding prepackaged liquefied petroleum products.

(6) "Sell" and "sale" includes barter and exchange.

(7) "Mislabeled" means a package label or dispensing device of a product which bears any statement, design, or device regarding the same or regarding ingredients or substances therein or regarding the properties, quality, or kind of such products, which is false or misleading in any manner.

Section 2. There is a new R.C.M. section numbered 60-235 that reads as follows:

60-235. Enforcement of act — rules. This act shall be enforced by the department. It may adopt necessary and reasonable rules for the implementation of the provisions and intent of this act, and those rules have the effect of law.

Section 3. There is a new R.C.M. section numbered 60-236 that reads as follows:

60-236. Standards for petroleum products. The standards and specifications for petroleum products, including but not limited to gasoline, fuel oils, diesel fuel, kerosene, and liquefied petroleum gases, shall be determined by the department and shall be based upon nationally recognized standards and specifications such as are published from time to time by the American society for testing materials. When so determined by the department and adopted as rules, such standards and specifications are the standards and specifications for such products sold in this state and official tests of such products shall be based upon them.

Section 4. There is a new R.C.M. section numbered 60-237 that reads as follows:

60-237. Department authorized to employ laboratory for testing. The department may employ a laboratory having sufficient facilities to make tests of petroleum products as required and pay reasonable compensation for the analyses and tests made by it.

Section 5. There is a new R.C.M. section numbered 60-238 that reads as follows:

60-238. Licenses and fees. (1) A petroleum dealer or liquefied petroleum dealer may not do business in this state until a license has been

HeinOnline -- 1977 Vol. I 303 1977

issued to him by the department. The license shall be obtained by the dealer by making application to the department upon blank forms provided by the department. A dealer who has not been issued a license and who is found selling, offering for sale, delivering, or distributing petroleum products shall upon conviction be punished as provided by this act.

(2) The fee for this license shall be determined as follows and depends upon the number of devices utilized by the dealer:

(a) each gasoline pump, diesel pump, or fuel oil pump measuring device — $3;

(b) each petroleum vehicle tank meter or bulk petroleum meter of 2 inches (5.08 centimeters) and under — $10;

(c) each bulk petroleum meter over 2 inches (5.08 centimeters) — $15;

(d) each liquefied petroleum liquid meter — $15;

(e) each vapor meter — $3;

(f) each petroleum and liquefied petroleum vehicle tank up to and including 2,000 gallons (7,570 liters) — $20;

(g) each petroleum and liquefied petroleum vehicle tank over 2,000 gallons (7,570 liters) — $20 plus $4 for each additional 1,000 gallons (3,785 liters).

(3) All licenses are annual and nontransferable as to person or location and expire on December 31 of each year. There is an additional charge of 50% on all license fees that are not paid before March 1 of each year in which the vehicle tank, meter, or measuring device is in use. If the fee is not paid, the equipment shall be sealed and removed from service by the department. It is unlawful for anyone to use a device so removed from service or to break the seal until all fees have been paid.

Section 6. There is a new R.C.M. section numbered 66-239 that reads as follows:

66-239. Refusing, suspending, and revoking licenses — hearing required. The department may refuse to grant a license or may suspend or revoke a license already granted for due cause after hearing noticed for not less than 10 days. Violation of any provision of this act or any lawful order or rule of the department are causes for which the department may suspend, revoke, or refuse to issue a license. The suspension, revocation, or refusal may be conditioned on those terms which the department considers just and proper.

Section 7. There is a new R.C.M. section numbered 66-240 that reads as follows:

66-240. Inspections, sampling, and tests by department to insure compliance with act. (1) For the purpose of obtaining information regarding suspected violation of this act, the department has access to all places where the commodities subject to regulation under this act are sold, offered for sale or kept for sale, manufactured, transported, or stored or where the books, papers, records, or documents relative to those transactions are kept and may inspect and copy them at any place in this state.

HeinOnline -- 1977 Vol. I 304 1977

(2) The department may sample, inspect, and test any of the commodities subject to this act, upon tendering payment for them, whether they originate at points outside the state or otherwise and whether they are in transport or at rest in places where they are to be sold.

Section 8. There is a new R.C.M. section numbered 66-241 that reads as follows:

66-241. Approved measure required for part delivery. Part of a compartment delivery may be made only by an approved, calibrated, and sealed meter or an approved measure. Gauge stick measurement is not permitted. All tank markers must be positioned and sealed as provided by the department. The department shall fix by rule fees for retesting meters or measuring devices or vehicle tanks used for distribution by petroleum or liquefied petroleum dealers and for any other special service rendered.

Section 9. There is a new R.C.M. section numbered 66-242 that reads as follows:

66-242. Full compartment sales — approval of meter. Full compartment sales or deliveries may only be made in a manner that shall be provided by the department by rule. All other sales or deliveries may only be made through a meter which has been approved, calibrated, and sealed by the department or by weight, unless otherwise provided by the department.

Section 10. There is a new R.C.M. section numbered 66-243 that reads as follows:

66-243. Dispensation and sale of petroleum products. It is unlawful to:

(1) use any meter or mechanical device for the measurement of gasoline or liquid fuels unless the same has been approved by the department and sealed as correct;

(2) change or in any way tamper with the department's seal without written consent from the department;

(3) make hose delivery from petroleum vehicle tanks unless the tanks have been calibrated by the department under 66-241;

(4) sell or deliver liquefied petroleum to a consumer, as a liquid or vapor, except as provided by 66-242;

(5) sell or offer for sale or deliver liquefied petroleum to a consumer, as a liquid or vapor the measurement of which has not been temperature corrected to 60°F by means of an automatic compensating device which has been approved, calibrated and sealed by the department, unless otherwise provided by the department;

(6) sell, offer, or expose for sale any petroleum product for which standards or minimum specifications have been set by the department unless the commodities in all respects meet the tests and standards prescribed;

(7) sell, offer, or expose for sale any petroleum product which is adul-

HeinOnline -- 1977 Vol. I 305 1977

terated, mislabeled, or misrepresented with respect to the use for which it is reasonably intended.

Section 11. There is a new R.C.M. section numbered 66-244 that reads as follows:

66-244. Penalty for violations. A person who violates any of the provisions of this act or any rule promulgated by the department is guilty of a misdemeanor and upon conviction shall, for the first offense, be punished by a fine of not less than $10 or more than $1,000 and shall be punished for any subsequent offense by a fine of not less than $50 or more than $5,000, by imprisonment in the county jail for a term not exceeding 1 year, or by both fine and imprisonment.

Section 12. There is a new R.C.M. section numbered 66-245 that reads as follows:

66-245. Injunction against violations. The department may apply to any court of competent jurisdiction for a temporary or permanent injunction, or both, restraining any person for violating any provision of this act or any rule promulgated by the department pursuant to this act.

Section 13. **Repealer.** Chapter 2 of Title 60, R.C.M. 1947, is repealed in its entirety.

Approved March 25, 1977.

Note: Sections 6 through 12 were erroneously enrolled as sections in Title 66. They will appear in R.C.M. 1947 as 60-239 through 60-245.

CHAPTER NO. 78

AN ACT TO AMEND SECTION 32-2614, R.C.M. 1947, RELATING TO FUNDS FOR THE REPLACEMENT OF BRIDGES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2614, R.C.M. 1947, is amended to read as follows:

"**32-2614. Replacement of bridges.** *(1)* Whenever funds are made available under the *Federal-Aid* Highway Act for the replacement of bridges, the department may *allocate* from state construction moneys such moneys as are necessary to match the available federal funds. Such allocation shall be made from available state construction moneys before the apportionments provided for in 32-2606, 32-2607, and 32-2611.

(2) Whenever such state construction moneys are so allocated, the amount so allocated *may not* be deducted from future apportionments to the financial district or city."

Approved March 25, 1977.

HeinOnline -- 1977 Vol. I 306 1977

CHAPTER NO. 79

AN ACT TO APPORTION STATE CONSTRUCTION FUNDS TO MATCH FEDERAL-AID OFF-SYSTEM ROAD FUNDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 32-2607.1 that reads as follows:

32-2607.1. Apportionment of construction funds. (1) Each fiscal year the department of highways shall apportion to each county available state construction funds for the purpose of matching federal-aid off-system road funds. Such apportionment shall be made in the same manner and on the same basis as provided in 32-2607.

(2) The board of county commissioners shall, in proposing projects to be constructed with off-system road funds, consult with the governing body of those cities with a population under 5,000 persons located within the county.

Approved March 25, 1977.

CHAPTER NO. 80

AN ACT TO AMEND SECTION 16-1032, R.C.M. 1947, TO ALLOW LEASE OF COUNTY PROPERTY FOR HOSPITAL PURPOSES FOR LONGER THAN 5 YEARS IN CERTAIN CIRCUMSTANCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1032, R.C.M. 1947, is amended to read as follows:

"**16-1032. Lease of county property for hospital purposes.** *(1)* The board of county commissioners has jurisdiction and power under *the* limitations and restrictions prescribed by law *to* lease county buildings, equipment, furniture and fixtures, for hospital purposes, with full power of lessor, except as hereinafter limited, upon *the* terms and conditions as the board *may* decide upon. The rentals received under *the* lease or leases shall be paid into the general fund of the county.

(2) No lease *may* be made for a longer period than *5* years *except in a case of financing bonds in accordance with 16-1045 through 16-1047 in which case the lease may terminate at the maturity date of the bonds sold and in which case bond payments may be made from lease receipts,* nor *may the* board enter into a contract of lease without and until first having advertised in a newspaper published in the county at least once a week for *5* weeks that the buildings and equipment are for lease for hospital purposes."

Approved March 25, 1977.

HeinOnline -- 1977 Vol. I 307 1977

CHAPTER NO. 81

AN ACT TO CREATE AN ALTERNATIVE PROCEDURE FOR DETRACTING A SINGLE PIECE OF LAND FROM A FIRE DISTRICT AND ANNEXING THE SAME TO A MUNICIPALITY; AMENDING AND CLARIFYING SECTIONS 11-519 AND 11-2008, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-519, R.C.M. 1947, is amended to read as follows:

"**11-519. Standards to be met before annexation can occur.** (1) A municipal governing body may extend the municipal corporate limits to include any area which meets the general standards of subsection (2) of this section.

(2) The total area to be annexed must meet the following standards:

(a) it must be contiguous to the *municipality's* boundaries at the time the annexation proceeding is begun;

(b) no part of the area *may* be included within the boundary of another incorporated municipality;

(c) it must be included within and the proposed annexation must conform to a comprehensive plan as prescribed in Title 11, chapter 38, R.C.M. 1947; and

(d) no part of the area *may* be included within the boundary, as existing at the inception of such attempted annexation, of any fire district organized under any of the provisions of chapter 20, Title 11, *if the* fire district was originally organized at least 10 years prior to the inception of such attempted annexation. *However, a single-ownership piece of land may be transferred from a fire district to a municipality by annexation as provided in 11-2008(5).*

(3) In fixing new municipal boundaries, a municipal governing body shall, wherever practical, use natural topographic features such as *ridgelines* and streams and creeks as boundaries, and if a street is used as a boundary, include within the municipality land on both sides of the street; and such outside boundary may not extend more than 200 feet beyond the right-of-way of the street."

Section 2. Section 11-2008, R.C.M. 1947, is amended to read as follows:

"**11-2008. Fire protection — creation of fire districts — contracts with cities, towns, and private service — dissolution and change of boundaries.** *(1)* The board of county commissioners is authorized to establish fire districts in any unincorporated territory *or* town upon presentation of a petition in writing signed by the owners of 50% or more of the area of the privately owned lands included within the proposed district who constitute a majority of the taxpayers who are freeholders of such area and whose names appear upon the last completed assessment roll. *The* board shall, within 10 days after the receipt of *the* petition, give notice of the hearing thereof at least 10 days prior *to the hearing* by mailing

HeinOnline -- 1977 Vol. I 308 1977

a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll, by causing notices of the time and place of such hearing to be posted in at least three of the most public places within the area proposed to be established as a fire district, and *by publishing the notice* at least once not less than 10 or more than 20 days prior to the time of *the* hearing in a newspaper regularly published in the county in which such proposed district is situated. The board shall proceed to hear the petition at the time set or at any time within 5 days thereafter to which the same *is* postponed or continued with due notice and may grant the same unless it *is* established thereat that the petition bears insufficient signatures as above required or, if originally sufficient, that by reason of written withdrawals thereof it has become insufficient. The board shall render its decision within 30 days after *the* hearing. At the time of the annual levy of taxes the board of county commissioners may levy a special tax upon all property within such districts for the purpose of buying or maintaining fire protection facilities and apparatus for such districts or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of such city, town, or private fire service for the purpose of furnishing fire protection service to property within such district, and such tax must be collected as are other taxes. *The* relationship between fire district and the city, town, or private fire service shall be that of an independent contractor.

(2) Any fire district organized under this act may be dissolved by the board of county commissioners upon presentation of a petition therefor signed by the owners of 50% or more of the area of the privately owned lands included within such fire district who constitute a majority of the taxpayers who are freeholders of such area and whose names appear upon the last completed assessment roll. The procedure and requirements outlined in subsection *(1)* above shall apply to such requests for dissolution of fire districts.

(3) Change of boundaries — division. Fire districts may be divided in the following manner: Whenever a petition in writing shall be made to the county commissioners, signed by the owners of 20% or more of the privately owned lands of an area proposed to be detracted from the original district who constitute 20% or more of the taxpayers who are freeholders within such proposed detracted area whose names appear upon the last completed assessment roll, the county commissioners shall, within 10 days from the receipt of such petition, give notice of the hearing of *the* petition by mailing a copy of the notice by first class mail to each freeholder in the district at the address shown in the assessment roll *and* by causing to be posted a notice thereof at least 10 days prior to the time appointed by them for the consideration of *the* petition in at least three of the most public places within the proposed detracted area and also in at least three of the most public places within the remaining area. The petition for detraction shall describe the boundaries of the proposed detracted area and the boundaries of the remaining area. The county commissioners shall, on the day fixed for hearing such petition (or on any legally postponed day), proceed to hear *the* petition. *The* petition shall be granted and the original districts shall thereupon be divided into separate districts, unless at the time of the hearing on such petition protests shall

HeinOnline -- 1977 Vol. I 309 1977

be presented by the owners of 50% or more of the area of the privately owned lands included within the entire original district who constitute a majority of the taxpayers who are freeholders of the entire original district and whose names appear upon the last completed assessment roll. If such required amount of protests are presented, the petition for division shall be disallowed. Upon the division of districts, moneys on hand shall be apportioned between the divided areas according to their respective taxable valuations; all other assets of the original district shall become the property of the remaining area, but a reasonable value shall be placed upon such "other assets" and the remaining area shall become indebted to the detracted area for its proportionate share thereof, based upon taxable valuations. Provided, however, that any detracted area shall remain liable for any existing warrant and bonded indebtedness of the original district.

(4) (a) Change of boundaries — annexation. Adjacent territory that is not already a part of a fire district may be annexed in the following manner: A petition in writing by the owners of 50% or more of the area of privately owned lands of the adjacent area proposed to be annexed who constitute a majority of the taxpaying freeholders within such proposed area to be annexed *and* whose names appear upon the last completed assessment roll shall be presented to the board of county commissioners. The commissioners shall hold a hearing on such petition in accordance with the procedure outlined in subsection *(3)* above and shall allow the annexation of such proposed adjacent territory unless protests are presented at the hearing by the owners of 50% or more of the area of the privately owned lands included within the original district who constitute a majority of the taxpaying freeholders within the original district. Such annexed territory shall become liable for any outstanding warrant and bonded indebtedness of the original district.

(b) Adjacent territory that is already a part of a fire district may withdraw from such fire district and become annexed to another fire district in the following manner: A petition in writing by the owners of 50% or more of the privately owned lands of an area which is part of any organized fire district who constitute a majority of the taxpaying freeholders within such area, according to the last completed assessment roll, shall be presented to the county commissioners asking that such area be transferred to and included in any other organized fire district to which said area is adjacent. *The* petition must set forth the change of boundaries to be affected by such proposed transfer of area. The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in subsection *(3)* above, and the withdrawal and annexation shall be allowed unless protests are presented at the hearing by the owners of 50% or more of the area of the privately owned lands included within either district affected who constitute a majority of the taxpaying freeholders of either district, according to the last completed assessment roll. *The* withdrawals and annexation shall be allowed only upon a showing of more advantageous proximity and communications with the *firefighting* facilities of the other district.

(5) In lieu of the detraction procedure set forth in subsection (3), whenever a person owns land adjacent to a city or town and wishes to have

HeinOnline -- 1977 Vol. I 310 1977

that land only annexed to the city or town, the land may be detracted as follows:

(a) The owner shall mail notice to the chairman of the trustees of the fire district or, if none, to the board of county commissioners of his intention to request annexation.

(b) The owner shall attach a copy of this notice of intention to his petition to the municipal governing body requesting annexation.

(c) Following adoption of the annexation order under 11-521, the land is detracted from the fire district."

Approved March 25, 1977.

CHAPTER NO. 82

AN ACT TO AUTHORIZE THE DEPARTMENT OF FISH AND GAME TO UTILIZE PART OF THOSE PORTIONS OF FISHING LICENSE FEES EARMARKED FOR PURCHASE OF FISHING ACCESSES FOR DEVELOPMENT, OPERATION, AND MAINTENANCE; AMENDING SECTION 26-234, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-234, R.C.M. 1947, is amended to read as follows:

"**26-234. Portions of fees used to purchase recreational facilities.** One dollar of the fee for Class A resident fishing license; $1 of the fee for Class B-4 nonresident *1-day* fishing license, $5 of the fee for the Class B-3 nonresident *6-day* fishing license; and $5 of the fee for the Class B nonresident fishing license shall be used for the purchase, *operation, development, and maintenance* of fishing accesses, stream, river, and lake frontages and the land deemed necessary to provide recreational use thereof. *The amount of funds used for operation, development, and maintenance may not exceed 15% of the moneys set aside each year under this section.* The funds raised under this section *may not be used in lieu of* any funds or sources of funds currently being used for acquisition or purchase of fishing accesses, stream, river, or lake frontages and the land deemed necessary to provide recreational use thereof, but serve in addition to those funds. *The moneys used for operation, development, and maintenance may be used only for these purposes on lands acquired with funds under this section after April 30, 1974.*"

Approved March 25, 1977.

CHAPTER NO. 83

AN ACT AMENDING SECTION 69-1512, R.C.M. 1947, BY DELETING CERTAIN BOILER INSPECTION FEE REQUIREMENTS.

HeinOnline -- 1977 Vol. I 311 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1512, R.C.M. 1947, is amended to read as follows:

"**69-1512. Fees for special inspection or examination.** *(1)* Whenever, upon request of the owner or operator of any boiler, it is necessary for the inspector to make a special trip for the inspection of the boiler, the mileage and per diem allowed by law shall be charged and collected by the division.

(2) Applicants for engineer's license shall pay fees according to the class of license for which application is made, as specified in the following schedule:

(a)	First class	$30
(b)	Second class	$20
(c)	Third class	$12
(d)	Low pressure	$ 8
(e)	Traction	$12
(f)	Renewal of license	$ 4
(g)	Replacement of lost certificate	$ 2

(3) Each application shall be accompanied by a payment equal to 50% of the license fee for which application is being made. *The* payment shall be forfeited in the event the applicant fails to appear for the examination at the scheduled time or fails to pass the examination.

(4) In case of the failure of any applicant to successfully pass an examination, 45 days must elapse before he can again be examined for license."

Approved March 25, 1977.

CHAPTER NO. 84

AN ACT TO REPEAL SECTIONS 69-1701 AND 69-1702, R.C.M. 1947, WHICH RELATE TO MARKINGS AND INSPECTIONS OF STEAM TRACTION ENGINES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 69-1701 and 69-1702, R.C.M. 1947, are repealed.

Approved March 25, 1977.

HeinOnline -- 1977 Vol. I 312 1977

CHAPTER NO. 85

AN ACT TO REGULATE VOLUNTEER PEACE OFFICERS BY ESTABLISHING MINIMUM QUALIFYING STANDARDS AND AUTHORIZING THE BOARD OF CRIME CONTROL TO ESTABLISH MINIMUM TRAINING STANDARDS FOR SUCH PEACE OFFICERS TO SAFEGUARD THE INTERESTS OF THE PUBLIC.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-1851 that reads as follows:

11-1851. Definitions. As used in this act, the following definitions apply:

(1) "Auxiliary officer" means an unsworn, part-time, volunteer member of a law enforcement agency who may perform but is not limited to the performance of such functions as civil defense, search and rescue, office duties, crowd and traffic control, and crime prevention activities. An auxiliary officer has only the arrest authority granted a private person in 95-611.

(2) "General law enforcement duties" means patrol operations performed for detection, prevention, and suppression of crime and the enforcement of criminal and traffic codes of this state and its local governments.

(3) "Law enforcement agency" means a law enforcement service provided directly by a local government.

(4) "Law enforcement officer" means a sworn, full-time, employed member of a law enforcement agency who is a peace officer as defined in 95-210 and has arrest authority as described in 95-608.

(5) "Reserve officer" means a sworn, part-time volunteer member of a law enforcement agency who is a peace officer as defined in 95-210 and has arrest authority as described in 95-608 only when authorized to perform these functions as a representative of the law enforcement agency.

Section 2. There is a new R.C.M. section numbered 11-1852 that reads as follows:

11-1852. Reserve officers. (1) A local government may authorize reserve officers. A person who meets minimum standards for appointment as a peace officer may be appointed as a reserve officer. To be appointed, a person must:

(a) have resided in the state continuously for at least 1 year prior to the appointment and in the county where such appointment is made for a period of at least 6 months prior to the date of the appointment;

(b) be a citizen of the United States;

(c) be at least 18 years of age;

(d) be fingerprinted, and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

HeinOnline -- 1977 Vol. I 313 1977

(e) not have been convicted of a crime for which he could have been imprisoned in a federal penitentiary or state prison;

(f) be of good moral character as determined by a thorough background investigation;

(g) be a graduate of an accredited high school or the equivalent;

(h) be examined by a licensed physician within 30 days immediately preceding the date of appointment and pronounced in good physical condition; and

(i) possess a valid Montana driver's license.

(2) No reserve officer may be authorized to function as a representative of a law enforcement agency performing general law enforcement duties after 2 years from the original appointment unless the reserve officer has satisfactorily completed a minimum 88-hour basic training program which must include but need not be limited to the following course content:

(a) introduction and orientation — 1 hour;

(b) police ethics and professionalism — 1 hour;

(c) criminal law — 4 hours;

(d) laws of arrest — 4 hours;

(e) criminal evidence — 4 hours;

(f) administration of criminal law — 2 hours;

(g) communications, reports, and records — 2 hours;

(h) crime investigations — 3 hours;

(i) interviews and interrogations — 2 hours;

(j) patrol procedures — 6 hours;

(k) crisis intervention — 4 hours;

(l) police human and community relations — 3 hours;

(m) juvenile procedures — 2 hours;

(n) defensive tactics — 4 hours;

(o) crowd control tactics — 4 hours;

(p) firearms training — 30 hours;

(q) first aid — 10 hours; and

(r) examination — 2 hours.

(3) The law enforcement agency is responsible for training its reserve officers in accordance with minimum training standards established by the Montana board of crime control.

HeinOnline -- 1977 Vol. I 314 1977

(4) A reserve officer may serve as a peace officer only on the orders and at the direction of the chief law enforcement administrator of the local government.

(5) A reserve officer may act only in a supplementary capacity to the law enforcement agency. A reserve officer may be appointed as a full-time law enforcement officer through the procedures provided in Montana law for such appointments.

(6) The chief law enforcement administrator of a law enforcement agency with reserve officers shall appoint a full-time law enforcement officer of the agency as a reserve force coordinator. The reserve force coordinator shall coordinate the activities of the reserve force with those of the law enforcement agency. Reserve officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer whose span of control would be considered within reasonable limits.

(7) No reserve officer may carry a weapon:

(a) while on assigned duty until the reserve officer has qualified on the firing range with a weapon in compliance with the firearms qualifying course conducted by the Montana law enforcement academy; and

(b) until authorized by the chief law enforcement administrator to carry a weapon.

(8) A reserve officer is vested with the same powers, rights, privileges, obligations, and duties as any other peace officer of this state upon being activated by the chief law enforcement administrator of the local government and while on assigned duty only.

(9) A reserve officer may not participate in any pension or retirement system established for full-time law enforcement officers.

(10) Each law enforcement agency that utilizes reserve officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency. Coverage shall be provided through the state compensation insurance fund, and the law enforcement agencies shall pay to the state fund an appropriate premium, as established by the state fund, to cover the insurance risk of providing coverage to the officers.

(11) A local government may not reduce the authorized number of full-time law enforcement officers through the appointment or utilization of reserve officers.

(12) Reserve officers serve at the pleasure of the chief law enforcement administrator and may be terminated at any time by the chief law enforcement administrator by written notification without any cause.

Section 3. There is a new R.C.M. section numbered 11-1853 that reads as follows:

11-1853. Reserve manual required. The authorizing law enforcement agency establishing a law enforcement reserve force shall adopt and

HeinOnline -- 1977 Vol. I 315 1977

publish a manual setting forth the minimum qualifications, minimum training standards, and standard operating procedures for reserve officers.

Section 4. There is a new R.C.M. section numbered 11-1854 that reads as follows:

11-1854. Auxiliary officers. (1) A local government may authorize auxiliary officers only on the orders and at the direction of the chief law enforcement administrator of the local government. Auxiliary officers:

(a) are subordinate to full-time law enforcement officers; and

(b) may not serve unless supervised by a full-time law enforcement officer.

(2) No auxiliary officer may carry a weapon while on assigned duty.

(3) An auxiliary officer may not participate in any pension or retirement system established for full-time law enforcement officers.

(4) Each law enforcement agency that utilizes auxiliary officers shall provide full workers' compensation coverage for the officers while they are providing actual service for a law enforcement agency.

Section 5. There is a new R.C.M. section numbered 11-1855 that reads as follows:

11-1855. Exceptions. Provisions of subsections (1) and (2) of 11-1852 do not apply to auxiliary officers, to sworn volunteer peace officers who are not assigned to general law enforcement duties, or to members of a posse organized to quell public disturbance or domestic violence in accordance with 16-2702(6).

Section 6. **Standardization of terminology.** To facilitate the use of common terminology for law enforcement purposes, the code commissioner shall, where appropriate, change all statutory references to comply with the following rules:

(1) Every reference to "reserve officer" in the laws governing the police retirement system shall be changed to "retired officer".

(2) Every reference to "reserve list" in the laws governing the police retirement system shall be changed to "retired list".

Approved March 25, 1977.

Note: Sections 1 through 5 were erroneously enrolled as 11-1851 through 11-1855. These sections will appear in R.C.M. 1947 as 11-1855 through 11-1859.

CHAPTER NO. 86

AN ACT AMENDING SECTION 69-3605, R.C.M. 1947, TO CLARIFY THE DEFINITION OF PATIENT WITH REGARD TO THE OPERATION OF AMBULANCE SERVICES.

HeinOnline -- 1977 Vol. I 316 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3605, R.C.M. 1947, is amended to read as follows:

"69-3605. Definitions. Unless the context requires otherwise, in this act: (1) "Ambulance" means a privately or publicly owned motor vehicle that is especially designed, constructed, and equipped, which is maintained and used for the transportation of patients, including dual purpose police patrol cars and funeral coaches or hearses which otherwise comply with this act, but does not include a motor vehicle owned by, or operated under the direct control of the United States or this state of Montana.

(2) "Ambulance service" means a person who operates an ambulance.

(3) "Attendant" means a trained or otherwise qualified individual responsible for the operation of an ambulance and the care of the patients whether or not the attendant also serves as driver.

(4) "Attendant-driver" means a person who is qualified as an attendant and a driver.

(5) "Driver" means an individual who drives an ambulance.

(6) "Dual purpose police patrol car" means a vehicle, operated by a police department, which is equipped as an ambulance, even though it is also used for patrol or other police purposes.

(7) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(8) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(9) "Patient" means an individual who is sick, injured, wounded, or otherwise incapacitated or helpless. *The term does not include a person who is nonambulatory and who needs transportation assistance solely because that person is confined to a wheelchair as his usual means of mobility.*

(10) "Person" means an individual, firm, partnership, association, corporation, company, group of individuals acting together for a common purpose, or organization of any kind, including a governmental agency other than the United States or this state."

Approved March 25, 1977.

CHAPTER NO. 87

AN ACT TO EXEMPT ONE-HALF OF A SMALL COAL PRODUCER'S GROSS PROCEEDS FROM PROPERTY TAXATION AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-202, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 317 1977

"**84-202. Exemptions from taxation.** (1) (a) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(4) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined,

HeinOnline -- 1977 Vol. I 318 1977

processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(5) The following agricultural products are exempt from taxation:

(a) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation.

(b) All nonperishable unprocessed agricultural products except livestock, held in possession of the original producer for less than seven (7) months following harvest.

(c) Livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of nine (9) months as of the last day of any month.

(6) Moneys and credits are exempt from taxation.

(7) A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under section 84-7403.

(8) One-half of the contract sales price of coal sold by a coal producer who extracts less than 20,000 tons of coal in a calendar year is exempt from taxation."

Section 2. **First application.** This act applies to taxable years commencing after December 31, 1976, based on coal production for the calendar year 1976.

Approved March 25, 1977.

CHAPTER NO. 88

AN ACT TO PROVIDE THAT THE ELECTED OFFICERS OF THE SENATE INCLUDE A PRESIDENT AND A PRESIDENT PRO TEMPORE; AND TO PROVIDE THAT THE ELECTED OFFICERS OF THE HOUSE OF REPRESENTATIVES INCLUDE A SPEAKER AND A SPEAKER PRO TEMPORE; AMENDING SECTION 43-214.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 43-214.1, R.C.M. 1947, is amended to read as follows:

"**43-214.1. Officers of the senate and house of representatives.** (1) The elected officers of the senate include *a president, a president pro tempore,* a secretary, and a chaplain. A sergeant-at-arms shall be appointed by the committee on committees.

(2) The elected officers of the house of representatives include *a*

speaker, a speaker pro tempore, a chief clerk, and a chaplain. A sergeant-at-arms shall be appointed by the speaker.

(3) All of the foregoing officers shall be elected or appointed by the house in which they are employed."

Approved March 25, 1977.

CHAPTER NO. 89

AN ACT CONCERNING SERVICE CREDITS AND SURVIVORSHIP ALLOWANCES IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTIONS 68-1607, 68-1608, AND 68-2304, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-1607, R.C.M. 1947, is amended to read as follows:

"**68-1607. Qualification of service with employer.** (1) Subject to the provisions of this section, any person who has service with an employer which is not creditable service may convert all or a portion of such service to membership service by filing written notice thereof with the board of administration. *The* person must pay to the retirement system the sum of the amount which he and his employer would have contributed during the period of service so converted if the employer had then been an employer and the interest which would have accumulated thereon to the time of such payment; provided, that the employer may pay the employer's portion including accrued interest. The employer must establish a policy as to the retroactive employer contributions and apply this policy indiscriminately for all employees and former employees. All employee appeals of discrimination will be subject to the determination of the board of administration. All successful appeals will obligate the employer to pay the employer and employee contributions with accrued interest for that employee filing such appeal with the board of administration. Each appeal will be heard on its individual merits and will not bind the employer to pay all retroactive payments for all former and present employees.

(2) A member may secure service credit not previously credited by submitting salary information certified by the member's employer or former employer to the board. The board will determine the eligibility of all service credit requests as prescribed in 68-1803.

(3) Payment may be made in one sum at the time of such filing or on an installment basis. Installment payments shall not exceed twenty-four (24) monthly payments. When the monthly payment, exceeds five percent (5%) of compensation in the initial month of payment, the board of administration may allow smaller payments over a period to exceed twenty-four (24) months. Failure to make regular monthly payments in any month where the member receives his normal compensation shall thereafter, forfeit such person's right to make any further installment

HeinOnline -- 1977 Vol. I 320 1977

payments, unless permission is granted to do so by the board of administration."

Section 2. Section 68-1608, R.C.M. 1947, is amended to read as follows:

"**68-1608. Qualification of prior service not previously credited.** Credit for any prior service not previously granted shall be granted to a member upon his filing written notice thereof with the board of administration provided he otherwise has not less than five (5) years of creditable service of which not less than three (3) years have been as a contributing member of the retirement system. Proper certification of such service must be *certified by the employer and furnished by the member.*"

Section 3. Section 68-2304, R.C.M. 1947, is amended to read as follows:

"**68-2304. Survivorship allowance elected by beneficiary.** A beneficiary eligible to receive a death benefit may elect a survivorship allowance instead if all of the following conditions are met:

(1) the member on behalf of whom the death benefit is payable had completed *5* years of creditable service;

(2) the beneficiary is a natural person of legal age with an insurable interest in the deceased at the time of his death;

(3) the beneficiary elects the survivorship allowance within ninety (90) days of receipt of notice from the board that he is eligible to receive the death benefit. Election shall be by written application."

Section 4. **Effective date.** This act is effective upon passage and approval.

Approved March 25, 1977.

CHAPTER NO. 90

AN ACT TO INCREASE THE MAXIMUM AMOUNT WHICH MAY BE PAID TO A QUALIFIED CLAIMANT UNDER THE VOLUNTEER FIREMEN'S PENSION PLAN FROM $50 TO $100 PER MONTH; AMENDING SECTION 11-2022, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-2022, R.C.M. 1947, is amended to read as follows:

"**11-2022. Disability, death, insurance and pension benefits.** 1. Every member of a fire company organized in an unincorporated area, town or village under the laws of this state, shall be entitled to receive compensation for disability incurred while in the performance of his duties as such fireman, when such disability necessitates the services of

HeinOnline -- 1977 Vol. I 321 1977

a physician or surgeon, while confined or nonconfined, in the amount of his necessary and reasonable medical expenses resulting directly from such disability, and incurred within a period of not more than thirty-six (36) months from the date of the injury which caused such disability, not to exceed a total of twenty-five thousand dollars ($25,000).

2. Where an injury incurred in line of such duty results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the board shall order them an artificial member or members be furnished to supply the loss thereof. The expense of furnishing such members shall not exceed the sum of one thousand five hundred dollars ($1,500). The replacement of an artificial member so furnished shall be required every five (5) years, if necessary.

3. To aid in defraying funeral expenses of a fireman covered under this act whose death occurs in line of duty, an amount not to exceed the actual necessary and reasonable expenses, or the sum of one thousand five hundred dollars ($1,500), whichever is less, shall be allowed.

4. To encourage and aid volunteer fire departments to maintain group insurance for benefits on account of death or injury incurred by members while in the performance of duties as volunteer firemen, the sum of seventy-five dollars ($75) per year for each mobile unit of fire-fighting equipment, not exceeding two (2) such units in number for any such department, shall be paid to each volunteer fire department maintaining such insurance, or to the organization or agency maintaining such insurance for any such volunteer fire department.

5. In the case of every volunteer fireman who shall meet the qualification requirements set forth in subparagraph two (2) of section 11-2023, and then if the claim provided for under subparagraph two (2) of section 11-2024 shall be completed and filed, the claimant shall be entitled thereafter to participate in the volunteer firemen's pension plan as provided in this act, and to receive payments thereunder computed each year in the following manner. Whenever at the close of business on the last day of any fiscal year there shall be a balance in the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund in excess of one million dollars ($1,000,000) then the industrial accident board shall set aside and pay over to the public employees' retirement system, the smaller of such amount in excess of one million dollars ($1,000,000), or an amount equal to ninety-five percent (95%) of the increase of said account balance over the account balance at the end of the preceding fiscal year, for the payment by said public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing said amount set aside by the number of claimants qualifying to participate in such pension plan at the beginning of such succeeding fiscal year. If such amount set aside shall be sufficient to pay each such qualified claimant at least twenty dollars ($20) per month throughout such succeeding fiscal year, then such pension shall be paid monthly, on or before the last day of each month of such succeeding fiscal year; but if said amount set aside shall not be sufficient to pay each qualified claimant at least twenty dollars ($20) per month, then each qualified claimant's full pension for that year shall be paid to

HeinOnline -- 1977 Vol. I 322 1977

him in one lump payment on or before the fifteenth day of December of such year; provided, however, that in any event the total pension payable hereunder to any qualified claimant shall not exceed the sum of *$100* per month, and the amount to be set aside hereunder from the volunteer fireman's compensation earmarked revenue account in the earmarked revenue fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of *$100* per month to each claimant qualified as of the beginning of such fiscal year. For the purpose of computation and payment of benefits under this act, if children of any volunteer fireman shall become eligible for benefits hereunder, then all children of such volunteer fireman shall be treated collectively as one (1) claimant. The fiscal year for the purpose of this act shall begin on the first day of July of each year and end on the last day of June of each year."

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 25, 1977.

CHAPTER NO. 91

AN ACT TO ALLOW MEMBERS OF THE LEGISLATURE TO BE CANDIDATES FOR OTHER PUBLIC OFFICE DURING THEIR LEGISLATIVE TERM AND TO IMPLEMENT SECTION 9, ARTICLE V, OF THE MONTANA CONSTITUTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 43-202.1 that reads as follows:

43-202.1. Purpose. The purpose of this act is to implement the provisions of section 9, Article V, of the Montana constitution.

Section 2. There is a new R.C.M. section numbered 43-202.2 that reads as follows:

43-202.2. Disqualifications — candidacy for other offices. No member of the legislature may, during the term for which he was elected, be appointed to any civil office under the state. A member of the legislature may become a candidate for public office during his term.

Section 3. There is a new R.C.M. section numbered 43-202.3 that reads as follows:

43-202.3. Resignation following election to another office. A member of the legislature who is elected to other public office shall resign from the legislature prior to assuming the office to which he was newly elected.

Approved March 25, 1977.

HeinOnline -- 1977 Vol. I 323 1977

CHAPTER NO. 92

AN ACT TO INCLUDE LOCAL GOVERNMENT GENERAL OBLIGATION REVENUE BONDS AS SECURITY FOR DEPOSITS OF PUBLIC FUNDS; AMENDING SECTION 79-307, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 79-307, R.C.M. 1947, is amended to read as follows:

"**79-307. Security for deposits of public funds.** The following kinds of securities may be pledged or guarantees may be issued to secure deposits of public funds:

(1) direct obligations of the United States;

(2) securities as to which the payment of principal and interest is guaranteed by the United States;

(3) securities issued or fully guaranteed by the following agencies of the United States, whether or not guaranteed by the United States:

(a) commodity credit corporation;

(b) federal intermediate credit banks;

(c) federal land bank;

(d) bank for cooperatives;

(e) federal home loan banks;

(f) federal national mortgage association;

(g) government national mortgage association;

(h) small business administration; and

(i) federal housing administration (not including insured mortgages);

(4) general obligation bonds of the state or of any county, city, school district, or other political subdivision of the state;

(5) revenue bonds of any county, city, or other political subdivision of the state, when backed by the full faith and credit of such subdivision;

(6) interest-bearing warrants of the state or of any county, city, school district, or other political subdivision of the state, issued in evidence of claims in an amount which, with all other claims on the same fund, do not exceed the amount validly appropriated in the current budget for expenditure from the fund in the year in which they are issued;

(7) obligations of housing authorities of the state, secured by a pledge of annual contributions or by a loan agreement, made by the United States or any agency thereof, providing for contributions or a loan sufficient, with other funds pledged, to pay the principal of and interest on the obligations when due;

(8) general obligation bonds of other states and of municipalities and counties of other states; and

HeinOnline -- 1977 Vol. I 324 1977

(9) undertaking or guarantees issued by a surety company authorized to do business in the state."

Approved March 25, 1977.

CHAPTER NO. 93

AN ACT AMENDING SECTION 68-2618, R.C.M. 1947, TO PROVIDE INCREASED BENEFITS FOR THE SURVIVING SPOUSES AND MINOR CHILDREN OF MEMBERS OF THE SHERIFFS' RETIREMENT SYSTEM WHO DIE AS A RESULT OF DUTY-RELATED INJURIES; TO PROVIDE FOR RETROACTIVE APPLICATION OF SUCH BENEFITS; AND TO PROVIDE FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-2618, R.C.M. 1947, is amended to read as follows:

"**68-2618. Payments in case of death before retirement.** *(1)* If a member dies before retirement, his beneficiary shall be entitled to elect among those of the following options for which the member *and the beneficiary qualify*:

(a) *a* lump sum payment of the accumulated deductions standing to the member's credit at his death;

(b) *if* a member were not eligible to retire at the time of death, a retirement allowance commencing on the member's death which is the actuarial equivalent of a retirement in the amount of two percent (2%) of the final salary for each year of service to a maximum of twenty-five (25) years;

(c) *if* the member were eligible to retire at the time of death, a retirement allowance commencing on the member's death in the amount of two percent (2%) of the final salary for each year of service to a maximum of twenty-five (25) years;

(d) *if* the board *finds* that the member died as a direct and proximate result of injuries received in the course of employment *and the beneficiary is other than the surviving spouse or minor children*, a retirement allowance commencing on the member's death in the amount of fifty percent (50%) of the final salary less the amount which is paid to any such beneficiary under the Workmen's Compensation Act of the state of Montana, during the period such compensation is paid or payable; provided that in no event shall a beneficiary be paid for a period longer than the time it would have taken the deceased member to reach the age of sixty-five (65) years or more than fifteen (15) years, whichever is greater;

(e) *if the board finds that the member died as a direct and proximate result of injuries received in the course of employment and the beneficiary*

HeinOnline -- 1977 Vol. I 325 1977

is the surviving spouse or minor children, whichever of the following that the beneficiary or the beneficiary's guardian elects:

(i) the retirement allowance provided for in subsection (1)(d); or

(ii) a retirement allowance to be paid to the guardian of the surviving minor children commencing on the member's death and consisting of $100 per month per surviving minor child of the deceased member, up to a maximum of $300 per month.

(2) Under the circumstances described in subsection (1)(d), the surviving spouse or, if there is no surviving spouse, the surviving minor children are entitled to the benefit provided for in subsection (1)(e)(ii)."

Section 2. **Retroactive application.** The provisions of subsections (1)(e) and (2) of 68-2618 apply retroactively to cases involving the death of a member, after July 1, 1976, as a direct and proximate result of injuries received in the course of employment.

Section 3. **Effective date.** This act is effective upon its passage and approval.

Approved March 25, 1977.

CHAPTER NO. 94

AN ACT TO PROVIDE THAT, IN A CRIMINAL PROSECUTION FOR RAPE, EVIDENCE OF FAILURE TO MAKE A TIMELY COMPLAINT OR IMMEDIATE OUTCRY DOES NOT RAISE ANY PRESUMPTION AS TO THE CREDIBILITY OF THE VICTIM; AMENDING SECTION 94-5-503, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-5-503, R.C.M. 1947, is amended to read as follows:

"**94-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with a person not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for any term not to exceed twenty (20) years.

(3) If the victim is less than sixteen (16) years old and the offender is three (3) or more years older than the victim, or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term not to exceed forty (40) years.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

HeinOnline -- 1977 Vol. I 326 1977

(5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) Evidence of the victim's past sexual conduct with the offender;

(b) Evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

If the defendant proposes, for any purpose, to offer evidence described in (a) or (b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under this subsection.

(6) *Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim.*"

Approved March 25, 1977.

CHAPTER NO. 95

AN ACT CREATING AN AGENCY FUND FROM WHICH TO MAKE PENSION PAYMENTS TO ELIGIBLE MEMBERS OF VOLUNTEER FIRE COMPANIES OF UNINCORPORATED AREAS; AMENDING SECTIONS 11-2022, 11-2025, 11-2028, AND 11-2030, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-2022, R.C.M. 1947, is amended to read as follows:

"**11-2022. Disability, death, insurance and pension benefits.** 1. Every member of a fire company organized in an unincorporated area, town or village under the laws of this state, shall be entitled to receive compensation for disability incurred while in the performance of his duties as such fireman, when such disability necessitates the services of a physician or surgeon, while confined or nonconfined, in the amount of his necessary and reasonable medical expenses resulting directly from such disability, and incurred within a period of not more than thirty-six (36) months from the date of the injury which caused such disability, not to exceed a total of twenty-five thousand dollars ($25,000).

2. Where an injury incurred in line of such duty results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the board shall order them an artificial member or members be furnished to supply the loss thereof. The expense of furnishing such members shall not exceed the sum of one thousand five hundred dollars ($1,500). The replacement of an artificial member so furnished shall be required every five (5) years, if necessary.

3. To aid in defraying funeral expenses of a fireman covered under this act whose death occurs in line of duty, an amount not to exceed the actual necessary and reasonable expenses, or the sum of one thousand five hundred dollars ($1,500), whichever is less, shall be allowed.

HeinOnline -- 1977 Vol. I 327 1977

4. To encourage and aid volunteer fire departments to maintain group insurance for benefits on account of death or injury incurred by members while in the performance of duties as volunteer firemen, the sum of seventy-five dollars ($75) per year for each mobile unit of fire-fighting equipment, not exceeding two (2) such units in number for any such department, shall be paid to each volunteer fire department maintaining such insurance, or to the organization or agency maintaining such insurance for any such volunteer fire department.

5. In the case of every volunteer fireman who shall meet the qualification requirements set forth in subparagraph two (2) of section 11-2023, and then if the claim provided for under subparagraph two (2) of section 11-2024 shall be completed and filed, the claimant shall be entitled thereafter to participate in the volunteer firemen's pension plan as provided in this act, and to receive payments thereunder computed each year in the following manner. Whenever at the close of business on the last day of any fiscal year there shall be a balance in the volunteer fireman's compensation account in the *agency* fund in excess of one million dollars ($1,000,000) then the industrial accident board shall set aside and pay over to the public employees' retirement system, the smaller of such amount in excess of one million dollars ($1,000,000), or an amount equal to ninety-five percent (95%) of the increase of said account balance over the account balance at the end of the preceding fiscal year, for the payment by said public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing said amount set aside by the number of claimants qualifying to participate in such pension plan at the beginning of such succeeding fiscal year. If such amount set aside shall be sufficient to pay each such qualified claimant at least twenty dollars ($20) per month throughout such succeeding fiscal year, then such pension shall be paid monthly, on or before the last day of each month of such succeeding fiscal year; but if said amount set aside shall not be sufficient to pay each qualified claimant at least twenty dollars ($20) per month, then each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before the fifteenth day of December of such year; provided, however, that in any event the total pension payable hereunder to any qualified claimant shall not exceed the sum of fifty dollars ($50) per month, and the amount to be set aside hereunder from the volunteer fireman's compensation account in the *agency* fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of fifty dollars ($50) per month to each claimant qualified as of the beginning of such fiscal year. For the purpose of computation and payment of benefits under this act, if children of any volunteer fireman shall become eligible for benefits hereunder, then all children of such volunteer fireman shall be treated collectively as one (1) claimant. The fiscal year for the purpose of this act shall begin on the first day of July of each year and end on the last day of June of each year."

Section 2. Section 11-2025, R.C.M. 1947, is amended to read as follows:

"**11-2025. Payment of claim — beneficiaries of decedent.** 1. Upon

HeinOnline -- 1977 Vol. I 328 1977

receipt of a claim under subparagraphs one (1), two (2), three (3) and four (4), or any thereof, of section 11-2022, by the industrial accident board, if the same is found to be in compliance with the provisions of subsection one (1) of section 11-2024, the board must order the allowance thereof, and pay the same by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital.

2. All payments under the volunteer firemen's pension plan shall be approved by the public employees' retirement system and paid by warrants drawn upon the *agency* fund, payable to the order of the individual qualified volunteer fireman; provided, however, that in the event of the death of any volunteer fireman who has not reached the age of fifty-five (55) years but who has otherwise qualified for full participation hereunder, or in the event of the death after February 27, 1971, of any volunteer fireman who has not reached the age of fifty-five (55) years but who has otherwise qualified for partial participation hereunder, or in the event of the death of any such volunteer fireman after qualifying for full participation hereunder but before receiving payments hereunder totaling at least two thousand dollars ($2,000), or in the event of the death of any such volunteer fireman after February 27, 1971 and after he has qualified for partial participation hereunder but before he has received payments hereunder totaling a proportion of two thousand dollars ($2,000) determined under the formula set forth in section 11-2023(2)(A)(II); and if such deceased volunteer fireman shall have left a surviving spouse, then such full or partial participation pension shall be paid or continue to be paid to the surviving spouse by a warrant or warrants drawn upon the *agency* fund and payable to the order of the surviving spouse, until such spouse's death or remarriage; or if said deceased volunteer fireman shall have left no surviving spouse but shall have left a child or children under the age of eighteen (18) years, then such full or partial participation pension shall be paid or continue to be paid to the guardian or other person having custody of the said child or children, until the youngest child shall reach the age of eighteen (18) years. Provided, further, that in the event of such payments after the death of a volunteer fireman, to or for a surviving spouse or children, then such pension shall terminate, and no further payments shall be made hereunder, in the case of a full participation pension when a total of two thousand dollars ($2,000) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death, or in the case of a partial participation pension, when a total of a proportion of two thousand dollars ($2,000) determined under the formula set forth in section 11-2023(2)(A)(II) shall have been paid upon such pension, including any payments made to the volunteer fireman before his death. If such deceased volunteer fireman shall leave neither surviving spouse nor child under the age of eighteen (18) years, then his pension shall terminate at the end of the month prior to the month in which his death occurs."

Section 3. Section 11-2028, R.C.M. 1947, is amended to read as follows:

"**11-2028. Earnings to be part of moneys.** All earnings made by moneys *received under* section 11-2030 by reason of interest paid for the

deposit thereof, or otherwise, shall be credited to and become a part of such moneys."

Section 4. Section 11-2030, R.C.M. 1947, is amended to read as follows:

"**11-2030. Fire insurance premium tax to be paid into fund.** The state auditor and ex officio commissioner of insurance of the state of Montana shall annually deposit in the *agency* fund, such sum as shall be equivalent to five per cent (5%) of premium taxes collected from insurers authorized to effect insurance against risks enumerated in section 11-1919, as shall remain after the amounts provided for by section 11-1919 shall have been first deducted. Such moneys shall be used for the payment of claims and administrative costs as provided in sections 11-2025 and 11-2026."

Approved March 25, 1977.

CHAPTER NO. 96

AN ACT TO AMEND SECTION 40-3010, R.C.M. 1947, TO PROVIDE FOR A MANDATORY RESERVE FOR TITLE INSURANCE COMPANIES AND FOR A METHOD OF AMORTIZING THE RESERVE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-3010, R.C.M. 1947, is amended to read as follows:

"**40-3010. Title insurance reserves.** *(1)* In addition to an adequate reserve as to outstanding losses as required under section 40-3004, a title insurer shall maintain a guaranty fund or unearned premium reserve of not less than an amount computed as follows:

(a) Ten per cent (10%) of the total amount of the risk premiums written in the calendar year for title insurance contracts shall be assigned originally to the reserve.

(b) During each of the twenty (20) years next following the year in which the title insurance contract was issued, the reserve applicable to the contract *shall* be reduced by five per cent (5%) of the original amount of such reserve.

(2) The sums herein required to be reserved for unearned premiums on contracts of title insurance shall at all times and for all purposes be considered and constitute unearned portions of the original premiums and shall be held in trust for the benefit of policyholders.

(3) The reduction of the unearned premium reserve required by subsection (1)(b) of this section shall be made for all title insurance contracts issued after December 31, 1958, with respect to which 10% of the risk premiums have been assigned to the reserve pursuant to subsection (1)(a) of this section. In the event that any title insurer has not in accordance with

HeinOnline -- 1977 Vol. I 330 1977

subsection (1)(b) of this section reduced the amount of its unearned premium reserve by 5% of the amount originally assigned to the reserve pursuant to subsection (1)(a) of this section for years ending after December 31, 1958, and before January 1, 1977, the insurer shall effect such reduction for such prior years during its accounting year which includes December 31, 1976."

Approved March 25, 1977.

CHAPTER NO. 97

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO PUBLIC CONTRACTS; AMENDING SECTIONS 82-1131, 82-1133, 82-1147, 82-1150, 82-1917, 82-1922, 82-1926, AND 82-1932, R.C.M. 1947; AND REPEALING SECTIONS 82-1104, 82-1139, 82-1902, 82-1904.1, 82-1904.2, 82-1906, 82-1909, 82-1913, AND 82-1915.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1131, R.C.M. 1947, is amended to read as follows:

"**82-1131. Bids required — advertising.** *(1) It is* unlawful for the board of examiners or any offices, departments, institutions, or any agent of the state of Montana acting for or in behalf of *the* state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state *when* the amount involved is *$10,000* or more without first advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed, calling for sealed bids to perform such work and stating the time and place bids will be considered.

(2) All such work *may* be done, caused to be done, or contracted for only after competitive bidding.

(3) If no bid for such work *is* accepted, *the* work *may* not be done or accomplished. *The work may* be readvertised from time to time until awarded to a qualified competitive bidder."

Section 2. Section 82-1147, R.C.M. 1947, is amended to read as follows:

"**82-1147. Contract provisions necessary — federal funds.** In all contracts let for state, county, municipal, and school construction, repair, *or* maintenance work under any of the laws of this state when the funds for *the* projects are supplied in whole or in part from funds of the United States government, it *is* lawful to insert in each of *the* contracts any provisions that are or will be necessary to have such contract conform to any federal statutes or regulation under which such funds are supplied."

Section 3. Section 82-1150, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 331 1977

"**82-1150. Folio measurement.** *(1)* The following *is the* basis of measurement for the computation of folios in the various sizes of type, *when set in a column 13 ems pica wide, and constitutes a folio within the meaning of 82-1149 through 82-1153:*

(a) 12 lines of *6-point* type;

(b) 14 lines of *7-point* type;

(c) 16 lines of *8-point* type;

(d) 18 lines of *9-point* type; or

(e) 20 lines of *10-point* type.

(2) A carefully verified *actual count* shall *be made of the folio.*"

Section 4. Section 82-1917, R.C.M. 1947, is amended to read as follows:

"**82-1917. Requisitions for supplies — manner of letting contracts.** (1) State officers, agencies, and institutions shall tabulate in detail the amount of supplies on hand for any class of merchandise for a period as determined by the department and the additional supplies needed for a period of time not to exceed *1* year's supply. The department shall *examine* the amount of supplies on hand and shall determine from that examination and from the furnished statements the additional amount of supplies necessary and shall make an itemized statement thereof, all of which acts of the department are subject to approval of the governor. As soon as the department determines what kind of supplies and the amount necessary for the state to purchase for its state offices, agencies, or institutions, the department shall make the purchases.

(2) All purchases by the department shall be based on competitive bids. On any purchase *when* the estimated expenditure is $2,000 or over, sealed bids shall be solicited by mail from each person, firm, or corporation who has filed with the department a request in writing that it be listed for solicitation on bids for such particular items set forth in such listing. However, if a person, firm, or corporation whose name is listed fails to respond to any solicitation for bids after the receipt of two such solicitations, such listing shall, within the discretion of the department, be canceled. It is within the discretion of the department to advertise for such purchases. If bids are solicited through advertising, the advertisement shall be made in at least three newspapers (one of which must be a daily) of general circulation printed within the state, once each week for 2 consecutive weeks, and the advertisement shall state that sealed proposals will be received by the department, up to a time to be mentioned therein, for furnishing supplies for the state offices, agencies, or institutions. The notice shall also state that detailed statements of supplies to be furnished are on file at the office of the department and subject to inspection and that at a certain time to be therein mentioned the proposals will be opened and contracts awarded to the lowest responsible bidder.

(3) On purchases where the estimated expenditure is less than $2,000,

HeinOnline -- 1977 Vol. I 332 1977

bids shall be secured without advertising, but the department shall solicit bids for the supplies by notice sent by mail to prospective suppliers whose names are listed as provided above, which notice shall contain the same information as is herein required to be set forth in advertisements.

(4) In the case of all bids as herein provided, there shall be separate proposals and separate contracts. Each proposal may be accompanied by sample supplies proposed to be furnished. The proposals shall be in writing, sealed, and marked *in accordance with the terms of the solicitation for bid* and shall be addressed to the department of administration, Helena, Montana.

(5) At the time set for the opening of bids, the proposals shall be opened in public and contracts awarded to the lowest responsible bidder. The department may reject any *bid.* If all proposals be rejected, proposals shall again be invited and proceeded with in the same manner; however, in that event, the department may, with the approval of the governor, purchase the supplies on the open market if they can be so purchased at a better price.

(6) With any proposal the department may require a certified check on some responsible bank, payable to the treasurer of the state, equal in amount to 5% of the sum of the proposal, *or a bid bond issued by a licensed surety company,* as a guarantee for the faithful performance of any contract awarded. After the award is made, all checks deposited as a guarantee shall be returned, except that of the successful bidder whose check shall be held until the contract is signed and the *performance* bond *is* filed and approved, if a *performance* bond is required. All proposals shall include the delivery of the supplies *in accordance with the terms of the solicitation for bid.*"

Section 5. Section 82-1922, R.C.M. 1947, is amended to read as follows:

"**82-1922. Contract transfers and collusion prohibited — violations and penalty.** (1) No contract or order or any interest therein may be transferred by the party to whom the contract or order is given to any other party, and the state may declare void any such transfer.

(2) Collusion or secret agreements between bidders for the purpose of securing any advantage to the bidders as against the state in the awarding of contracts is prohibited. *The* state may declare the contract void if the department finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the state.

(3) All rights of action for a breach of a contract by the contracting parties are reserved to the state.

(4) A person who violates the provisions of *59-501 or this section, or both,* is guilty of a misdemeanor and shall be fined not less than $500 *or* more than $5,000, and the state of Montana *may* at its option declare any contract in violation of the provisions of *59-501 or this section, or both,* void ab initio."

Section 6. Section 82-1926, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 333 1977

"**82-1926. Contract — Montana product preference provisions.** *(1)* Each contract awarded by any political subdivision, school district, public corporation, or agency of the state of Montana shall contain among its provisions a requirement that in all instances products manufactured or produced in this state by Montana industry and labor shall be preferred for use in all projects and in all materials, supplies, and equipment *procured* if such products, materials, equipment, and supplies are comparable in price and quality.

(2) It is the intent of *82-1924, 82-1925, and 82-1926* that *whenever* possible, products manufactured and produced in this state which are suitable substitutes for products manufactured or produced outside the state and comparable in price, quality, and performance shall be preferred for use in all projects and in all state institutions.

(3) Failure to comply with the law in this respect shall disqualify such contractor as a qualified bidder for future contracts with the state of Montana, any legal subdivision of the state of Montana, any school district, public corporation, or agency for a period of 2 years.

(4) The preference given to Montana products shall apply to contracts involving funds obtained from the federal government unless expressly prohibited by the laws of the United States or regulations adopted pursuant thereto."

Section 7. Section 82-1932, R.C.M. 1947, is amended to read as follows:

"**82-1932. Designation of small business set-asides.** *(1)* Each department has authority to designate as small business set-asides specified commodities, equipment, or services, except those services rendered and furnished by registered professions, such as but not limited to accountants, attorneys, architects, dentists, engineers, land surveyors, optometrists, physicians, *and* pharmacists, for which purchase has been requested under the Montana Small Business Purchasing Act. Such a designation shall be made prior to the advertisement for bids in a daily state newspaper, and when the advertisement is published, it shall indicate the purchases which have been designated small business set-asides. To effectuate the purposes of *82-1929 through 82-1937*, a department shall exercise this authority whenever there is a reasonable expectation that bids will be obtained from at least three small businesses capable of furnishing the desired property or service at a fair and reasonable price.

(2) In the case of purchase designated as small business set-asides, invitations to bid shall be confined to small businesses and bids from other businesses shall be rejected. The *purchase*, contract, or expenditure of funds shall be awarded to the lowest responsible bidder among the small businesses (considering conformity with specifications and terms) in accordance with the rules for purchasing published by the department."

Section 8. There is a new R.C.M. section numbered 82-1902.1 that reads as follows:

82-1902.1. General procurement duties of department of administration. (1) The department shall make or supervise the making of all

HeinOnline -- 1977 Vol. I 334 1977

purchases of goods and services for the legislature, the supreme court, and each state agency, institution, and official.

(2) Unless otherwise provided by law, the legislature, the supreme court, or any state agency, institution, or official may not purchase goods or services unless the purchase is supervised by the department.

Section 9. **Repealer.** Sections 82-1104, 82-1139, 82-1902, 82-1904.1, 82-1904.2, 82-1906, 82-1909, 82-1913, and 82-1915, R.C.M. 1947, are repealed.

Approved March 25, 1977.

CHAPTER NO. 98

AN ACT TO CONSOLIDATE PROPERTY TAX PROCEDURES FOR THE CENTRALIZED ASSESSMENT OF RAILROADS, UTILITIES, AIRLINES, MINES, AND OIL AND GAS WELLS AND TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING THERETO; AMENDING SECTIONS 84-404, 84-708.1, 84-801, 84-802, 84-901, 84-905, 84-5402, 84-5403, 84-5405, 84-5407, 84-6201, 84-6202, 84-6203, AND 84-6403, R.C.M. 1947; REPEALING SECTIONS 84-719, 84-720, 84-721, 84-722, 84-802.1, 84-803, 84-804, 84-903, 84-903.1, 84-904, 84-906, 84-907, 84-5408, 84-5410, 84-6207, 84-6209, 84-6402, 84-6405, 84-6405.1, 84-6406, 84-6407, 84-6408, AND 84-6410, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-7801 that reads as follows:

84-7801. Properties centrally assessed. The department of revenue shall centrally assess each year:

(1) the franchise, roadway, roadbeds, rails, rolling stock, and all other property of railroads operated in more than one county in the state or more than one state, but buildings on right-of-way, land outside the right-of-way and improvements thereon, furniture, machinery, and other personal property situated within a county shall be assessed in that county;

(2) property owned by a corporation or other person constituting a single and continuous property operated in more than one county or more than one state, including telegraph, telephone, microwave, electric power or transmission lines, natural gas or oil pipelines, canals, ditches, flumes, or like properties, but buildings on right-of-way, land outside the right-of-way and improvements thereon, dams and power houses, furniture, machinery, and other personal property situated within a county shall be assessed in that county;

(3) all property of scheduled airlines;

(4) the net proceeds of mines and of oil and gas wells; and

(5) the gross proceeds of coal mines.

HeinOnline -- 1977 Vol. I 335 1977

Section 2. There is a new R.C.M. section numbered 84-7802 that reads as follows:

84-7802. Notice of assessment — opportunity for conference — appeal. After assessing property under 84-7801, the department shall notify the owner of such property, in writing, of the assessed value it has determined. Within 20 days following notification, the taxpayer may demand a review of the validity of the department's assessment. The department shall conduct an assessment review conference, which is not subject to the contested case procedures of the Montana Administrative Procedure Act. However, a party has the right of discovery prior to any assessment revision review conference. Upon consideration following such conference, the department may revise the assessment. Appeals from the final decision may be taken to the state tax appeal board.

Section 3. There is a new R.C.M. section numbered 84-7803 that reads as follows:

84-7803. Due date of reports and returns — extensions. Each report or return described in 84-801, 84-901, 84-1320, 84-5402, 84-6202, or 84-6403 shall be delivered to the department on or before March 31 each year and each report described in 84-801 shall be delivered to the department before April 15 each year. The department may for good cause extend the time for filing a return or report for not more than 30 days.

Section 4. There is a new R.C.M. section numbered 84-7804 that reads as follows:

84-7804. Failure to file report — estimate by department — penalty. If any person fails to file a report or return under 84-7803 by March 31 or by such later date as the department may approve, the department shall estimate the value of the property to have been reported on the basis of the best available information. In estimating the value of the net proceeds of mines, the department shall proceed under 84-5407, and in estimating the value of the gross proceeds of coal mines, the department shall proceed under 84-1318. In estimating value under this section, the department may subpoena a person or his agent as specified in 84-716. An assessment based on estimated value is subject to review under 84-711. Each month or part of a month a report is delinquent, the department shall impose and collect a $25 penalty, the total not to exceed $200, and shall deposit such penalty to the credit of the general fund of the state of Montana. The department will also inform its agents in the counties of the delinquency and the agents shall assess a penalty of 1% of the tax due for each month or part of a month the report is delinquent.

Section 5. There is a new R.C.M. section numbered 84-7805 that reads as follows:

84-7805. Apportionment among counties. The department shall apportion the value of property assessed under 84-802, 84-902, or 84-6404 among the counties in which such property is located. Apportionment shall be on a mileage basis or if the property is of such a character that its value cannot reasonably be apportioned on the basis of mileage, the department may adopt such other method or basis of apportionment as may be just or proper.

HeinOnline -- 1977 Vol. I 336 1977

Section 6. There is a new R.C.M. section numbered 84-7806 that reads as follows:

84-7806. Transmission to the counties. (1) On or before July 1, the department shall transmit to its agent in each county a statement listing:

(a) the assessed value of railroad property, as determined under 84-802, apportioned to the county, including the length or other description of such property;

(b) the assessed value of utility property, as determined under 84-902, apportioned to the county, including the length or other description of such property;

(c) the assessed value of property of airline companies, as determined under 84-6404, apportioned to the county;

(d) the assessed value of the net proceeds and royalties from mines and oil and gas wells in the county, as determined under 84-5403, 84-5406, 84-6203, and 84-6205; and

(e) the assessed value of the gross proceeds from coal mines, as described in 84-1320.

(2) The agent of the department shall enter the assessed values so transmitted in the assessment book in a manner prescribed by the department.

Section 7. There is a new R.C.M. section numbered 84-7807 that reads as follows:

84-7807. Amended assessment — transmission to counties. Whenever the valuation of centrally assessed property is revised under 84-7802 or 84-711, the department shall, within 15 days following the final decision or order, transmit a statement of the revised assessment to its agent or the county officer then having custody of the assessment book in the county where the property is located. The revision shall be immediately entered in the assessment book.

Section 8. Section 84-404, R.C.M. 1947, is amended to read as follows:

"**84-404. Department of revenue to assign percentage basis, when.** The percentage basis of true and full value as provided for in 84-302 shall be determined and assigned by the department of revenue when it makes its annual assessment of the property which it is required to assess *centrally* under the laws of this state. *The department* shall transmit such determination and assignment to *its agents in the various counties* with the assessments so made, and its determination shall be final except as to the right of review in the *state tax appeal board or the* proper court."

Section 9. Section 84-708.1, R.C.M. 1947, is amended to read as follows:

"**84-708.1. Powers and duties of the department of revenue.** (1) *The department shall centrally assess the properties described in 84-7801.*

HeinOnline -- 1977 Vol. I 337 1977

(2) *The department may adopt rules necessary for the taxation of property under chapters 8, 9, 13, 54, 62, 64, and 78.*

(3) *The department of revenue shall* adjust and equalize the valuation of taxable property among the several counties and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of agents of the department; change, increase, or decrease valuations made by its agents; and exercise such authority and do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(4) *The department of revenue shall* have and exercise general supervision over the administration of the assessment and tax laws of the state and over its agents and any officers of municipal corporations having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at true value in substantial compliance with law and *may make rules* to supervise the administration of all revenue laws of the state and assist in their enforcement. Further, the department of revenue *shall* organize, schedule, and hold area schools within the state for appraisers and assessors as often as is *considered* necessary in the judgment of the department, and the costs of such appraisers and assessors attending shall be borne by the state. Further, the department shall determine if there is a need for a taxing, assessing, and appraising school, and such school shall be held when *considered* necessary. The department shall notify all assessors and appraisers at least 6 months before such school is scheduled, and it shall be the duty of all assessors and appraisers to attend, and the cost of their attendance shall be borne by the state.

(5) *The department of revenue shall* confer with, advise, and direct officers of municipal corporations as to their duties, with respect to taxation, under the statutes of the state.

(6) *The department of revenue may* direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishment of public officials and persons or their agents for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations; and cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(7) *The department of revenue may* require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals, and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws, in their respective counties.

(8) *The department of revenue shall* collect annually from the proper officers of the municipal corporations information as to the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other informa-

HeinOnline -- 1977 Vol. I 338 1977

tion as may be needful and helpful in the work of the department in such form and upon such blanks as the department shall prescribe; and it shall be the duty of all public officers so called upon to fill out properly and return promptly to the department all blanks so transmitted and in every way aid the department in its work. *The department shall* examine the records of all municipal corporations for such purposes as are *considered* needful or helpful by the department.

(9) *(a) The department of revenue may* inspect and examine or cause an inspection and examination of the records of the officers of any municipality whenever such officer *has* failed, neglected, or refused to return properly the information required by this section within the time set by the department. Upon completion of such inspection and examination, the department shall transmit to the clerk or other proper official of the municipality a statement of the expenses incurred by the department to secure the necessary information. Within 60 days after the receipt by the municipality of the above statement, the same shall be audited as other claims of the municipal corporation are audited, and shall be paid into the state treasury, and if the same is not so paid, the attorney general shall institute an action in the proper court against the municipality to recover the same.

(b) The officers responsible for the furnishing of the information collected pursuant to this section shall be jointly and severally liable for any loss the municipality may suffer through their delinquency; and no payment *may* be made to them for salary or on any other account until the cost of such inspection and examination as provided above *has* been paid into the treasury or to the proper officers of such municipality. They shall also be subject to such other fines and penalties as prescribed by law.

(10) *The department of revenue may* require persons to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other expenses, taxes, and all other facts which may enable the department to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(11) *The department of revenue may* summon witnesses to appear and give evidence and to produce records, books, papers, and documents relating to any matter which the department *has* authority to investigate and determine.

(12) *The department of revenue may* cause the deposition of witnesses residing within or without the state or absent therefrom to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the department *has* authority to investigate and determine.

(13) *The department of revenue may* examine all cases where evasion or violation of the laws for taxation of property, proceeds, occupation, or business is alleged, complained of, or discovered and ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(14) *The department of revenue may* investigate the tax systems of other

HeinOnline -- 1977 Vol. I 339 1977

states and countries and formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

(15) *The department of revenue shall* consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto, and the progress of the work of the department and furnish the governor such assistance as he may require.

(16) *The department of revenue shall* transmit to the governor and to each member of the legislature 20 days before the meeting of the legislature a report of the department showing all the taxable property of the state and the value of the same, in tabulated form, with recommendations for improvements in the system of taxation, together with such measures as may be formulated for the consideration of the legislature and include therein a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium, with indexes tabulated at sufficient intervals to show the comparative state price structures.

(17) *The department of revenue may,* in its discretion, waive the assessment of penalty for the late filing of any tax statement or return required to be filed with the department when the filing is done within 5 days of the date specified for filing the return or statement and for the late payment of any tax collected by the department when the payment is made within 5 days of the date specified for payment of the tax.

(18) *The department of revenue may,* in its discretion, enter into reciprocal agreements with the taxing authorities of states contiguous to the state of Montana which tax the income of Montana residents earned in that state to provide that the tax imposed by Title 84, chapter 49, R.C.M. 1947, on income derived by persons who are nonresidents of this state *is not* payable when such other state or states agree to grant similar treatment to residents of Montana."

Section 10. Section 84-801, R.C.M. 1947, is amended to read as follows:

"**84-801. Assessment of railroads.** The president, secretary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating any railroad in more than one county in this state *or more than one state* must each year furnish the department a statement signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending December *31,* immediately preceding:

(1) *the* whole number of miles of railroad in the state and, where the line is partly out of the state, the whole number of miles without the state, and the whole number within the state, owned or operated by such corporation, person, or association;

(2) the value of the roadway, roadbed, and rails of the whole railroad and the value of the same within the state;

HeinOnline -- 1977 Vol. I 340 1977

(3) the width of the *right-of-way;*

(4) the number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railroad, including the part without the state;

(5) *the number,* kind, and value of rolling stock owned and operated in the state;

(6) *the number,* kind, and value of rolling stock used in the state but *not* owned by the party making the returns;

(7) *the number,* kind, and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns or by and upon other railroads;

(8) *the* whole number of sidetracks in each county, including the number of miles of track in each railroad yard in the state;

(9) *the* number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof of all engines, passenger, mail, express, baggage, freight, and other cars or property owned or leased by such corporation, persons, or association;

(10) *the* number of sleeping and dining cars not owned by such corporation, person, or association but used in operating the railroads of such corporation, person, or association in the state or on the line of the road without the state during each month of the year for which the return is made; also the number of miles each month *the* cars have been run or operated within and without the state;

(11) *a* description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road *has* once been given, no other annual description thereof is necessary unless the road *has* been changed. Whenever the road or any portion of the road is advertised to be sold or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad or the *right-of-way* for the same. If such statement is not furnished as above provided, the assessment made by the department of revenue upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

(12) the gross earnings of the entire road;

(13) the gross earnings of the road within the state and *if* the railroad is let to other operators, how much was derived by the lessor as rental;

(14) the cost of operating the entire road, exclusive of sinking fund, expenses of land department, and money paid to the United States;

(15) net income for such year and amount of dividend declared;

(16) capital stock authorized;

HeinOnline -- 1977 Vol. I 341 1977

(17) capital stock paid in;

(18) funded debt;

(19) number of shares authorized;

(20) number of shares of stock issued;

(21) any other facts the department may require."

Section 11. Section 84-802, R.C.M. 1947, is amended to read as follows:

"**84-802. Assessment — how made.** The department must assess the franchise, roadway, roadbed, rails, and rolling stock of all railroads operated in more than one county. All rolling stock must be assessed in the name of the person, corporation, or association owning, leasing, or using the same. Assessment must be made to the corporation, person, or association of persons owning or leasing or using the same and must be made upon the entire railroad within the state. The depots, stations, shops, and buildings erected upon the space covered by the *right-of-way* and all other property owned or leased by such person, corporation, or association, except as above provided, shall be assessed by an agent of the department in the county *where* they are *located.*"

Section 12. Section 84-901, R.C.M. 1947, is amended to read as follows:

"**84-901. Officers of certain telegraph, telephone, electric power, and other lines to furnish statement to department.** The president, secretary, or managing agent or such other officer as the department of revenue may designate of any corporation and each person or association of persons owning or operating a telegraph, telephone, microwave, electric power or transmission line, natural gas pipeline, oil pipeline, canal, ditch, flume, or other property, other than real estate not included in *right-of-way*, and which constitute a single and continuous property throughout more than one county or state, must each year furnish the department a statement, signed and sworn to by one of such officers or by the person or one of the persons forming such association, showing in detail for the year ending on December *31*, immediately preceding, as follows:

(1) the whole number of miles of said property in the state, and where the property is partly out of the state, the whole number of miles without the state and the whole number of miles within the state owned or operated by such corporation, person, or association;

(2) the total value of the entire property and plant both within and without the state and the total value of that portion of the same within the state;

(3) a complete description of the property within the state, giving the points of entrance into and the points of exit from the state and the points of entrance into and the points of exit from each county, with a statement of the total number of miles in each county in the state;

(4) such other information regarding such property as may be required by the department."

HeinOnline -- 1977 Vol. I 342 1977

Section 13. Section 84-905, R.C.M. 1947, is amended to read as follows:

"**84-905. Assessment of property — apportionment to counties.** The department must assess all the properties described in 84-901, but franchises granted by the United States must not be assessed, the value of such properties for assessment purposes to be determined upon such factors as the department *considers* proper."

Section 14. Section 84-5402, R.C.M. 1947, is amended to read as follows:

"**84-5402. Net proceeds tax — statement of yield.** Every person, partnership, corporation, or association engaged in mining, extracting, or producing from any quartz vein or lode, placer claim, dump, or tailings or other place or sources whatever precious stones or gems, gold, silver, copper, lead, or other valuable mineral, except coal, must on or before March *31* each year make out a statement of the gross yield *and value* of the above-named metals or minerals from each mine owned or worked by such person, corporation, or association during the year preceding January *1* of the year in which such statement is made. Such statement shall be in the form prescribed by the department of revenue and must be verified by the oath of *the* person *completing the statement* or the manager, superintendent, agent, president, or vice-president of *the* corporation, association, or partnership and must be delivered to the department of revenue on or before March *31*. Such statement shall show the following:

(1) the name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons, corporations, or associations owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons, corporations, or associations during the period covered by the statement;

(2) the description and location of the mine;

(3) the number of tons of ore, barrels of petroleum, cubic feet of natural gas, or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement;

(4) the amount and character of such ores, mineral products, or deposits and the yield of such ores, mineral products, or deposits from such mine in constituents of commercial value; that is, the number of ounces of gold or silver, pounds of copper or lead, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas, or other commercially valuable constituents of *the* ores, mineral products or deposits, measured by standard units of measurement, yielded to such person, corporation, or association so engaged in mining and to *each* royalty *holder*, if any, during the period covered by the statement;

(5) the gross yield or value in dollars and cents;

(6) actual cost of extracting from *the* mine;

HeinOnline -- 1977 Vol. I 343 1977

(7) *actual* cost of transporting to place of reduction or sale;

(8) *actual* cost of reduction or sale;

(9) *actual* cost of marketing the product and conversion of same into money;

(10) *cost* of construction, repairs, and betterments of mines, and cost of repairs and replacements of reduction works;

(11) *the* assessed valuation of reduction works for the calendar year for which such return is made;

(12) *actual* cost of fire insurance and *workers'* compensation insurance."

Section 15. Section 84-5403, R.C.M. 1947, is amended to read as follows:

"**84-5403. Net proceeds — how computed.** *(1)* The department shall calculate from *the* returns the gross product yielded from such mine and its gross value for the year covered by the statement and shall calculate and compute the net proceeds of *the* mine yielded to *the* person, corporation, or association engaged in mining. *Net* proceeds shall be determined by subtracting from the value of the gross product thereof the following:

(a) *all* royalty paid or apportioned in cash or in kind by the person, corporation, or association so engaged in mining;

(b) *all* moneys expended for necessary labor, machinery, and supplies needed and used in the mining operations and developments;

(c) *all* moneys expended for improvements, repairs, and betterments necessary in and about the working of the mine, except as hereinafter provided;

(d) *all* moneys expended for costs of repairs and replacements of the milling and reduction works used in connection with the mine;

(e) *depreciation* in the sum of 6% of the assessed valuation of such milling and reduction works for the calendar year for which such return is made;

(f) *all* moneys actually expended for transporting the ores and mineral products or deposits from the mines to the mill or reduction works or to the place of sale and for extracting the metals and minerals therefrom and for marketing the product and the conversion of the same into money;

(g) *all* moneys expended for fire insurance and *workers'* compensation insurance and for payments by mine operators to welfare and retirement funds when provided for in wage contracts between mine operators and employees.

(2) In computing the deductions allowable for repairs, improvements, and betterments to the mine, the department shall allow *10%* of such cost each year for a period of *10* years.

(3) No moneys invested in mines or improvements *may* be allowed as a deduction unless all machinery, equipment, and buildings represented

HeinOnline -- 1977 Vol. I 344 1977

by such moneys *are* returned to the county in which such mine is located for assessment purposes, at the level of assessment of all other property in such county.

(4) No moneys invested in the mines and improvements during any year, except the year for which such statement is made and except as provided in this section, *may* be included in such expenditures; and such expenditures *may* not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the mine or superintending the management thereof."

Section 16. Section 84-5405, R.C.M. 1947, is amended to read as follows:

"**84-5405. Lien of tax and penalty.** The tax and penalty so assessed on net proceeds *are* a lien upon all of the right, title, and interest of such operator in or to such mine or mining claim and upon all of the right, title, and interest in or to the machinery, buildings, tools, and equipment used in operating *the* mine or mining claim. *The* tax and penalty on such net proceeds may be collected and the payment enforced by the seizure and sale of the personal property upon which the tax and penalty *are* a lien in the same manner as other personal property is seized and sold for delinquent taxes or by the sale of the mine and improvements, as provided for the sale of real property for delinquent taxes or by the institution of a civil action for its collection in any court of competent jurisdiction. *Resort* to any one of the methods of enforcing collection shall not bar the right to resort to either or both of the other methods, but any two or all of the methods may be used until the full amount of such tax and penalty is collected."

Section 17. Section 84-5407, R.C.M. 1947, is amended to read as follows:

"**84-5407. False or fraudulent reports, procedure in case of.** If any report required by this chapter contains any willfully false or fraudulent statements as to the gross amount received by any person, corporation, or association engaged in mining for any mine's product, then the department shall compute the gross value of such mine's product based upon the average quotations of the price of such mine's product in New York City or the relative market value at the point of delivery as evidenced by some established authority or market report. *If* any such person, corporation, or association has sold or otherwise disposed of any of its mine's product at a price substantially below the true market price of such product at the time and place of such sale or disposal, then the department shall compute the gross value of such portion of *the* mine's product so sold or disposed of substantially below the market price, which gross value shall be based upon the quotations of the price of such mine's product in New York City or the relative market value at the point of delivery at the time such portion of the product was so sold or otherwise disposed of, as evidenced by some established authority or market report. Should there be no quotation covering any particular product, then the department shall fix the value of such gross product or such portion thereof as shall have been sold or otherwise disposed of at a price substantially below the true market price at the time and place of such sale or disposal in such a manner as may seem to be equitable."

HeinOnline -- 1977 Vol. I 345 1977

Section 18. Section 84-6201, R.C.M. 1947, is amended to read as follows:

"**84-6201. Definitions.** *(1)* The term "person", as used in this act, *means* and *includes an* individual, firm, *partnership,* every corporation, joint-stock company, syndicate, *or* association.

(2) The terms "operator" and "producer" mean any person who engages in the business of drilling for, extracting, or producing any natural gas, petroleum, or other crude or mineral oil.

(3) The term "well" includes each single well or group of wells, including dry wells, in one field or production unit and under the control of one operator or producer."

Section 19. Section 84-6202, R.C.M. 1947, is amended to read as follows:

"**84-6202. Statement of yield.** *Each operator or producer of* natural gas, petroleum, or other crude or mineral oil must on or before March *31* in each year make out and deliver to the department of revenue a statement of the gross yield of such natural gas, petroleum, or other crude or mineral oil from each *well* owned or worked by such person during the next preceding calendar year and the value thereof. Such statement shall be in the form prescribed by the department and must be verified by the oath of *the operator or producer* or the manager, superintendent, agent, president, or vice-president of such corporation, association, or partnership. Such statement shall show the following:

(1) the name and address of the operator, together with a list in duplicate of the names and addresses of any and all persons owning or claiming any royalty interest in the *production from the well* or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons during the period covered by the statement;

(2) the description and location of the *well;*

(3) the number of cubic feet of natural gas, barrels of petroleum, or other crude or mineral oil extracted or produced from the *well* during the period covered by the statement;

(4) the gross yield or value in dollars and cents;

(5) actual cost of extracting *product from well;*

(6) cost of construction, repairs, and betterments;

(7) actual cost of fire insurance and *workers'* compensation insurance."

Section 20. Section 84-6203, R.C.M. 1947, is amended to read as follows:

"**84-6203. Net proceeds — how computed.** *(1)* The department of revenue shall calculate and compute from *the* returns the gross product yielded from such *well* and its gross value for the year covered by the statement and shall calculate the net proceeds of *the well* yielded to *the*

HeinOnline -- 1977 Vol. I 346 1977

producer, which net proceeds shall be determined by subtracting from the value of the gross products thereof the following:

(a) all royalty paid or apportioned in cash or in kind by the *operator or producer;*

(b) all moneys expended for necessary labor, machinery, and supplies needed and used in the operations and developments;

(c) all moneys expended for improvements, repairs, and betterments necessary in and about the working of the *well;*

(d) all moneys expended for fire insurance and *workers'* compensation insurance and for payments by operators to welfare and retirement funds when provided for in wage contracts between operators and employees.

(2) No moneys invested in the *well* and improvements during any year, except the year for which such statement is made, *may* be included in such expenditures, except as provided in 84-6204; and such expenditures *may* not include the salaries or any portion thereof of any person or officer not actually engaged in the working of the *well* or superintending the management thereof."

Section 21. Section 84-6403, R.C.M. 1947, is amended to read as follows:

"**84-6403. Report by airline company.** Every airline company engaged in air commerce in this state shall annually file with the department of revenue, in such form as the department may require, a report under oath, showing the following:

(1) *the* name of the person or persons, association, joint-stock company, or corporation;

(2) *under* the laws of what state organized or existing;

(3) *the* location of its principal office;

(4) *the* location of its principal office in this state, if any;

(5) *the* number of aircraft of each type or kind, the total original cost, the average cost per plane, the total depreciated cost, and the average depreciated cost per plane at the end of the preceding calendar year;

(6) *the* number of shares of capital stock authorized, number of shares outstanding, the total par value and the total market value at the end of the preceding calendar year; the par value of outstanding bonds and *long-term* debt and the market value at the end of the preceding calendar year;

(7) *income* account showing operating revenues and expenses of the entire system and net operating income during the preceding calendar year;

(8) *the* total tonnage of passengers, express, and freight first received by the airline company in this state during the preceding calendar year plus the total tonnage of passengers, express, and freight finally discharged by it within this state during the preceding calendar year and

HeinOnline -- 1977 Vol. I 347 1977

the total of such tonnage first received by the airline company or finally discharged by it, within and without this state during the preceding calendar year;

(9) *the* total time in equated plane hours of all aircraft of the scheduled airline company in flight in this state during the preceding calendar year plus the total time of such aircraft on the ground in this state during the preceding calendar year and the total of such time in flight or on the ground within and without this state during the preceding calendar year;

(10) *the* number of revenue *ton-miles* of passengers, mail, express, and freight flown by the scheduled airline company within this state during the preceding calendar year and the total number of such miles flown by it within and without this state during the preceding calendar year;

(11) *the* number of arrivals and departures of all aircraft of the scheduled airline company in this state during the preceding calendar year and the total number of such arrivals and departures within and without this state during the preceding calendar year;

(12) *such* other information as the department of revenue may require."

Section 22. **Repealer.** Sections 84-719, 84-720, 84-721, 84-722, 84-802.1, 84-803, 84-804, 84-903, 84-903.1, 84-904, 84-906, 84-907, 84-5408, 84-5410, 84-6207, 84-6209, 84-6402, 84-6405, 84-6405.1, 84-6406, 84-6407, 84-6408, and 84-6410, R.C.M. 1947, are repealed.

Approved March 25, 1977.

CHAPTER NO. 99

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTIONS 68-1602, 68-1604, 68-1605, 68-1608, 68-1901, 68-1904, 68-2103, 68-2201, 68-2203, 68-2304, 68-2505, 68-2506, AND 68-2511, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-1602, R.C.M. 1947, is amended to read as follows:

"**68-1602. Exclusions.** The following persons *may* not become members of the retirement system:

(1) elective officers who have not filed with the board written requests to become members, *except* that *a* person so excluded from membership may later become a member by otherwise becoming an employee or by written request after a subsequent election to office, and if he affirmatively *exercises* the option, the contributions of the employer because of his membership shall be the same as they would have been had he not been so excluded;

HeinOnline -- 1977 Vol. I 348 1977

(2) inmates of state institutions who are allowed compensation for such service as they are able to perform;

(3) persons in state institutions principally for the purpose of training, but who receive compensation;

(4) independent contractors, unless *there is a* written contract *which* specifies the creation of an employer-employee relationship for purposes of retirement coverage under the Public Employees' Retirement System Act;

(5) employees serving in employment which does not exceed the equivalent of 60 working days in any fiscal year;

(6) employees in service on July 1, 1945, or prior thereto who filed with the board *elections* not to become members, *except that a* person so excluded from membership may become a member *and be eligible thereafter to receive the same benefits that he would have received if he had never filed an election not to be a member* by meeting the requirements *prescribed in 68-1607 and 68-1608*;

(7) persons directly appointed by the governor who do not file with the board an election in writing to become members;

(8) *(a)* persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or political subdivision thereof and who are receiving credit in *the* other system for service, it being the purpose of this *subsection* to prevent a person from receiving credit for the same service in two retirement systems supported wholly or in part by public funds, except when *the* service qualifies, is applied for, and purchased pursuant to 68-1605.1; *a* member of the retirement system who, because of his employment by the state, *is* required to become a member of any other *system described in this subsection* shall be considered, solely for the purposes of making normal contributions, as permanently separated from service; *exclusion under this subsection (8)(a) is subject to the following exceptions:*

(i) when an employer has entered into a collective bargaining agreement which includes provisions for payments or contributions by the employer in lieu of wages to a retirement or pension plan qualified by the Internal Revenue Service for its employees, *the* employees remain eligible, if otherwise qualified, for membership in the retirement system, and the payments or contributions in lieu of wages *may* not be *considered* a part of the *employees'* compensation for purposes of computing the employer or employee contributions to the retirement system;

(ii) for the purpose of subsection (8), persons receiving pensions, retirement allowances, or other payments from any source on account of employment other than as an employee as defined in this act are not considered, because of such receipt, members of any other retirement or pension system;

(b) the accumulated contributions of a member who dies after becoming a member of any other system described in subsection (8) and before receiv-

ing his accumulated contributions shall be paid to the beneficiary nominated by him to receive any death benefit payable under 68-2301;

(c) employer contributions on the basis of compensation earned by members after the effective date of termination of membership because of membership in another system, as provided in subsection (8), shall be repaid to the employer;

(9) court commissioners or appointive members of any board or commission who serve the state or any contracting employer intermittently and who are paid on a per diem basis;

(10) persons who become employees after they have reached their *60th* birthday and have no creditable service in this system and who do not file with the board an election to become members;

(11) employees of county hospitals or county rest homes in the sixth and seventh class counties, unless they elect to file with the board an election in writing to become members;

(12) persons employed by the legislature during the legislative session who do not file with the board an election in writing to become members."

Section 2. Section 68-1604, R.C.M. 1947, is amended to read as follows:

"**68-1604. Absence not included in time of service.** Except as provided in 68-1605, *68-1605.1,* and 68-1606, time during which a member is absent from compensated employment with an employer *may* not be allowed in computing service."

Section 3. Section 68-1605, R.C.M. 1947, is amended to read as follows:

"**68-1605. Absence in military service.** *(1)* Any period of absence from compensated employment with an employer *for one of the following reasons,* occurring either during a war involving the United States as a belligerent or *during* any other national emergency and 90 days thereafter, *is* considered service for the purpose of qualification for retirement and death benefits but not for calculation of retirement benefits:

(a) by reason of having been ordered on duty with the armed forces of the United States;

(b) by reason of voluntary service in said forces or on ships operated by or for the United States government; or

(c) by reason of direct assignment to the department of defense for duties pursuant to the national defense efforts where a leave of absence has been granted by the employer.

(2) Any member so absent *has* the right to contribute to the retirement system, either during his period of absence or upon his return to service, at times and in the manner fixed by the board, amounts equal to the *contributions* which would have been made by him to the system on the basis of his compensation at the commencement of his absence. If he does contribute, he shall receive credit for service for such time in the same man-

HeinOnline -- 1977 Vol. I 350 1977

ner as if he had not been absent from service. Whenever a member elects to continue his contributions, the employer shall thereupon contribute an amount equal to what its employer contributions would have been had the member not been absent from service.

(3) Any member so absent *loses* the right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to 68-1905."

Section 4. Section 68-1608, R.C.M. 1947, is amended to read as follows:

"**68-1608. Qualification of prior service not previously credited.** *If a member otherwise has not less than 5 years of creditable service of which not less than 3 years have been as a contributing member of the retirement system, he shall be granted credit* for any prior service not previously granted upon his filing written notice thereof with the board no later than July 1, 1975, *or within 1 year after becoming an employee, whichever is later.* Proper certification of *the prior* service must be furnished."

Section 5. Section 68-1901, R.C.M. 1947, is amended to read as follows:

"**68-1901. Management of fund.** The retirement fund shall be managed as follows:

(1) The board *has* exclusive control of the administration of the fund except as otherwise provided.

(2) The fund shall be invested by the state board of investments as part of the long-term investment fund.

(3) The department of administration shall deposit monthly in the state treasury all amounts received by it as provided in this act.

(4) The state treasurer *is* custodian of the retirement fund, subject to the exclusive control of the board as to the administration thereof and the board of investments as to the investment thereof.

(5) Interest earned on any cash *deposited* in a bank by the state treasurer and income on other assets constituting a part of the fund shall be paid into the fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(6) Except as herein provided, no member and no employee of the department of administration *may:*

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing therefrom;

(b) directly or indirectly, for himself or as an agent or partner of others, borrow any of its funds or deposits;

(c) in any manner use the same except to make such current and necessary payments as are authorized by the department; *or*

HeinOnline -- 1977 Vol. I 351 1977

(d) become an endorser or surety as to or in any manner an obligor for investments for the retirement system."

Section 6. Section 68-1904, R.C.M. 1947, is amended to read as follows:

"**68-1904. Employer contribution to administrative expense.** (1) The board may assess and the department of administration shall collect a fee *from each employer* for the purpose of defraying the administrative expense of this act, not to exceed .3% of gross compensation.

(2) In addition to the contributions elsewhere provided in this act, on July 1 of each year each employer shall contribute on behalf of each member then in its employ a membership fee of $1. These fees together with other moneys appropriated for that purpose shall be used for the purpose of defraying the administrative expense of this act."

Section 7. Section 68-2103, R.C.M. 1947, is amended to read as follows:

"**68-2103. Allowance for duty-related disability.** The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons is 50% of his final compensation. *However,* the annual amount of retirement allowance *is* 25% of final compensation for any period during which the member has been awarded compensation by the *workers'* compensation division, whether such compensation is received in periodic payments or in a lump sum. *The* annual amount of retirement allowance *reverts* to 50% of final compensation at the end of such period."

Section 8. Section 68-2201, R.C.M. 1947, is amended to read as follows:

"**68-2201. Medical examination of disability retiree — cancellation and reinstatement.** (1) The board may, at its pleasure, require the recipient of a retirement allowance because of disability to undergo medical examination. The examination shall be made by a physician or surgeon appointed by the board, at the place of residence of the recipient or another place mutually agreed upon. Upon the basis of the examination, the board shall determine whether *the* recipient is unable, by reason of physical or mental incapacity, to perform either the duties of the position held by him when he was retired or the duties proposed to be assigned to him. If the board determines that *the* recipient is not incapacitated or if the recipient refuses to submit to medical examination, his retirement allowance shall be canceled.

(2) *A* person whose retirement allowance is canceled shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity, if he had been an employee of the state or of the university. If he had been an employee of a contracting employer, the board shall notify the proper official of the contracting employer that the retirement allowance has been canceled and that the former employee is eligible for reinstatement to duty. The fact that he was retired for disability *may* not prejudice any right to reinstatement to duty which he may have or claim to have.

HeinOnline -- 1977 Vol. I 352 1977

(3) If *a* person whose retirement allowance is canceled is not reemployed in a position subject to the retirement system, his service *is considered, for the purposes of 68-1905,* to *have been* discontinued coincident with *the commencement of* his retirement allowance."

Section 9. Section 68-2203, R.C.M. 1947, is amended to read as follows:

"**68-2203. Optional retirement allowance.** (1) The retirement allowance of a member who so elects shall be converted, in lieu of all other benefits under this act, into an optional retirement allowance which is the actuarial equivalent of *the regular retirement* allowance. The optional retirement allowance is a reduced amount payable during the member's lifetime with a subsequent benefit as follows:

(a) *option* 1—a death benefit to the member's beneficiary equal to the excess, if any, of the member's accumulated contributions, with regular interest to the day his retirement allowance commenced, over the total of his retirement allowance payments;

(b) *option* 2—a continuation of the reduced retirement allowance during the lifetime of his named contingent annuitant;

(c) *option* 3—a continuation of one-half of the reduced retirement allowance during the lifetime of his named contingent annuitant;

(d) *option* 4—such other actuarially equivalent benefit as *may* be approved by the board.

(2) Election of *an* optional retirement allowance *must* be by written application filed prior to the first payment of the regular retirement allowance.

(3) If either the member or his contingent annuitant *dies* before the member has received the first payment under option 2 or 3, the election of *the* option *is* automatically canceled.

(4) If a member dies after retirement and within 30 days from the date his election or changed election of an optional retirement allowance is received by the board, then *the* election is void and the death *is* considered as that of a member before retirement."

Section 10. Section 68-2304, R.C.M. 1947, is amended to read as follows:

"**68-2304. Survivorship allowance elected by beneficiary.** A beneficiary eligible to receive a death benefit may elect, *by written application,* a survivorship allowance instead if all of the following conditions are met:

(1) *The* member on behalf of whom the death benefit is payable had completed 10 years of creditable service.

(2) *The* beneficiary is a natural person of legal age.

(3) *The* beneficiary elects the survivorship allowance within 90 days of receipt of notice from the board that he is eligible to receive the death benefit."

HeinOnline -- 1977 Vol. I 353 1977

Section 11. Section 68-2505, R.C.M. 1947, is amended to read as follows:

"**68-2505. Payment of state contributions — budget and appropriations.** (1) No later than the *10th* day of each month, each department, board, commission, bureau, or other agency of the state shall certify to the state auditor all contributions required of *the* unit and its employees under this act on the basis of compensation paid during the previous month, including any contributions payable with respect to members absent in the armed forces of the United States. The state auditor shall thereupon draw a warrant upon the state treasurer for *the* contributions. The warrant shall be drawn to the credit of the retirement fund on the funds appropriated to *the* unit.

(2) Every state employer shall include in *its* budget and request for legislative appropriations an amount necessary to defray the state's part of the costs of this act for *its* employees to the end that the legislature may make definite appropriation for the cost incurred by each employer *the* employees *of which* are within the retirement system created by this act."

Section 12. Section 68-2506, R.C.M. 1947, is amended to read as follows:

"**68-2506. Transfers between funds.** Any fund out of which payments are made under the provisions of this act may be reimbursed to the extent of such payments by transfer of a sufficient sum for *the* reimbursement from another fund or funds under the control of the same disbursing officer. The disbursing officer shall certify to the state auditor *the* amounts to be thus transferred *and* the funds from and to which the transfer is to be made, and the auditor shall thereupon make the transfer as directed in the certificate."

Section 13. Section 68-2511, R.C.M. 1947, is amended to read as follows:

"**68-2511. Transfer to and from and concurrent membership in teachers' retirement system.** (1) For the purpose of this section, "system" means the public employees' retirement system of Montana or the teachers' retirement system of the state of Montana.

(2) Upon transfer of a person from being an employee under one system to being an employee in the other, *all* service credits, both prior and membership, *shall be transferred, except those that have been forfeited by withdrawal and have not been reinstated.* The amounts transferred shall be determined by the boards of the systems by mutual agreement and *shall* be certified by the system from which the employee transfers.

(3) Any person who is concurrently employed by employers under both systems *is* entitled to establish credits or equities in each of the systems in accordance with and to the extent set forth in this act.

(4) Eligibility of any such person for a retirement allowance, death benefit, or refund of contributions *is* governed by the provisions of the act creating the system to which the person last made contributions *and*

HeinOnline -- 1977 Vol. I 354 1977

is based upon the entire length of service for which he *has been* granted credit under both systems."

Approved March 25, 1977.

CHAPTER NO. 100

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO MINORS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-204, R.C.M. 1947, is amended to read as follows:

"**10-204. Age certificates.** Upon *attaining* the age of *16* years any child may make application to the commissioner of labor and industry for an age certificate, which must be presented to any employer with whom *the* child *seeks* employment. The employer, if such employment be given, must countersign the certificate and return *it* to the commissioner, who shall keep *it* on file in his office. Any person, firm, company, association, or corporation who employs or permits to be employed in any occupation prohibited by 10-201 any child without such certificate showing the child to be at least *16* years of age *is* guilty of a misdemeanor and punishable as hereinafter provided should such child prove to be less than *16* years of age."

Section 2. Section 10-205, R.C.M. 1947, is amended to read as follows:

"**10-205. Enforcement.** To enforce this act the commissioner of labor and industry and *each* county *attorney* shall, each upon *his* own volition or upon the sworn complaint of any reputable citizen that this act is being violated, make prosecutions for such violations."

Section 3. Section 10-1206, R.C.M. 1947, is amended to read as follows:

"**10-1206. Jurisdiction of the court.** (1) The court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town prior to having become 18 years of age.

(2) Justice, municipal, and *city* courts shall have concurrent jurisdiction with the youth court over all traffic and fish and game violations alleged to have been committed by a youth, except that the following alleged violations are under the exclusive jurisdiction of the court:

(a) driving while intoxicated as defined in 32-2142;

(b) failing to stop at an accident as defined in 32-1202; and

(c) driving without a valid license or permit as defined in 31-125 and 31-127, after having been previously convicted of the same offense."

HeinOnline -- 1977 Vol. I 355 1977

Section 4. Section 10-1210, R.C.M. 1947, is amended to read as follows:

"**10-1210. Consent adjustment without petition.** (1) Before a petition is filed, the probation officer may enter into an informal adjustment *and* give counsel and advice to the youth and other interested parties if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment shall be reduced to writing *and* signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge *is* required *if* the complaint alleges commission of a felony or *if* the youth has been or will be in any way detained.

(3) An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto *may* not be used against the declarant in any proceeding under this act, nor *may* the incriminating statement be admissible in any criminal proceeding against the declarant.

(4) The following dispositions may be imposed by informal adjustment:

(a) *probation*;

(b) *placement* of the youth in a licensed foster home or other home approved by the court;

(c) *placement* of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to a district youth guidance home;

(d) *transfer* of legal custody of the youth to the department of institutions, provided that such commitment *does* not authorize the department of institutions to place the youth in a detention facility, and such commitment *may* not exceed a period of 6 months without a subsequent order of the court, after notice and hearing."

Section 5. Section 10-1217, R.C.M. 1947, is amended to read as follows:

"**10-1217. Service of summons.** (1) Any youth who is the subject of a proceeding under this act must be personally served with summons at least 5 days before the time stated for appearance.

(2) Service of summons on all other persons designated in 10-1216*(1)*

HeinOnline -- 1977 Vol. I 356 1977

shall be made in accordance with Rule 4D of the Montana *rules* of *civil procedure*, except that in all cases service shall be completed at least 5 days before the time stated for appearance.

(3) If a party referred to in subsection (2) herein is not personally served before a hearing and has not secluded himself with an attempt to delay or disrupt any proceeding, such party may appear within a reasonable time subsequent to the hearing and, on motion to the court, request a rehearing. The motion may be granted at the discretion of the judge if a rehearing would be in the best interest of the youth.

(4) The court may authorize payment from county funds of costs of service and necessary travel expenses incurred by persons summoned or otherwise required to appear at the hearing.

(5) An actual abandonment of a youth by his parent or parents shall constitute a waiver of summons and notice requirements by the parent or parents. A return endorsed upon the summons showing inability to serve summons constitutes prima facie evidence of actual abandonment.

(6) The youth court may, in the interests of justice, shorten the notice requirements contained herein, and such notice of shortened time shall be endorsed on the summons.

(7) A party, other than the youth, may waive service of summons on himself by written stipulation or by voluntary appearance at the hearing. If the youth is present at the hearing, his counsel may waive service of summons in his behalf."

Section 6. Section 10-1218, R.C.M. 1947, is amended to read as follows:

"**10-1218. Basic legal rights.** (1) When a youth alleged to be a delinquent youth or a youth in need of supervision is taken into custody, the following requirements must be met:

(a) *The* youth shall be immediately and effectively advised of his constitutional rights and his rights under this *act*.

(b) *The* youth may waive such rights under the following situations:

(i) when the youth is under the age of 12 years, the parents of the youth may make an effective waiver;

(ii) when the youth is over the age of 12 years and the youth and his *parents* agree, they may make an effective waiver; and

(iii) when the youth is over the age of 12 years and the youth and his parents do not agree, the youth may make an effective waiver only with advice of counsel.

(c) In a proceeding alleging a youth to be a delinquent youth:

(i) *an extrajudicial* statement that would be constitutionally inadmissible in a criminal matter *may* not be received in evidence;

(ii) *evidence* illegally seized or obtained *may* not be received in evidence to establish the allegations of a petition against a youth; and

HeinOnline -- 1977 Vol. I 357 1977

(iii) *an extrajudicial* admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

(2) Title 95 shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) *no* youth *may* be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge;

(b) *no* fingerprint records or photographs *may* be filed with the federal bureau of investigation, state of Montana identification bureau, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation;

(c) *at* such time as the proceedings in the matter, including appeals, are complete, the fingerprint records and photographs shall be destroyed. *However,* such fingerprint records and photographs may be retained by the originating agency for a specific period when ordered by the court for good cause shown.

(3) In all proceedings on a petition alleging a delinquent youth or youth in need of supervision the youth *and the* parents *or* guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained or if it appears that counsel will not be retained, counsel shall be appointed for the youth, unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel if commitment to a detention facility or a youth forest camp or to the department of institutions for a period of more than 6 months may result from adjudication.

(4) The court at any stage of a proceeding on a petition under this act may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party *may* not be appointed as guardian ad litem.

(5) In a proceeding on a petition, a party is entitled to:

(a) the opportunity to introduce evidence and otherwise be heard on the party's own behalf;

(b) confront and cross-examine witnesses testifying against the party; and

(c) admit or deny the allegations against the party in the petition.

(6) Persons afforded rights under this act shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in *that act* or other law.

HeinOnline -- 1977 Vol. I 358 1977

(7) All *posttrial* motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure *are* available to a youth proceeded against under this act."

Section 7. Section 10-1220, R.C.M. 1947, is amended to read as follows:

"**10-1220. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses. *In* the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory *hearing* shall be set forthwith and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses. *If* the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court *considers* appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, *may* not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public shall be excluded and only such persons as have a direct interest in the case *may be admitted,* except that when a hearing in the court is held on a written petition charging the commission of a felony, persons with a legitimate interest in the proceeding, including representatives of public information media, *may* not be excluded from the hearing.

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or *after the hearing required by this section,* a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this act.

(7) When a jury trial is required in a case, it may be held before the regular trial panel. If the regular panel is not in attendance, the court may draw a jury from jury box No. 3."

Section 8. Section 10-1224, R.C.M. 1947, is amended to read as follows:

"**10-1224. Consent decree with petition.** (1) At any time after the filing of a petition alleging delinquency or need of supervision and before the entry of a judgment, the court may, on motion of counsel for the youth

HeinOnline -- 1977 Vol. I 359 1977

or on the court's own motion, suspend the proceedings and continue the youth under supervision under terms and conditions negotiated with probation services and agreed to by all necessary parties. The court's order continuing the child under supervision under this section shall be known as a "consent decree". The procedures used and dispositions permitted *under* this section shall conform to the procedure and disposition specified in 10-1210 relating to consent adjustments without petition.

(2) If the youth or his counsel objects to a consent decree, the court shall proceed to findings, adjudication, and disposition of the case.

(3) If, either prior to discharge by probation services or expiration of the consent decree, a new petition alleging delinquency or need of supervision is filed against the youth, or if the youth fails to fulfill the expressed terms and conditions of the consent decree, the petition under which the youth was continued under supervision may be reinstated in the discretion of the county attorney in consultation with probation services. In the event of reinstatement, the proceeding on the petition shall be continued to conclusion, as if the consent decree had never been entered.

(4) A youth who is discharged by probation services or who completes a period under supervision without reinstatement of the original petition *may* not again be proceeded against in any court for the same offense alleged in the petition, and the original petition shall be dismissed with prejudice. Nothing in this subsection precludes a civil suit against the youth for damages arising from his conduct.

(5) In all cases where the terms of the consent decree shall extend for a period in excess of 6 months, the probation officer shall at the end of each *6-month* period *submit a report* which shall be reviewed by the court."

Section 9. Section 10-1229, R.C.M. 1947, is amended to read as follows:

"**10-1229. Transfer to criminal court.** (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(i) criminal homicide as defined in 94-5-101;

(ii) arson as defined in 94-6-104;

(iii) aggravated assault as defined in 94-5-202;

(iv) robbery as defined in 94-5-401;

(v) burglary or aggravated burglary as defined in 94-6-204;

(vi) sexual intercourse without consent as defined in 94-5-503;

(vii) aggravated kidnapping as defined in 94-5-303;

HeinOnline -- 1977 Vol. I 360 1977

(viii) possession of explosives as defined in 94-6-105;

(ix) criminal sale of dangerous drugs for profit as included in 54-132;

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be to the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there are reasonable grounds to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community *require* treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court shall also consider the following factors:

(a) the sophistication and maturity of the youth, determined by consideration of his home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions;

(c) the prospects for adequate protection of the public and the likelihood of reasonable rehabilitation of the youth by the use of procedures, services, and facilities currently available to the youth court.

(3) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the court was waived and the case transferred to district court.

(4) The transfer terminates the jurisdiction of the court over the youth with respect to the acts alleged in the petition. No youth *may* be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(5) Upon order of the court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(6) If a youth is found guilty in district court of any of the offenses enumerated in subsection *(1)*(a) of this section and is sentenced to the state prison, his commitment shall be to the department of institutions which shall confine the youth in whatever institution it *considers* proper."

HeinOnline -- 1977 Vol. I 361 1977

Section 10. Section 10-1230, R.C.M. 1947, is amended to read as follows:

"**10-1230. Law enforcement records.** (1) *No* law enforcement records concerning a youth, except traffic records, *may* be open to public inspection *or* their contents disclosed to the public unless so ordered by the court.

(2) Inspection of law enforcement records concerning a youth is permitted prior to the sealing of the records by:

(a) a youth court having the youth currently before it in any proceeding;

(b) the officers of agencies having legal custody of the youth and those responsible for his supervision after release;

(c) any other person, by order of the court, having a legitimate interest in the case or in the work of the law enforcement agency;

(d) law enforcement officers *of Montana,* when necessary for the discharge of their immediate duties;

(e) a district court in which the youth is convicted of a criminal offense, for the purpose of a presentence *investigation*;

(f) the county attorney; or

(g) the youth, his parent, guardian, or counsel."

Section 11. Section 10-1236, R.C.M. 1947, is amended to read as follows:

"**10-1236. Foster homes.** (1) The youth court may establish procedures for finding, maintaining, and administering temporary and permanent foster homes or other homes approved by the court for youth within the provisions of this act.

(2) All foster homes *established by the youth court which are* licensed by the *department of* social and rehabilitation services, shall be financed by the department as set forth in 71-210(b).

(3) The licensed foster homes established under this section shall be funded at a rate consistent with other foster homes established for other purposes under law."

Section 12. Section 10-1242, R.C.M. 1947, is amended to read as follows:

"**10-1242. Establishment of district youth guidance home program.** The *legislature*, in recognition of the wide and varied needs of delinquent youths and youths in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible and in order to reduce the need for custodial care in existing state institutions, establishes by *10-1242 through 10-1252* a district youth guidance home program to provide facilities and services for the rehabilitation of delinquent youths and youths in need of supervision and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions."

HeinOnline -- 1977 Vol. I 362 1977

Section 13. Section 10-1246, R.C.M. 1947, is amended to read as follows:

"**10-1246. Authority of youth court judge to commit delinquent youths and youths in need of supervision.** A youth court judge is hereby authorized in his discretion to place a delinquent youth or a youth in need of supervision *in a* district youth guidance home for any period of time up to the child's *21st* birthday subject to the approval of its sponsoring nonprofit corporation or association."

Section 14. Section 10-1248, R.C.M. 1947, is amended to read as follows:

"**10-1248. Continuing jurisdiction of youth court over youths.** The youth court placing a delinquent youth or a youth in need of supervision *in* a district youth guidance home shall retain continuing jurisdiction over *the* youth until *the* youth becomes 21 years of age or is otherwise discharged by order of the court."

Section 15. Section 10-1249, R.C.M. 1947, is amended to read as follows:

"**10-1249. Per diem charge to financially able parents.** A youth court judge placing a delinquent youth or a youth in need of supervision in a district youth guidance home may, if the parent or parents of the youth are financially able, without undue hardship, require the parents or parent to pay to the district youth guidance home *such* per diem charge *as the judge may determine.*"

Section 16. Section 10-1251, R.C.M. 1947, is amended to read as follows:

"**10-1251. Rules.** The director of the department of institutions *may* adopt reasonable rules and standards to carry out the administration and purposes of *10-1242 through 10-1252.*"

Section 17. Section 10-1252, R.C.M. 1947, is amended to read as follows:

"**10-1252. Federal assistance.** The department of institutions *may* make application for and receive federal-aid money or other assistance which might become available for programs in the nature of the one created by *10-1242 through 10-1252.*"

Section 18. Section 10-1301, R.C.M. 1947, is amended to read as follows:

"**10-1301. Definitions.** (1) "Child" or "youth", for purposes of this act, means any person under 18 years of age.

(2) "Abuse" or "neglect" means:

(a) *the* commission or omission of any act or acts which materially affect the normal physical or emotional development of a youth. *Any* excessive physical injury, sexual assault, or failure to thrive, taking into account the age and medical history of the youth, shall be *presumed to be nonaccidental and to "materially affect" the normal development of the youth.*

HeinOnline -- 1977 Vol. I 363 1977

(b) *the* commission or omission of any act or acts by any person in the status of parent, guardian, or custodian who thereby and by reason of physical or mental incapacity or other cause refuses or, with state and private aid and assistance is unable, to discharge the duties and responsibilities for proper and necessary subsistence, education, medical, or any other care necessary for *the youth's* physical, moral, and emotional well-being.

(3) "Dependent youth" means a youth who is abandoned, dependent upon the public for support, destitute, without parents or guardian or under the care and supervision of a suitable adult, or who has no proper guidance to provide for his necessary physical, moral, and emotional well-being. A child may be considered dependent and legal custody transferred to a licensed agency if the parent or parents voluntarily relinquish custody of *the* child.

(4) "Youth in need of care" means a youth who is dependent or is suffering from abuse or neglect within the meaning of this act."

Section 19. Section 10-1309, R.C.M. 1947, is amended to read as follows:

"**10-1309. Emergency protective service.** *(1)* Any social worker of the department of social and rehabilitation services, the county welfare department, *a* peace officer, or county attorney who has reason to believe any youth is in immediate or apparent danger of violence or serious injury *may* immediately remove the youth and place him in a protective facility. The department may make a request for further assistance from the law enforcement agency or take such legal action as may be appropriate.

(2) A petition shall be filed within 48 hours of emergency placement of a child unless arrangements acceptable to the agency for the care of the child have been made by the parents.

(3) The department of social and rehabilitation services and the county welfare department shall comply with the *procedure* set forth in 10-1305.

(4) The department of social and rehabilitation services and the county welfare department shall make such necessary arrangements for the youth's well-being as are required prior to the court hearing."

Section 20. Section 10-1310, R.C.M. 1947, is amended to read as follows:

"**10-1310. Petitions.** (1) The county attorney shall be responsible for filing all petitions alleging abuse, neglect, *or* dependency. He may require all state, county, and municipal agencies, including law enforcement agencies, to conduct such investigations and furnish such reports as may be necessary.

(2) Such petitions shall be given preference by the court in setting hearing dates.

(3) A petition alleging abuse, neglect, or dependency is a civil action brought in the name of the state of Montana. The rules of civil procedure shall apply except as herein modified. Proceedings under a petition *are not* a bar to criminal prosecution.

HeinOnline -- 1977 Vol. I 364 1977

(4) The parents or parent, guardian, or other person or agency having legal custody of the youth named in the petition, if residing in the state, shall be served personally with a copy of the petition and summons at least 5 days prior to the date set for hearing. *If* such person or agency resides out of state or is not found within the state, the rules of civil procedure relating to service of process in such cases shall apply.

(5) In the event service cannot be made upon the parents or parent, guardian, or other person or agency having legal custody, the court shall appoint an attorney to represent the unavailable party where in the opinion of the court the interests of justice require.

(6) *If* a parent of the child is a minor, notice shall be given to the minor parent's *parents or* guardian, and if there is no guardian the court shall appoint one.

(7) Any person interested in any cause under this act *has* the right to appear.

(8) Except where the proceeding is instituted or commenced by a representative of *the department of* social and rehabilitation services, a citation shall be issued and served upon a representative of *the department* prior to the court hearing.

(9) The petition shall:

(a) state the nature of the alleged abuse, neglect, or dependency;

(b) state the full name, age, and address of the youth *and the name and address of* his parents or guardian or person having legal custody of the youth;

(c) state the names, addresses, and relationship to the youth *of* all persons who are necessary parties to the action.

(10) The petition may ask for the following relief:

(a) temporary investigative authority and protective services;

(b) temporary legal custody;

(c) limited legal custody;

(d) permanent legal custody, including the right to consent to adoption;

(e) appointment of guardian ad litem;

(f) any combination of the above or such other relief as may be required for the best interest of the youth.

(11) The petition may be modified for different relief at any time within the discretion of the court.

(12) The court may at any time on its own motion or the motion of any party appoint a guardian ad litem for the youth or counsel for any indigent party.

(13) This section *does* not apply to a petition for temporary investigative authority and protective services."

HeinOnline -- 1977 Vol. I 365 1977

Section 21. Section 10-1311, R.C.M. 1947, is amended to read as follows:

"**10-1311. Petition for temporary investigative authority and protective services.** (1) In cases where it appears that a youth is abused or neglected or is in danger of being abused or neglected, the county attorney may file a petition for temporary investigative authority and protective services.

(2) A petition for temporary investigative authority and protective services shall state the specific authority requested and the facts establishing probable cause that a youth is abused or neglected or is in danger of being abused or neglected.

(3) The petition for temporary investigative authority and protective services shall be supported by an affidavit signed by the county attorney or a *department of* social and rehabilitation services report stating in detail the facts upon which the request is based.

(4) *(a)* Upon the filing of a petition for temporary investigative authority and protective services, the court may issue an order granting such relief as may be required for the immediate protection of the youth.

(b) The order shall be served by a peace officer or a representative of the *department of* social and rehabilitation services on the person or persons named therein.

(c) The order shall require the person served to comply *immediately* with the terms thereof or, upon failure to so comply, to appear before the court issuing the order on the date specified and show cause why he has not complied with the order. Except as otherwise provided herein, the rules of civil procedure shall apply.

(d) Upon a failure to comply or show cause the court may hold the person in contempt or place temporary legal custody of the youth with the *department of* social and rehabilitation services until further order.

(5) The court may grant the following kinds of relief:

(a) right of entry by *a* peace officer or *department of* social and rehabilitation services worker;

(b) medical and psychological evaluation of youth or parents, guardians, or person having legal custody;

(c) require the youth, parents, guardians, or person having legal custody to receive counseling services;

(d) place the youth in temporary medical facility or facility for protection of the youth;

(e) require the parents, guardian, or other person having custody to furnish such services as the court may designate;

(f) such other temporary disposition as may be required in the best interest of the youth."

HeinOnline -- 1977 Vol. I 366 1977

Section 22. Section 10-1320, R.C.M. 1947, is amended to read as follows:

"**10-1320. Payment for support of dependent and neglected children — reimbursement by county.** *(1)* Whenever agreements are entered into by the department of social and rehabilitation services for placing dependent and neglected children in approved family foster homes or licensed private institutions, the department *shall* pay by its check or draft each month from any funds appropriated for that purpose the entire amount agreed upon for board, clothing, personal needs, and room of such children.

(2) On or before the *20th* of each month the department shall present a claim to the county of residence of such children for one-half the payments so made during the month. The county must make reimbursement to the department within *20* days after such claim is presented."

Section 23. Section 69-6101, R.C.M. 1947, is amended to read as follows:

"**69-6101. Validity of consent of minor for health services.** *(1)* The consent to the provision of medical or surgical care or services by a hospital, public clinic, or the performance of medical or surgical care or services by a physician licensed to practice medicine in this state may be given by a minor who professes or is found to meet any of the following descriptions:

(a) a minor who is or was ever married or has had a child or graduated from high school or is emancipated;

(b) a minor who has been separated from his parent, parents, or legal guardian for whatever reason and is supporting himself by whatever means;

(c) a minor who professes or is found to be pregnant or afflicted with any reportable communicable disease, including venereal disease, or drug and substance abuse, including alcohol. This self-consent only applies to the prevention, diagnosis, and treatment of those conditions specified in this subsection. The self-consent in the case of pregnancy, venereal disease, and drug and substance abuse also obliges the health professional, if he accepts the responsibility for treatment, to counsel the minor by himself or by referral to another health professional for counseling.

(d) a minor who needs emergency care, including transfusions, without which his health will be jeopardized. *If emergency care is rendered, the* parent, parents, or legal guardian shall be informed as soon as practical except *under the circumstances* mentioned in *this subsection (1).*

(2) A minor who has had a child may give effective consent to health service for his child.

(3) A minor may give consent for health care for his spouse if his spouse is unable to give consent by reason of physical or mental incapacity."

Section 24. Section 69-6106, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 367 1977

"69-6106. **Psychiatric or psychological counseling under urgent circumstances.** *When executed by a minor, the* consent to the providing of psychiatric or psychological counseling by a physician or psychologist licensed to practice in this state, under circumstances *when* the need for such counseling is urgent in the opinion of the physician or psychologist involved because of danger to the life, safety, or property of a minor or of other person or persons, and the consent of the spouse, parent, custodian, or guardian of the minor cannot be obtained within a reasonable time to offset the danger to life or safety, shall be *as* valid and binding as if the minor *had* achieved majority. *That* is, such minor *has* the same legal capacity to act and the same legal obligations with regard to the giving of such consent as a person of full legal age and capacity, and such consent *may* not be subject to later disaffirmance by reason of such minority. *The* consent of no other person or persons (including but not limited to a spouse, parent, custodian, or guardian) *is* necessary in order to authorize the psychiatric or psychological counseling *of* such minor. *However,* no parent *may* be obligated for the cost of such counseling without his consent."

Section 25. **Repealer.** Sections 10-207, 10-208, 10-209, and 10-210, R.C.M. 1947, are repealed.

Approved March 25, 1977.

CHAPTER NO. 101

AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO PROFESSIONAL AND OCCUPATIONAL LICENSING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-607, R.C.M. 1947, is amended to read as follows:

"66-607. **Deposit of moneys collected.** *All fees* shall be collected by the department and deposited in the earmarked revenue fund for the use of the state board of medical examiners, subject to 82A-1603(6)."

Section 2. Section 66-818, R.C.M. 1947, is amended to read as follows:

"66-818. **Exemptions.** Nothing in this act *prohibits* service in case of emergency or domestic administration without compensation; services by persons authorized under the laws of this state to practice dentistry, the healing *arts, or mortuary science; or* services by barbers lawfully engaged in the performance of the usual and ordinary duties of their vocation or in cutting women's hair."

Section 3. Section 66-1038, R.C.M. 1947, is amended to read as follows:

"66-1038. **Revocation or suspension of license — probation.** (1) The board may *make an investigation whenever* it *is* brought to its atten-

HeinOnline -- 1977 Vol. I 368 1977

tion that there is reason to suspect that a person having a license or certificate to practice medicine in this state:

(a) *is* mentally or physically unable to *safely* engage in the practice of medicine, has procured his license to practice medicine by fraud or misrepresentation or through mistake, or has been declared incompetent by a court of competent jurisdiction and thereafter has not been lawfully declared competent, or *has* a condition which impairs his intellect or judgment to the extent that it incapacitates him for the safe performance of professional duties;

(b) *has* been guilty of unprofessional conduct;

(c) *has* practiced medicine while his license was suspended or revoked;

(d) *has* had his license suspended or revoked by any licensing authority for reasons other than nonpayment of fees; or

(e) while under probation *has* violated its terms.

(2) The investigation *shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses, and may include* requiring the person to submit to a physical examination or a mental examination or both by a physician or physicians selected by the board, *if* it appears *to be* in the best interests of the public that this evaluation be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part of the examination, and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person at his last address of record with the department a specification of the charges against him, together with a written *notice* of the time and place of the hearing on *such charges*, advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for the hearing *may* not be less than 30 days from the date of mailing the notice.

(3) A person, including a member of the board, may file a sworn complaint with the department against a person having a license to practice medicine in this state charging him with the commission of any of the offenses set forth in 66-1037 or *with any of the offenses or conditions set forth in* subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint is filed, the department shall mail a copy to the person accused at his last address of record with the department, together with a written citation of the time and place of the hearing on it.

(4) At the hearing the board shall adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the *offenses or* conditions referred to in 66-1037 or subsection (1) of this section do not exist with respect to the person or if he is found not guilty, the board shall dismiss the charges or complaint. *If* the board *finds* that the *offenses or* conditions referred to in 66-1037 or in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) *revoke* his license;

HeinOnline -- 1977 Vol. I 369 1977

(b) *suspend* his right to practice for a period not exceeding 1 year;

(c) *suspend* its judgment of revocation on the terms and conditions to be determined by the board;

(d) *place* him on probation; or

(e) *take* any other action in relation to disciplining him as the board in its discretion considers proper.

(5) In a case of revocation, suspension, or probation, *the department* shall enter in its records the facts of the action and of subsequent action of the board with respect to it.

(6) On the expiration of the term of suspension, the licensee shall be reinstated by the board if he furnishes the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced medicine in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the holder is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced medicine in this state during the term of suspension, the board shall revoke the license at a hearing with notice and the procedure provided in subsection (1) of this section. The revocation is final and absolute.

(7) If a person holding a license to practice medicine under this *chapter* is by a final order or adjudication of a court of competent jurisdiction adjudged to be mentally incompetent or *seriously mentally ill* or addicted to the use of narcotics, his license may be suspended by the board. The suspension continues until the licensee is found or adjudged by the court to be restored to reason or cured or until he is discharged as restored to reason or cured and his professional competence has been proven to the satisfaction of the board."

Section 4. Section 66-1242, R.C.M. 1947, is amended to read as follows:

"**66-1242. Exemptions — limitations on authority conferred.** *(1)* No provisions of this law *may* be construed as prohibiting*:*

(a) gratuitous nursing by friends or members of the family*;*

(b) incidental care of the sick by domestic servants or persons primarily employed as housekeepers;

(c) nursing assistance in the case of an emergency;

(d) the practice of nursing by students enrolled in approved schools of nursing or approved courses *or* by the graduates of such schools or courses pending the results of the first licensing examination scheduled by the board following *their* graduation;

(e) the practice of nursing in this state by any legally qualified nurse of another state whose engagement requires *the nurse* to accompany and care for a patient temporarily residing in this state during the period of one such engagement not to exceed 6 months in length, provided *that* person does not represent or hold herself *or himself out* to be a nurse licensed to practice in this state;

HeinOnline -- 1977 Vol. I 370 1977

(f) the practice of any legally qualified nurse of another state who is employed by the United States government or any bureau, division, or agency thereof while in the discharge of *that nurse's* official duties;

(g) nursing or care of the sick, with or without compensation, when done in connection with the practice of the religious tenets of any well-established religion or denomination by adherents thereof.

(2) This act *may* not be construed as conferring any authority to practice medicine, surgery, or any combination thereof; to confer any authority to practice any of the healing arts prescribed by law to be practiced in the state of Montana; *or* to permit any person to undertake the treatment of disease by any of the methods employed in *those* arts, unless the licensee *has been* qualified under the applicable law or laws licensing the practice of *those professions* or healing *arts* in the state of Montana."

Section 5. Section 66-1243, R.C.M. 1947, is amended to read as follows:

"**66-1243. Violation of chapter — penalties.** *(1)* It *is* a misdemeanor for *a* person (including *a* corporation, association, or individual) to:

(a) sell or fraudulently obtain or furnish any nursing diploma, license, or record or aid or abet therein;

(b) practice nursing as defined by this *chapter* under cover of any diploma, license, or record illegally or fraudulently obtained or signed or issued unlawfully or under fraudulent representation;

(c) practice professional nursing unless duly licensed to do so;

(d) practice practical nursing unless duly licensed to do so;

(e) use in connection with *the person's* name any designation tending to imply that *the person* is a registered professional nurse or a licensed practical nurse unless duly licensed so to practice;

(f) practice nursing during the time *the person's* license *is* suspended, revoked, or on inactive status;

(g) conduct a school of nursing or a course unless the school or course has been approved by the board;

(h) otherwise violate any *provision* of this *chapter.*

(2) Such misdemeanor *is* punishable by a fine of not less than $100 for the first offense. Each subsequent offense *is* punishable by a fine of $300, by imprisonment of not more than 6 months in the county jail or by both such fine and imprisonment.

(3) The several district courts within their respective county jurisdictions *may* hear, try, and determine such misdemeanor and impose in full the punishment and fines prescribed. It *is* necessary to prove, in any prosecution for misdemeanor under this section, only a single act prohibited by law or a single holding out or an attempt. *It is not necessary to prove* a general course of conduct in order to constitute a violation."

HeinOnline -- 1977 Vol. I 371 1977

Section 6. Section 66-1406, R.C.M. 1947, is amended to read as follows:

"**66-1406. Certificates not to authorize the practice of major or operative surgery.** The *certificates* provided for in *this chapter do* not authorize the *holders* thereof to prescribe or use drugs in the practice of osteopathy or to perform major or operative surgery. *A* person holding a certificate under this *chapter* who *prescribes* or *uses* drugs in the practice of osteopathy or who *performs* major or operative surgery *is* guilty of a misdemeanor, provided that nothing in this *chapter may* be construed to prohibit any legalized osteopath in this state from practicing major or operative surgery after having passed a satisfactory examination in surgery before the *Montana* state board of medical examiners."

Section 7. Section 66-1413, R.C.M. 1947, is amended to read as follows:

"**66-1413. Osteopathy not practice of medicine.** The system, method, or science of treating diseases of the human body commonly known as osteopathy is not the practice of medicine or surgery within the meaning of *66-1011 through 66-1048* and *is* not subject to the provisions of *those* sections."

Section 8. Section 66-1516, R.C.M. 1947, is amended to read as follows:

"**66-1516. Physicians to report prescriptions issued to drug addicts.** *(1)* A physician duly licensed to practice medicine in Montana who prescribes for *or* dispenses, administers, or in any manner gives *opium or coca leaves or any of their derivatives, salts, preparations, or compounds* to a person known to him or believed by him to be an habitual user or a drug addict shall, within *48* hours, report *the name, address, physical and mental condition, and any necessary substantial information regarding such person* to the county attorney of the county in which *that* physician prescribes, dispenses, administers, or in any manner gives any of the drugs mentioned in this *section.* "An habitual user of drugs" or "drug addict" is defined as follows: *A* person who has needed or demanded the prescribing, dispensing, or administering or in any manner the giving of opium or coca leaves or any of their derivatives, salts, preparations, or compounds at more or less regular intervals for *30* consecutive days prior to the day *that* person applies to a physician for the prescribing, dispensing, administering, or the giving in any way of any such drugs or their derivatives. If a physician *prescribes* for *or dispenses, administers,* or in any manner *gives* any of the drugs mentioned in this *section* daily for more than *30* days to a *person, that* physician shall register with the county attorney the name of such person, together with a statement of the physical and mental condition of such person and a prognosis as to the probable future necessity for continuing *to prescribe for, dispense, administer,* or *give* such drugs to such *person,* and *the* prognosis shall include an estimate as to the length of time which, according to the judgment of the physician, will be required to remove the necessity of administering the aforesaid narcotic drugs to such *person. The* county attorney *shall,* upon receipt of such notice, immediately file a complaint against such habitual user of drugs or drug addict in the district court of his county.

HeinOnline -- 1977 Vol. I 372 1977

(2) A person violating any of the provisions of this section is guilty of a misdemeanor and upon conviction for each violation shall be sentenced to a term of imprisonment not to exceed 6 months in the county jail, a fine not to exceed $500, or both."

Section 9. Section 66-1522, R.C.M. 1947, is amended to read as follows:

"66-1522. Use of words "apothecary", "pharmacy", "chemist shops" for advertising. *(1)* It *is* unlawful for *a* person to carry on, conduct, or transact a retail business under a name which contains as a part thereof the words "pharmacy", "apothecary", or "chemist shop" or any *abbreviation, translation,* extension, or variation thereof or in any manner by advertisement circular or poster, sign, or otherwise *to* describe or refer to the place of business conducted by *that* person by such term, *abbreviation,* translation, extension, or variation unless the place so conducted is a pharmacy within the meaning of this *chapter* and duly licensed as such and in *the* charge of a registered pharmacist."

Section 10. Section 66-1525, R.C.M. 1947, is amended to read as follows:

"66-1525. Exemptions. *Subject only to 66-1514 and 66-1515:*

(1) nothing in this *chapter subjects* a person duly licensed in this state to practice medicine, dentistry, or veterinary medicine to inspection by the board *or prevents* such person from compounding or using drugs, medicines, chemicals, or poisons in his practice *or prevents* one duly licensed to practice medicine from furnishing to a patient such drugs, medicines, chemicals, or poisons as he *considers* proper in the treatment of such patient;

(2) nothing herein *prevents* the sale of drugs, medicines, chemicals, or poisons at wholesale;

(3) nothing herein *prevents* the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes or in the arts *or changes* any of the provisions of this code relating to the sale of insecticides and fungicides, and nothing in this *chapter prevents* the sale of common household preparations and other drugs, provided stores selling *them* are licensed under the terms of this *chapter;*

(4) nothing herein *applies* to or *may* interfere with manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature for use for nonmedicinal purposes."

Section 11. Section 66-1829.1, R.C.M. 1947, is amended to read as follows:

"66-1829.1. Corporations composed of certified public accountants — registration. *(1)* A professional service corporation organized for the practice of public accounting may register with the board as a corporation of certified public accountants, provided it meets the following requirements:

HeinOnline -- 1977 Vol. I 373 1977

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with *this chapter* or the *rules* of the board, *but* the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

(b) At least one shareholder thereof must be a certified public accountant of this state in good standing and must hold a license issued under 66-1833 which is in effect.

(c) Each shareholder of the corporation must be a certified public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person *may* have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public *accountants* of some state in good standing.

(d) Each shareholder of the corporation personally engaged within this state in the practice of public accounting as a member thereof must be a certified public accountant of this state in good standing and must hold a license issued under 66-1833 which is in effect.

(e) Each staff member who is employed within this state and who is certified under 66-1819 or registered under 66-1820 must also hold a license issued under 66-1833 which is in effect.

(f) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "certified public accountant" or the abbreviation "CPA's" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered."

Section 12. Section 66-1831.1, R.C.M. 1947, is amended to read as follows:

"66-1831.1. Corporations composed of public accountants — registration thereof. *(1)* A professional service corporation organized for the practice of public accounting may register with the board as a corporation of public accountants, provided it meets the following requirements:

(a) The sole purpose and business of the corporation must be to furnish to the public services not inconsistent with *this chapter* or the *rules* of the board, *but* the corporation may invest its funds in a manner not incompatible with the practice of public accounting.

HeinOnline -- 1977 Vol. I 374 1977

(b) At least one shareholder thereof must be a certified public accountant or public accountant of this state in good standing and must hold a license issued under 66-1833 which is in effect.

(c) Each shareholder of the corporation must be a certified public accountant or public accountant of some state in good standing and must be principally employed by the corporation or actively engaged in its business. No other person *may* have any interest in the stock of the corporation. The principal of the corporation and any officer or director having authority over the practice of public accounting by the corporation must be certified public *accountants* or public *accountants* of some state in good standing.

(d) Each shareholder of the corporation personally engaged within this state in *the* practice of public accounting as a member thereof must be a certified public accountant or public accountant of this state in good standing and must hold a license issued under 66-1833 which is in effect.

(e) Each staff member who is employed within this state and who is certified under 66-1819 or registered under 66-1820 must also hold a license issued under 66-1833 which is in effect.

(f) In order to facilitate compliance with the provisions of this section relating to the ownership of stock, there must be a written agreement binding the corporation or the qualified shareholders to purchase any shares offered for sale by, or not under the ownership or effective control of, a qualified shareholder and binding any shareholder not a qualified shareholder to sell such shares to the corporation or the qualified shareholders. The agreement must be noticed on each certificate of corporate stock.

(2) Application for such registration must be made upon the affidavit of a shareholder who holds a permit to practice in this state as a certified public accountant or public accountant. The board shall determine whether the applicant is eligible for registration. A corporation which is so registered may use the words "public accountant" or the abbreviation "PA's" in connection with its corporation name. Notification shall be given the board within 1 month after the admission or withdrawal of a shareholder of a corporation so registered."

Section 13. Section 66-1832, R.C.M. 1947, is amended to read as follows:

"**66-1832. Registration of offices.** Each office established or maintained in this state for the practice of public accounting in this state by a certified public accountant or a partnership or corporation of certified public accountants or by a licensed public accountant or a partnership or corporation of licensed public accountants or by one registered under 66-1828 shall be registered annually with the department. A fee may not be charged for this registration. The principals of sole proprietorships and staff employees who are employed in this state and who are holders of certificates as certified public accountants must also hold *licenses* issued under 66-1833 which *are* in effect. Partnerships and corporations must be registered under 66-1829, *66-1829.1,* 66-1831, *or 66-1831.1,* whichever is applicable, and foreign accountants under the provisions of 66-1828."

HeinOnline -- 1977 Vol. I 375 1977

Section 14. Section 66-1838, R.C.M. 1947, is amended to read as follows:

"**66-1838. Acts declared unlawful.** *(1)* No person *may* assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such person is a certified public accountant unless such person has received a certificate as a certified public accountant under 66-1819, holds a license issued under 66-1833 which is not revoked or suspended, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 66-1832. *However,* a foreign accountant who has registered under the provisions of 66-1828 and who holds a current license issued under 66-1833 may use the title under which he is generally known in his country followed by the name of the country from which he received his certificate, license, or degree.

(2) No partnership or corporation shall assume or use the title or designation "certified public accountant" or the abbreviation "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of certified public accountants unless it is registered under 66-1829 *or 66-1829.1, whichever is applicable,* and all of its offices in this state for the practice of public accounting are maintained and registered as required under 66-1832.

(3) No person *may* assume or use the title or designation "licensed public accountant", "public accountant", or any other title, designation, words, letters, *abbreviation,* sign, card, or device tending to indicate that such person is a public accountant unless such person is registered as a licensed public accountant under 66-1820, holds a current license issued under 66-1833, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 66-1832 or unless such person has received a certificate as a certified public accountant under 66-1819, holds a current license issued under 66-1833, and all of such person's offices in this state for the practice of public accounting are maintained and registered as required under 66-1832.

(4) No partnership or corporation *may* assume or use the title or designation "licensed public *accountant*", "public accountant", or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that such partnership or corporation is composed of public accountants unless it is registered under 66-1831, *66-1831.1,* 66-1829, *or 66-1829.1, whichever is applicable,* and all of its offices in this state for the practice of public accounting are maintained and registered as required under 66-1832.

(5) No person, corporation, or partnership *may* assume or use the title or designation "certified accountant", "chartered accountant", "enrolled accountant", "licensed accountant", "registered *accountants*", or any other title or designation likely to be confused with "certified public accountant", "licensed public accountant", "public accountant", or any of

HeinOnline -- 1977 Vol. I 376 1977

the abbreviations "CA", "EA", "RA", or "LA" or similar abbreviations likely to be confused with "CPA". *However,* anyone who holds a current license issued under 66-1833 and all of whose offices in the state for the practice of public accounting are maintained and registered as required under 66-1832 may hold himself out to the public as an "accountant" or "auditor" as provided in *subsections (1), (2), (3),* and *(4);* and a foreign accountant registered under 66-1828 who holds a current license issued under 66-1833 and all of whose offices in this state for the practice of public accounting are maintained and registered as required under 66-1832 may use the title under which he is generally known in this country followed by the name of the country from which he received his certificate, license, or degree.

(6) No person *may* sign or affix his name or any trade or assumed name used by him in his profession or business, with any wording indicating that he is an accountant or auditor or with any wording indicating that he has expert knowledge in accounting or auditing, to any accounting or financial statement or to any opinion on, report on, or certificate to any accounting or financial statement unless he holds a current license issued under 66-1833 and all of his offices in this state for the practice of public accounting are maintained and registered under 66-1832. *However,* the provisions of this subsection *do* not prohibit any officer, employee, partner, or principal *of* any organization from affixing his signature to any statement or report in reference to the financial affairs of *that* organization with any wording designating the position, title, or office which he holds in *that* organization, nor *do* the provisions of this subsection prohibit any act of a public official or public employee in the performance of his duties as such.

(7) No person *may* sign or affix a partnership or corporation name, with any wording indicating that it is a partnership or corporation composed of accountants or auditors or persons having expert knowledge in accounting or auditing, to any accounting or financial statement or to any report on or certificate to any accounting or financial statement unless the partnership or corporation is registered under *66-1829, 66-1829.1, 66-1831, or 66-1831.1* and all of its offices in this state for the practice of public accounting are maintained and registered as required under 66-1832.

(8) No person *may* assume or use the title or designation "certified public accountant" or "public accountant" in conjunction with names indicating or implying that there is a partnership or corporation or in conjunction with the designation "and Company" or "and Co." or a similar designation if, in any such case, there is in fact no bona fide partnership or corporation registered under 66-1829, *66-1829.1,* 66-1831, *or 66-1831.1. However,* a sole proprietor or partnership lawfully using such title or designation in conjunction with such names or designation on *July 1, 1969,* may continue to do so if he or it otherwise complies with the provisions of this *chapter,* and further, it *is* lawful for a sole proprietor to continue the use of the deceased's name in connection with his business for a reasonable period of time after the death of a former partner."

Section 15. Section 66-1933, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 377 1977

"66-1933. **Bond of brokers and salesmen.** No license may be issued or renewed until the applicant for a broker's license or salesman's license has filed a bond with the department in the sum of $10,000 executed by a surety company authorized to do business in this state in a form approved by the board and conditioned that the applicant, if and when licensed, shall conduct his business and himself in accordance with this *chapter* and shall pay, to the extent of $10,000, judgments recovered against him for loss or damage to a person arising in the course of the applicant's practice as a real estate broker or salesman. Bonds given by licensees under this *chapter*, after approval, shall be filed and held in the office of the department. If for *any* reason the bond of *a* broker or salesman is canceled or voided, the license of the broker or salesman is automatically suspended until the broker or salesman is again fully bonded and the bond has been approved by the board. If the suspension is not terminated by rebonding and approval within 30 days from the date of suspension, the license of the broker or salesman is automatically revoked."

Section 16. Section 66-1946, R.C.M. 1947, is amended to read as follows:

"66-1946. **No effect on 94-6-307 or 94-6-308.** Nothing contained herein *may* be construed to amend *or* modify *94-6-307 or 94-6-308.* This *chapter* shall be construed to be supplemental to *94-6-307 and 94-6-308.*"

Section 17. Section 66-2104(2), R.C.M. 1947, is amended to read as follows:

"66-2104(2). **Compensation of members of board — disposition of funds.** (1) Each member of the board shall receive a compensation of *$25* per day for actual services while attending meetings or otherwise engaged in business connected with the board and shall receive travel expense reimbursement as provided for in 59-538, 59-539, and 59-801.

(2) Money received under this *chapter* shall be deposited in the earmarked revenue fund for the use of the board, subject to 82A-1603(6)."

Section 18. Section 66-2210, R.C.M. 1947, is amended to read as follows:

"66-2210. **Veterinary medicine — denial, suspension, and revocation of license and certificate.** (1) The board may, *with respect to the practice of veterinary medicine,* either refuse to grant a license or refuse to grant a certificate of registration or suspend or revoke a license and certificate of registration on any of the following grounds:

(a) *fraud* or deception in procuring the license;

(b) publication or use of an untruthful or improper statement or representation with the view of deceiving the public or a client or customer in connection with the practice of veterinary medicine;

(c) conviction of a felony as shown by a certified copy of the record of the court of conviction, *subject to Title 66, chapter 40;*

(d) *habitual* intemperance in the use of intoxicating liquors or habitual

HeinOnline -- 1977 Vol. I 378 1977

addiction to the use of morphine, cocaine, or other habit-forming drugs or, *subject to Title 66, chapter 40,* conviction of a violation of a federal or state law relating to narcotic drugs;

(e) *immoral,* unprofessional, or dishonorable conduct manifestly disqualifying the licensee from practicing veterinary medicine;

(f) *gross* malpractice, including failure to furnish to the board on written application by it a report or information relating thereto;

(g) employment of unlicensed persons to perform work which under this chapter can lawfully be done only by persons licensed to practice veterinary medicine;

(h) *fraud* or dishonest conduct in applying or reporting diagnostic biological tests or in issuing health certificates;

(i) *failure* to keep one's premises in a clean and sanitary condition;

(j) *violation* of this act or of the rules or orders of the board;

(k) *revocation* by proper authorities for any of the above reasons of a license issued by another state.

(2) The board may *not* refuse to issue a license or certificate of registration *or* suspend or revoke a license and certificate of registration for any cause, unless the person accused has been given notice and a public hearing by the board."

Section 19. Section 66-2212, R.C.M. 1947, is amended to read as follows:

"**66-2212. Practice in violation of law — penalties.** *A* person practicing veterinary medicine or *veterinary technology* within this state, as defined in this chapter, without first having obtained a license to practice and being registered as required by this chapter or after his license to practice has been suspended or revoked or contrary to the provisions of this chapter in any manner *is* guilty of a misdemeanor for each violation of the provisions of this chapter or for each act relating to the practice of veterinary medicine *or veterinary technology* in this state and upon conviction shall be punished by a fine of not less than $200 *or* more than $500, or by imprisonment in the county jail for not less than 30 days *or* more than 6 months, or by both *such* fine and imprisonment. Any person convicted a second time for any violation of this chapter shall be punished by both such fine and imprisonment. The district court *has* jurisdiction of all prosecutions brought hereunder."

Section 20. Section 66-2214, R.C.M. 1947, is amended to read as follows:

"**66-2214. Veterinary technology — denial, suspension, and revocation of licenses or certificates.** The board may, *with respect to the practice of veterinary technology,* deny or suspend or revoke any license or certificate of registration upon the grounds that the applicant or veterinary technician is guilty of:

(1) soliciting patients for any practitioner of the healing arts;

HeinOnline -- 1977 Vol. I 379 1977

(2) soliciting or receiving any form of compensation from any person other than his registered employer for performing as a veterinary technician;

(3) willfully or negligently divulging a professional confidence or discussing a veterinarian's diagnosis or treatment without the express permission of the veterinarian;

(4) any offense punishable by incarceration in a state penitentiary or federal prison. A copy of the record of conviction, certified to by the clerk of the court entering the conviction, *is* conclusive evidence, provided that at the conclusion of state supervision imposed as a consequence of such conviction the board *may* not consider the conviction upon reapplication for a license or certificate.

(5) the habitual or excessive use of intoxicants or drugs;

(6) fraud or misrepresentation in applying for or procuring a certificate of qualification to perform as a veterinary technician or in applying for or procuring an annual registration;

(7) impersonating another person registered as a veterinary technician or allowing any person to use his certificate of qualification or registration;

(8) aiding or abetting the practice of veterinary medicine by a person not licensed by the board;

(9) gross negligence in the performance of duties, tasks, or functions assigned to him by a licensed veterinarian; *or*

(10) manifest incapacity or incompetence to perform as a veterinary technician."

Section 21. Section 66-2358, R.C.M. 1947, is amended to read as follows:

"**66-2358. Application for registration — fees.** (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five references of whom three or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

(2) The registration fee for professional engineers is $50, $30 of which shall accompany application, the remaining $20 to be paid on issuance of a certificate. *Whenever* a certificate of qualification issued by the *committee on national engineering certification of the national council of engineering examiners* is accepted as evidence of qualification, the total fee for registration as professional engineer is $30.

(3) The fee for engineer-in-training is $20, which shall accompany the application and *includes* the cost of examination and issuance of a certificate. *Whenever* certification as an engineer-in-training by another state or a territory or possession of the United States or country is accepted

HeinOnline -- 1977 Vol. I 380 1977

as evidence of qualification, the fee for engineer-in-training is $10. *Whenever* registration as a professional engineer is completed by an engineer-in-training, an additional fee of $25 shall be paid before issuance of a certificate as a professional engineer.

(4) The registration fee for land surveyors is $50, which shall accompany the application. The fee for registration as both a professional engineer and land surveyor is $70, $50 of which shall accompany the application, the remaining $20 to be paid on issuance of a certificate.

(5) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee."

Section 22. Section 66-2402, R.C.M. 1947, is amended to read as follows:

"**66-2402. Application for state license — qualifications of licensees.** (1) A person desiring to work at the business of plumbing in Montana shall file his application for a license with the department and shall at the time and place designated by the board be examined as to his qualifications for working in this business.

(2) The following requirements shall be met by applicants for a *journeyman plumber's* license:

(a) a specific record of 4 *years'* experience in the field of plumbing of a character satisfactory to the board. This experience requirement may be fulfilled by working 4 years in a major phase of the plumbing business or by completing an apprenticeship program meeting the standards set by the department of labor and industry or the United States department of labor, bureau of apprenticeship, or credit towards this experience requirement may be given for time spent attending an accredited trade or other *school* specializing in training of value in the field of plumbing and approved by the board.

(b) satisfactory completion of an examination conducted by the department, subject to 82A-1603(4), testing the applicant's knowledge of techniques and methods employed in the field of plumbing and establishing by practical demonstration his competence in the special skills required in the field of plumbing.

(3) a licensed journeyman plumber may perform work only in the employment of a licensed master plumber unless otherwise permitted by rule of the board.

(4) The following requirements shall be met by an applicant for a master plumbers' license:

(a) evidence of 4 *years'* experience as a journeyman plumber in the field of plumbing of a character satisfactory to the board;

(b) evidence of 3 *years'* experience in supervisory capacities in the field of plumbing, which may run concurrently with the requirement in *subsection (4)(a);*

(c) satisfactory completion of an examination for master plumbers testing his knowledge of the field of plumbing and demonstrating his skill and ability in the field of plumbing.

HeinOnline -- 1977 Vol. I 381 1977

(5) A master plumber is not authorized to perform the work of a journeyman plumber unless he is also licensed as a journeyman plumber. A licensed master plumber may employ *only* apprentice *plumbers registered with the state department of labor and industry* and only journeyman plumbers who are licensed by the state of Montana. *A master plumber is* responsible for assuring that all work performed by such employees *is* in compliance with the state plumbing code."

Section 23. Section 66-2411, R.C.M. 1947, is amended to read as follows:

"66-2411. Penalty for violations — exceptions from chapter. *A* person *who works* at the field of plumbing or *maintains* or *conducts* a plumbing business or *an* individual who connects or disconnects plumbing from a public water or sewer system in violation of any provisions of this *chapter* or at a time when he is not exempt from the provisions of this *chapter* pursuant to the provisions of a duly enacted and subsisting ordinance of *a* city or town *is* guilty of a misdemeanor and, upon conviction thereof in any court of competent jurisdiction, shall be punished by a fine of not less than *$10* and not more than *$100* for each separate offense. *However,* this *chapter* shall not be construed to apply to or affect plumbing or pipefitting as indicated in the 66-2401(2) and *66-2426* exceptions."

Section 24. Section 66-2502, R.C.M. 1947, is amended to read as follows:

"66-2502. Qualifications of applicants for license. To be eligible for a license as a physical therapist, an applicant must:

(1) *be* of good moral character;

(2) *have* graduated from a school of physical therapy approved by the council of medical education and hospitals of the American *medical association*;

(3) *either:*

(a) pass to the satisfaction of the board an examination to determine his fitness for practice as a physical therapist; or

(b) be entitled to a license without examination under 66-2505."

Section 25. Section 66-2509, R.C.M. 1947, is amended to read as follows:

"66-2509. Refusal to issue or renew license — grounds. The board, after due notice and hearing, may refuse to license any applicant and may refuse to renew the license of any licensed person:

(1) *who* is habitually intoxicated or who is addicted to the use of narcotic drugs;

(2) *who* has been convicted of violating any state or federal narcotic law, *subject to Title 66, chapter 40*;

(3) *who* is, in the judgment of the board, guilty of immoral or unprofessional conduct;

HeinOnline -- 1977 Vol. I 382 1977

(4) *who* has been convicted of any crime involving moral turpitude, *subject to Title 66, chapter 40;*

(5) *who* is guilty, in the judgment of the board, of gross negligence in his practice as a physical therapist;

(6) *who* has obtained or attempted to obtain registration by fraud or material misrepresentation;

(7) *who* has been declared *to be seriously mentally ill* by a court of competent jurisdiction and has not thereafter been *released from treatment;*

(8) *who* has treated or undertaken to treat ailments of human beings otherwise than by physical therapy or who has undertaken to practice physical therapy independent of prescription from a person who holds an unlimited license to practice medicine and surgery in Montana and other states and territories."

Section 26. There is a new section that reads as follows:

Terminology changed. Unless inconsistent with the clear intent of the context in which such terms appear, any reference in 66-2901, to the terms "masseur" or "masseuse" means "massage therapist". Any reference in 66-2902 through 66-2914, to the term "masseur" means "massage therapist" and any reference to "massage" means "massage therapy".

Section 27. Section 66-3017, R.C.M. 1947, is amended to read as follows:

"**66-3017. Revocation or suspension for cause.** *A* person registered under this *chapter* may have his license revoked or suspended for a fixed period to be determined by the board for any of the following causes:

(1) *being* convicted of a felony, *subject to Title 66, chapter 40.* The record of the conviction or a certified copy from the clerk of the court where the conviction occurred or *certification* by the judge of the court *is conclusive* evidence *of the conviction; except* that *if* the person has been pardoned by a governor or the president of the United States, *the conviction does not constitute grounds for revocation or suspension.*

(2) securing a license under this *chapter* through fraud or deceit or false statements;

(3) *for* the personal use of a false name or alias in the practice of his profession, with fraudulent intent;

(4) *for* violating any of the provisions of this *chapter;*

(5) *for* obtaining any fee or making any sale by fraud or misrepresentation;

(6) *knowingly* employing directly or indirectly any suspended or unlicensed person to perform any work covered by this *chapter;*

(7) *using* or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand,

HeinOnline -- 1977 Vol. I 383 1977

insignia, or any other representation however disseminated or published which is improbable, misleading, deceptive, or untruthful;

(8) *representing* that the services or advice of a person licensed to practice medicine or possessing certification as an audiologist will be used or made available in the selection, fitting, adjustment, maintenance, or repair of hearing aids when that is not true or using the terms "doctor", "clinic", "state registered", or other like words, abbreviations, or symbols which tend to connote the medical profession when that use is not accurate. The term "hearing center" shall be discontinued in accordance with the code of ethics of the *national hearing aid society.*

(9) *permitting* another to use his license or certificate;

(10) *defaming* competitors by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations or falsely *disparaging* the products of competitors in any respect or their business methods, selling prices, values, credit terms, policies, or services;

(11) *obtaining* information concerning the business of a competitor by bribery of an employee or agent of such competitor, by false or misleading statements or representations, by the impersonation of one in authority, or by any other *unlawful* means;

(12) directly or indirectly *giving* or *offering* to give or *permitting* or *causing* to be given money or anything of value to any person who advises another in a professional capacity as an inducement to influence others to purchase or contract to purchase products sold or offered for sale by a hearing aid dispenser or *influencing* persons to refrain from dealing in the products of competitors;

(13) *unethical* conduct or gross incompetence or negligence in the performance of his duties, including repeated failure to make indicated medical referrals of his customers;

(14) *selling* a hearing aid to a person who has not been given tests utilizing appropriate established procedures and instrumentation in fitting of hearing aids, except in cases of selling replacement hearing aids."

Section 28. Section 66-3022, R.C.M. 1947, is amended to read as follows:

"66-3022. Licensee entitled to disciplinary hearing. No license issued under this *chapter* may be suspended, revoked, denied, or renewal denied without notice and *opportunity for* a hearing."

Section 29. Section 66-3319, R.C.M. 1947, is amended to read as follows:

"66-3319. Confidentiality of information. (1) *A* licensee or officer, director, partner, or manager of a licensee may divulge to any law enforcement officer or *county* attorney or his representative any information he may acquire as to any criminal offense, but he *may* not divulge to any other person, except as required by law, any information acquired by him except at the direction of the employer or client for whom the information was obtained.

HeinOnline -- 1977 Vol. I 384 1977

(2) No licensee or officer, director, partner, manager, or employee of a licensee *may* knowingly make any false report to his employer or client for whom information was being obtained.

(3) No written report *may* be submitted to a client except by the licensee, qualifying manager, or a person authorized by either of them, and *the* person submitting the report shall exercise diligence in ascertaining whether or not the facts and information in *the* report are true and correct.

(4) No licensee or officer, director, partner, manager, or employee of *a* private investigator *may* use a badge in connection with the official activities of the licensee's business.

(5) No licensee or officer, director, partner, manager, or employee of a licensee *may* use a title, wear a uniform, use an identification card, or make any statement with the intent to give an impression that he is connected in any way with the federal government, a state government, or any political subdivision of a state government.

(6) No licensee or officer, director, partner, manager, or employee of a licensee *may* enter any private building or portion thereof without the consent of the owner or of the person in legal possession thereof.

(7) No private patrol licensee or officer, director, partner, manager, or employee of a private patrol licensee *may* use a badge except while engaged in guard or patrol work and while wearing a uniform."

Section 30. Section 66-3411, R.C.M. 1947, is amended to read as follows:

"66-3411. Refusal to issue, suspension, revocation of license — probation — notice — hearing — reinstatement. (1) The board may refuse to issue or may suspend or revoke a license issued pursuant to this *chapter* for any one or any combination of the following causes:

(a) conviction of a felony or conviction of a violation of any state or federal law regulating the possession, distribution, or use of any controlled substance as shown by a certified copy of record of the court, *subject to Title 66, chapter 40*;

(b) being adjudicated incompetent or *seriously mentally ill*;

(c) sustaining a physical or mental disability which renders further practice dangerous;

(d) habitual *drunkenness* or habitual addiction to the use of a controlled substance;

(e) gross malpractice;

(f) engaging in any dishonorable, unethical, or unprofessional conduct which may deceive, defraud, or harm the public or which is unbecoming a person licensed to practice under this *chapter*;

(g) obtaining or any attempt to obtain a license or practice in the profession for money or any other thing of value by fraudulent misrepresentations;

HeinOnline -- 1977 Vol. I 385 1977

(h) advertising by means of knowingly false or deceptive statement;

(i) advertising, practicing, or attempting to practice under a name other than one's own;

(j) using any false, fraudulent, or forged statement or document or engaging in any fraudulent, deceitful, dishonest, or immoral practice in connection with the licensing requirements of this *chapter*; or

(k) violating or attempting to violate or assisting or abetting the violation of or conspiring to violate any provision of this *chapter*.

(2) Any person, including any member of the board, may file a sworn complaint with the secretary of the board against any person having a license to practice acupuncture in this state charging him with the commission of any of the offenses set forth in subsection (1) of this section, which complaint shall set forth a specification of the charges. When *the* complaint is filed, the secretary shall mail a copy to the person so accused at his last address of record with the board, together with a written *notice* of the time and place of a hearing thereon advising him that he may be present in person and by counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing *may not* be less than 30 days from the date of mailing the notice. The contested case procedures of the Montana Administrative Procedure Act apply to the notice and hearing *required by this section*, except that neither common law nor statutory rules of evidence need apply, but the board may make rules designed to exclude repetitive, redundant, or irrelevant testimony.

(3) At the time and place fixed for a hearing before the board as provided in subsection (2) of this section or at any time and place to which the matter may be continued, the board shall receive evidence upon the subject under consideration and shall accord the person against whom charges are preferred a full and fair opportunity to be heard in his defense and shall after consideration adopt a resolution finding him guilty or not guilty of the matters charged. If the board finds that the conditions referred to in subsection (1) of this section do not exist with reference to the person or if he *is* found not guilty, the board shall dismiss the charges or complaint, but if the board *finds* that the conditions referred to in subsection (1) of this section do exist and the person is found guilty, the board shall:

(a) revoke his license;

(b) suspend his right to practice for a period not exceeding 1 year;

(c) suspend its judgment of revocation upon the terms and conditions to be determined by the board;

(d) place him on probation; or

(e) take such other action in relation to disciplining him as the board in its discretion *considers* proper.

(4) The secretary of the board in all cases of revocation, suspension, or probation shall enter in its records the facts of the action and of any subsequent action of the board with respect thereto.

HeinOnline -- 1977 Vol. I 386 1977

(5) Upon the expiration of the term of suspension, the licensee shall be reinstated by the board, provided the licensee *furnishes* the board with evidence that he is then of good moral character and conduct and restored to good health and that he has not practiced acupuncture in this state during the term of suspension. If the evidence fails to establish to the satisfaction of the board that the licensee is then of good moral character and conduct or restored to good health or if the evidence shows he has practiced acupuncture in this state during the term of suspension, the board shall revoke the license at a hearing, the notice and procedure of which shall be as *herein* provided, which revocation *is* final and absolute."

Section 31. Section 66-3505, R.C.M. 1947, is amended to read as follows:

"**66-3505. Deposit of fees.** Money paid for license and equipment fees under this *chapter* shall be deposited in *the* earmarked revenue *fund* for the use of the board, subject to 82A-1603(6)."

Section 32. Section 66-3607, R.C.M. 1947, is amended to read as follows:

"**66-3607. Authority to create rules — penalties.** (1) The board may adopt rules in accordance with the Montana Administrative Procedure Act to implement this *chapter* and to properly regulate this profession.

(2) *Violation* of this *chapter, or of* the rules adopted under it *is a misdemeanor punishable by a fine, imprisonment, or by both fine and imprisonment.*"

Section 33. Section 66-3809, R.C.M. 1947, is amended to read as follows:

"**66-3809. Registrant status.** (1) *Certificates* of licensing *may* be issued to natural persons only, but nothing contained in this *chapter* prevents a duly licensed landscape architect from performing his services for a corporation, firm, partnership, or association.

(2) Each partner in a partnership of landscape architects shall be licensed to practice landscape architecture. Subject to this requirement, a partnership of landscape architects may use a partnership name if *the* name consists of:

(a) the names of two or more landscape architects*; or*

(b) the names of one or more landscape architects and one or more professional engineers, architects, or planners.

(3) *A* person applying to the licensing official of any county or city for a business license to practice landscape architecture shall at the time of application exhibit to *the* licensing official satisfactory evidence under the seal of the board and the hand of its secretary that the applicant possesses a current registration with the board. The license may not be granted until such evidence is presented."

Section 34. Section 66-3906, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 387 1977

"**66-3906. Qualifications and requirements for licensure.** *(1)* To be eligible for licensing by the board as a speech pathologist or audiologist, the applicant must:

(a) meet the current academic, supervised clinical practicum, and post classroom sponsored employment requirements of the ASHA;

(b) pass an examination approved by the board.

(2) The board shall determine the subject and scope of the examination. Written examinations may be supplemented by such oral examinations as the board *determines.* An applicant who fails his examination may be reexamined at a subsequent examination upon payment of another *examination* fee. An applicant who fails two successive examinations may apply for reexamination after *2* years of additional professional experience or training."

Section 35. Section 93-2002, R.C.M. 1947, is amended to read as follows:

"**93-2002. Qualifications, examination, and admission.** *Each* applicant for admission as an attorney and counselor must produce satisfactory testimonials of good moral character and a certificate of one or more reputable *counselors-at-law* that he has been engaged in the study of law for *2* successive years prior to the making of such application and undergo a strict examination as to his qualifications by any one or more of the justices of the supreme court. The form and manner of the examination shall be as the justices may, from time to time, determine. *However,* a diploma from the *university* of Montana *law school* at Missoula or *other* evidence of having completed the *3-year* course in law of *that school entitles* the holder to a license to practice law in all the courts of this state, subject to the right of the chief justice of the supreme court to order an examination as in ordinary cases of applicants without such diploma or evidence."

Section 36. **Repealer.** Sections 66-1510, 66-1517, 66-1518, 66-1519, 66-1523, 66-1524, 66-2104(1), 66-2120, and 93-2029 through 93-2037, R.C.M. 1947, are repealed.

Approved March 25, 1977.

CHAPTER NO. 102

AN ACT AMENDING SECTION 84-4906, R.C.M. 1947, TO ALLOW A DEDUCTION FOR CHILD AND DEPENDENT CARE EXPENSES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4906, R.C.M. 1947, is amended to read as follows:

"**84-4906. Deductions allowed in computing net income.** In computing net income, there shall be allowed as deductions:

HeinOnline -- 1977 Vol. I 388 1977

(1) the items referred to in sections 161 and 211 of the Internal Revenue Code of 1954 or as sections 161 and 211 shall be labeled or amended, except that state income tax paid shall not be deductible and also subject to the exceptions provided in 84-4909, relating to items not deductible;

(2) federal income tax paid within the taxable year;

(3) child and dependent care expenses determined in accordance with the provisions of section 214 of the Internal Revenue Code of 1954 that were in effect for the taxable year that began January 1, 1974."

Section 2. **Effective date.** This act is effective upon passage and approval, and the amendment provided for shall apply to taxable years beginning after December 31, 1975.

Approved March 25, 1977.

CHAPTER NO. 103

AN ACT TO MAKE CONSISTENT THE STATUTES ON THE COMPENSATION AND EXPENSES PAID TO LEGISLATORS; AMENDING SECTIONS 43-218, 43-310, 43-310.1, 43-1112, 69-6510, 70-704, 79-2305, AND 82-4203.3; REPEALING SECTIONS 43-311 AND 43-714; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 43-218, R.C.M. 1947, is amended to read as follows:

"**43-218. Presession caucus — compensation and expenses.** *(1)* As soon after the official canvass as possible, but not later than December 1 of each year following an election when members of the legislature are elected, the majority and minority parties of each house of the legislature shall hold a *presession* caucus for holdover senators, senators-elect, and representatives-elect. The purpose of the caucus of each party of each house is to elect officers, appoint committees, and hire any necessary employees.

(2) Members of the legislature attending the presession caucus are entitled to receive compensation and expenses as provided in 43-310.1."

Section 2. There is a new R.C.M. section numbered 43-218.1 that reads as follows:

43-218.1. Presession activity of house appropriations and senate finance and claims committees — compensation and expenses. (1) Members of the house appropriations committee and of the senate finance and claims committee named at the presession caucus may begin reviewing requests for appropriations immediately and may visit state agencies and institutions to discuss requests.

(2) While engaged in presession committee business, members of these

committees are entitled to receive compensation and expenses as provided in 43-310.1.

Section 3. Section 43-310, R.C.M. 1947, is amended to read as follows:

"**43-310. Compensation and expenses for members while in session.** *(1) Legislators are entitled to a salary commensurate to that of the daily rate of a grade 8, step 1 classified state employee, for those days during which the legislature is in session. The president of the senate and the speaker of the house shall receive an additional $5 a day in salary for those days during which the legislature is in session.*

(2) Legislators are entitled to $40 a day, 7 days a week, during a legislative session, as reimbursement for expenses incurred in attending a session. Expense payments shall stop when the legislature recesses for more than 3 days and shall resume when the legislature reconvenes.

(3) Legislators are entitled to a mileage allowance as provided in 59-801 for each mile of travel:

(a) to the place of the holding of the session and to return to their place of residence at the conclusion of the session; and

(b) for one additional round trip to their place of residence during each session.

(4) Legislators are not entitled to any additional mileage allowance under (3)(a) or (3)(b) for a special session if it is convened within 7 days of a regular session."

Section 4. Section 43-310.1, R.C.M. 1947, is amended to read as follows:

"**43-310.1. Compensation and expenses when legislature not in session.** *When the legislature is not in session, members of the legislative council, legislative subcommittees, and select and interim committees, while engaged in committee business authorized by the legislative council, are entitled to:*

(1) a mileage allowance as provided in 59-801;

(2) expenses as provided in 59-538 and 59-539; and

(3) a salary equal to ¼ the daily rate of a grade 8, step 1 classified state employee, for every 6 hours or fraction thereof spent away from home on committee business."

Section 5. Section 43-1112, R.C.M. 1947, is amended to read as follows:

"**43-1112. Appointment and term of members.** *(1)* The legislative finance committee consists of:

(a) four members of the senate finance and claims committee appointed by the chairman;

(b) two members of the senate appointed *at-large* by the committee on committees;

HeinOnline -- 1977 Vol. I 390 1977

(c) four members of the house of representatives appropriation committee appointed by the chairman; and

(d) two members of the house appointed *at-large* by the speaker.

(2) These members shall be appointed before the end of *each legislative* session. No more than three members of each house, two committee members and one *at-large* member, may be from the same political party.

(3) If a vacancy *occurs* on the committee when the legislature is not in session, *the remaining members* shall *select* a member of the appropriate political party and appropriate committee, as provided in this section, to complete the unexpired term.

(4) Appointments are for 2 years, and a member of the committee shall serve until his term of office as a legislator ends or until his successor is appointed, whichever occurs first.

(5) The committee shall elect one of its members as chairman and such other officers as it considers necessary.

(6) Members of the committee *are entitled to receive compensation and expenses as provided in 43-310.1.*"

Section 6. Section 69-6510, R.C.M. 1947, is amended to read as follows:

"**69-6510. Meetings.** The council may determine the time and place of its meetings but shall meet at least once each quarter. Each member of the council *is entitled to receive compensation and expenses as provided in 43-310.1.* Members who are full-time salaried officers or employees of this state may not be compensated for their service as members but shall be reimbursed for their expenses."

Section 7. Section 70-704, R.C.M. 1947, is amended to read as follows:

"**70-704. Meetings of committee — expenses of members reimbursed.** The committee shall meet at least once each quarter to advise and consult with the consumer counsel. Committee members *are entitled to receive compensation and expenses as provided in 43-310.1.*"

Section 8. Section 79-2305, R.C.M. 1947, is amended to read as follows:

"**79-2305. Meetings — compensation.** *(1)* The committee shall meet as often as may be necessary during and between legislative sessions to advise and consult with the legislative auditor.

(2) Committee members *are entitled to receive compensation and expenses as provided in 43-310.1.*"

Section 9. Section 82-4203.3, R.C.M. 1947, is amended to read as follows:

"**82-4203.3. Meetings.** The committee shall meet as often as may be necessary during and between legislative sessions. Committee members *are entitled to receive compensation and expenses as provided in 43-310.1.*"

HeinOnline -- 1977 Vol. I 391 1977

Section 10. **Repealer.** Section 43-311 and 43-714, R.C.M. 1947, are repealed.

Section 11. **Effective date.** This act is effective on passage and approval.

Approved March 25, 1977.

CHAPTER NO. 104

AN ACT CREATING A FIRE SERVICES TRAINING SCHOOL.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-7716 that reads as follows:

75-7716. Fire services training school — creation — allocation to the board of public education. There is a fire services training school. The fire services training school is allocated to the board of public education for purposes of planning and coordination. The budget request for the fire services training school shall be submitted through the board of public education. The general supervision of the school is vested in the board of public education.

Section 2. There is a new R.C.M. section numbered 75-7717 that reads as follows:

75-7717. Purpose of fire services training school. The purpose of the fire services training school is to:

(1) reduce the loss of life and personal injury caused by fire;

(2) reduce property damage and loss caused by fire;

(3) provide paid, volunteer, and other publicly or privately employed firefighters with professional training;

(4) provide training in investigating the cause of fire;

(5) develop new methods of fire prevention and firefighting;

(6) provide expertise for testing firefighting methods and firefighting equipment;

(7) provide public educational programs to promote fire prevention.

Section 3. There is a new R.C.M. section numbered 75-7718 that reads as follows:

75-7718. Fire services training advisory council. (1) The board of public education shall appoint a fire services training advisory council to work with the director of the fire services training school. The membership of the council shall include the following:

(a) a fire chief;

HeinOnline -- 1977 Vol. I 392 1977

(b) a volunteer firefighter;

(c) a paid firefighter;

(d) a fire service instructor;

(e) a person involved in fire prevention;

(f) an engineering representative of the insurance services office;

(g) a representative of the fire protection engineering industry;

(h) a fire control officer recommended by the administrator of the division of forestry.

(2) The board shall solicit and consider the recommendations of appropriate organizations and associations of fire service personnel in making appointments under subsection (1) of this section.

(3) Members appointed shall serve for a 4-year term. If a vacancy occurs, a member shall be appointed to fill the unexpired term. A member may be reappointed.

(4) The state fire marshal and director of the fire services training school are ex officio members of the council.

Section 4. There is a new R.C.M. section numbered 75-7719 that reads as follows:

75-7719. Organization of fire services training advisory council — procedures — compensation of members. (1) The members of the fire services advisory council shall elect a chairman, a vice-chairman, and such other officers considered advisable by the council. The terms of the officers shall be established by the council.

(2) The council shall adopt rules governing its procedures subject to approval of the board of public education.

(3) Members of the council shall receive compensation under 59-538, 59-539, and 59-801.

Section 5. There is a new R.C.M. section numbered 75-7720 that reads as follows:

75-7720. Duties of the fire services training advisory council. The fire services training advisory council shall advise the board and director of the fire services training school on planning, coordination, governance, management, and control of the fire services training school to promote the purposes of the school.

Section 6. There is a new R.C.M. section numbered 75-7721 that reads as follows:

75-7721. Appointment of director of the fire services training school. (1) The board of public education shall appoint the director of the fire services training school. The director is responsible to the board for carrying out the provisions of this act.

(2) The director may be removed for cause.

HeinOnline -- 1977 Vol. I 393 1977

(3) The director must have the following qualifications:

(a) a bachelor's degree in a field of study related to fire protection; or

(b) 5 years' experience in an organized training program as an instructor and 7 years' experience as a firefighter or fire combat officer.

Section 7. There is a new R.C.M. section numbered 75-7722 that reads as follows:

75-7722. Duties of fire services training school director. The director shall appoint a staff and execute policies and programs established by the board of public education for the fire services training school. The director is responsible for the direction of staff and operation of the school.

Section 8. There is a new R.C.M. section numbered 75-7723 that reads as follows:

75-7723. Acceptance of gifts, donations, and grants authorized. The board of public education may accept gifts, donations, and grants of property and services on behalf of the fire services training school. The board may enter into contractual agreements necessary to facilitate achievement of the purposes of the school.

Section 9. There is a new R.C.M. section numbered 75-7724 that reads as follows:

75-7724. Cost recovery fee. The board of public education may establish a cost recovery fee for training of commercially employed firefighters and such fees shall be deposited to the general fund.

Section 10. There is a new R.C.M. section numbered 75-7725 that reads as follows:

75-7725. Coordination with other agencies. The fire services training school shall coordinate its programs and cooperate with state and local fire services to the maximum possible extent in accordance with the policy of the board of public education.

Approved March 25, 1977.

CHAPTER NO. 105

AN ACT TO GENERALLY REVISE AND CLARIFY SECTION 84-4202, R.C.M. 1947, AND AMEND IT TO PROVIDE FOR THE PAYMENT OF PERSONAL PROPERTY TAXES ON MOBILE HOMES AND HOUSE TRAILERS IN TWO PAYMENTS, EXCEPT WHEN ASSESSMENTS OCCUR AFTER JULY 1.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4202, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 394 1977

"**84-4202. Duty of treasurer.** *(1)* The county treasurer *shall* collect taxes on all personal property and, in the case provided in the preceding section, *shall* immediately, upon receipt of the report prescribed by 84-4201, notify the person or persons against whom the tax is assessed and any person who has a properly perfected security interest of record with the registrar of motor vehicles of the state of Montana that the amount of such tax is due and payable at the county treasurer's office. The county treasurer *shall*, at the time of receiving the report and in any event within 30 days from the receipt of such report, levy upon and take into his possession *the* personal property against which a tax is assessed or any other personal property in the hands of the delinquent taxpayer and proceed to sell the same in the same manner as property is sold on execution by the sheriff. *The* county treasurer may, for the purpose of making *the* levy and sale, direct the sheriff to make *the* levy and sale, and the sheriff, undersheriff, or any deputy sheriff of *the* county is ex officio a deputy county treasurer for such purposes, and either may act and receive payment of such taxes. *The* sheriff *may* receive the same fees as he is entitled to in making a seizure and sale under execution.

(2) The county treasurer and his sureties are liable on his official bond for all taxes on personal property remaining uncollected by reason of the willful failure and neglect of *the* treasurer to levy upon and sell such personal property for the taxes levied thereon.

(3) The tax on such personal property may be collected and the payment thereof enforced by the seizure and sale of any personal property in the possession of the person assessed at any time after the date the assessment is made or by the institution of a civil action for its collection in any court of competent jurisdiction. *A* resort to any one of the methods provided for *does* not bar the right to resort to either or both of the other methods. *Any* of the methods provided for may be used until the full amount of *the* tax is collected.

(4) The county *has* a general lien, dependent on possession, upon any moneys in its possession belonging to any taxpayer for any amounts due *the* county for any delinquent personal property taxes not a lien on real estate of *the* taxpayer. *Due* notice *shall* be given the lien holder, if any.

(5) (a) The owner of a mobile home or house trailer which is not taxed as an improvement, as improvements are defined in 84-101, shall pay the personal property tax in *two payments, except as provided in subsection (5)(b). The first payment is due within 30 days from the date of the notice of taxes due. The second payment is due no later than September 30 of the year in which the property is assessed.* The department of revenue shall issue tax-paid stickers to the county treasurers. The treasurers shall issue *the* stickers to the owners of mobile homes and house trailers *if* the taxes *are paid in full. An* owner shall then display the sticker, which shall be visible from the exterior of the mobile home or house trailer. No mobile home movement permit provided in 84-6606 may be issued unless *the taxes* have been paid *in full* to the county treasurer.

(b) The treasurer shall issue the mobile home movement declaration provided for in section 84-6606 to a person required by that section to

execute it in such quantities as he requests to a maximum of 100. The treasurer shall issue such additional quantities of the declaration to a maximum of 100 as the person requests at the discretion of the county treasurer upon receipt from the person of the previously issued declarations properly executed. In any event executed declarations must be delivered to the treasurer within 30 days from their issue."

Approved March 25, 1977.

CHAPTER NO. 106

AN ACT TO CHANGE THE RATE OF THE CEMENT DEALERS LICENSE TAX; AMENDING AND CLARIFYING SECTIONS 84-1102 AND 84-1104, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1102, R.C.M. 1947, is amended to read as follows:

"**84-1102. License tax on sales of cement and byproducts.** Every person who engages in or carries on the occupation or business in this state of retailing or selling at retail cement, cement plaster, gypsum plaster, or other byproducts of cement must pay to the department of revenue a license tax for engaging in and carrying on such business in an amount equal to *22* cents per *ton* of cement and *5* cents per ton on cement plaster, gypsum plaster, or other byproducts of cement sold by such person during such year and for the manufacturing or producing of which no person has paid or assumed a liability for the payment of any license tax to the state of Montana under any law of this state."

Section 2. Section 84-1104, R.C.M. 1947, is amended to read as follows:

"**84-1104. Quarterly payment of license tax.** The license tax of *22* cents per *ton* and *5* cents per ton shall be paid in quarterly installments for the quarters ending March 31, June 30, September 30, and December 31 in each year, and the total amount of such license tax becoming due for any quarter shall be paid to the department of revenue within 30 days after the end of the quarter for which the same is due."

Approved March 25, 1977.

CHAPTER NO. 107

AN ACT TO PROVIDE A 25% PENALTY FOR UNDERREPORTING THE VALUE OF BUSINESS INVENTORIES; AMENDING SECTION 84-708.9, R.C.M. 1947; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

HeinOnline -- 1977 Vol. I 396 1977

Section 1. Section 84-708.9, R.C.M. 1947, is amended to read as follows:

"**84-708.9. Department audit of taxable value — costs of audit paid by county — penalty for underreporting.** *(1)* When in the judgment of the director of revenue it is necessary, audits may be made for the purpose of determining the taxable value of net proceeds of mines and oil and gas wells, bank shares, business inventories, and all other types of property subject to ad valorem taxation. The costs incurred by the department of revenue, including per diem and mileage expense as well as salaries and benefits, shall be reimbursed from the amount collected as a result of the audit. In the event the property subject to audit is assessed within two or more counties the department shall allocate the cost among the collections due each of the counties. Reimbursement shall be made solely for audit expense and not for other services provided to the counties by the department and may not exceed the amounts collected.

(2) The taxable value of any underreported portion of any business inventory, found as a result of an audit to have been underreported by the owner, shall be increased by 25% as a penalty for underreporting.

(3) The 25% penalty may be waived by the department of revenue if reasonable cause for failure to report the total value of a business inventory is provided to the department."

Section 2. **Effective date.** This act is effective January 1, 1978.

Approved March 25, 1977.

CHAPTER NO. 108

AN ACT TO CHANGE THE RATE OF THE CEMENT AND GYPSUM PRODUCER'S LICENSE TAX, TO CHANGE PENALTY AND INTEREST RATES, AND TO PROVIDE A PROCEDURE FOR FILING LIENS; AMENDING SECTIONS 84-1202, 84-1207, AND 84-1209, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1202, R.C.M. 1947, is amended to read as follows:

"**84-1202. License tax on producers and importers of gypsum and cement.** *(1)* Every person engaged in or carrying on the business in the state of Montana of producing or manufacturing cement, gypsum, gypsum plaster, stucco, wallboard, land plaster, or other products of cement or gypsum and any person who imports into this state any such products for sale or use must pay to the department of revenue for the use of the state of Montana a license tax for engaging in and carrying on such business in the state of Montana in an amount equal to the following sums:

(a) for each *ton* of cement produced or manufactured by such person

HeinOnline -- 1977 Vol. I 397 1977

or used by such person in the manufacture or production of any of the articles or products hereinabove enumerated or imported by such person into this state for sale or use, *22* cents;

(b) for each ton of gypsum produced or manufactured by such person or used by such person in the manufacture or production of any of the articles or products hereinabove named or imported by such person into this state for such sale or use, 5 cents.

(2) The words "products of cement or gypsum" as used in this section shall, in addition to the articles herein specifically enumerated, include all manufactured products into which gypsum enters as a component part to the extent of not less than 50% by weight. No double taxation of either cement, gypsum, or the products thereof is imposed by this act."

Section 2. Section 84-1207, R.C.M. 1947, is amended to read as follows:

"**84-1207. Quarterly statement and payment of tax.** Each person must, within *30* days after the end of each quarter, make out, on forms prescribed by the department of revenue, and deliver to the department a statement showing the total number of tons of cement or gypsum produced by such person or used by him in the manufacture of the respective articles or products enumerated in 84-1202 or imported by such person into the state of Montana for sale or use during each month of such quarter and during the whole quarter and such other information as the department may require, together with the total amount due to the state as license taxes for such quarter, and must, within such *30* days and at the same time such statement is delivered to the department, pay to the department the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Any such person engaged in carrying on such business at more than one place or operating more than one factory or plant in this state may include all thereof in one statement. *The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.*"

Section 3. Section 84-1209, R.C.M. 1947, is amended to read as follows:

"**84-1209. Procedure to ascertain tax on failure of statement — penalty.** *(1)* If any such person shall fail, neglect, or refuse to file any statement required by 84-1207 within the time required or shall fail to pay the tax required by this act on or before the date such payment is due, the department of revenue shall, immediately after such time has expired, proceed to inform itself, as best it may, regarding the amounts of the respective articles or products enumerated in 84-1202 manufactured or produced by such person within this state or imported by such person into the state during such quarter and during each month thereof and shall determine and fix the amount of the license taxes due to the state from such person for such quarter.

(2) The department shall add to the amount of all such delinquent license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% a month or fraction thereof computed on the total

HeinOnline -- 1977 Vol. I 398 1977

amount of license taxes and penalty. Interest shall be computed from the date the license taxes were due to the date of payment.

(3) The department shall mail to the person required to file a quarterly statement and pay any license tax a letter setting forth the amount of license tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made within 15 days a lien may be filed as set forth in 84-1213. Upon receipt of the letter the person shall remit to the department, within 15 days, the full amount of license tax, penalty, and interest due. The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 84-1207 is provided to the department."

Section 4. There is a new R.C.M. section numbered 84-1213 that reads as follows:

84-1213. Procedure for collection of tax. All tax, penalty, and interest due from any person under this act is a lien upon any and all real property of such person upon the filing by the department of revenue of a duplicate of the tax assessment statement in the office of the county clerk in the county where such real property is situated. The lien has precedence over any other claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

Approved March 25, 1977.

CHAPTER NO. 109

AN ACT TO AMEND SECTION 71-217, R.C.M. 1947, TO CLARIFY THE METHOD OF REIMBURSEMENT OF THE STATE DEPARTMENT BY COUNTY BOARDS OF PUBLIC WELFARE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-217, R.C.M. 1947, is amended to read as follows:

"71-217. Staff personnel — how selected, paid and controlled — dismissal. Each county board shall select and appoint from a list of qualified persons furnished by the state department such staff personnel as are necessary. The staff personnel in each county shall consist of at least one qualified staff worker (or investigator) and such clerks and stenographers as may be decided necessary. If conditions warrant, the county board, with the approval of the state department, may appoint some fully qualified person listed by the state department as supervisor of its staff personnel. The staff personnel of each county department are directly responsible to the county board, but the state department shall have the authority to supervise such county employees in respect to the efficient and proper performance of their duties. The county board of public welfare shall not dismiss any member of the staff personnel without the approval of the state department; but the state department shall have the authority to request the county board to dismiss any member of the staff personnel for inefficiency, incompetence or similar cause.

HeinOnline -- 1977 Vol. I 399 1977

Public assistance staff personnel attached to the county board shall be paid from state public welfare funds, both their salaries and their travel expenses, as provided for in sections 59-538, 59-539, and 59-801, when away from the county seat in the performance of their duties; but the county board of public welfare shall reimburse the state department, from county poor funds *the full amount of the salaries and travel expenses not reimbursed to the state department by the federal government and the full amount of the state department's administrative costs which are allocated by the department to the county for the administration of county welfare programs and not reimbursed to the state department by the federal government. Under circumstances prescribed by the state department, the reimbursement by the county board of public welfare may be less than the county share as prescribed above.* All other administrative costs of the county department shall also be paid from county poor funds.

On or before the 20th day of the month following the month for which the payments to the public assistance staff personnel of the county were made, the state department shall present to the county department of public welfare a claim for the required reimbursements. The county board shall make such reimbursements within twenty (20) days after the presentation of the claim and the state department shall credit (add) all such reimbursements to its account for administrative costs."

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved March 25, 1977.

CHAPTER NO. 110

AN ACT TO AMEND SECTION 28-111, R.C.M. 1947, AND REPEAL SECTION 28-124, R.C.M. 1947, TO PROVIDE THAT FIRE PROTECTION TAX ASSESSMENTS BE DEPOSITED IN THE FEDERAL AND PRIVATE REVENUE FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-111, R.C.M. 1947, is amended to read as follows:

"**28-111. Determination of costs of fire protection — certification — tax levy.** (1) The department shall prepare a fire protection plan for the approval of the board in which fire protection costs for each classification within each protection zone are determined. The board shall establish the portion of the planned fire protection costs to be borne by the state, and the portion to be borne by the owners of classified forest land. The department shall request the legislature to appropriate the state's

HeinOnline -- 1977 Vol. I 400 1977

portion as approved by the board. After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of classified forest land, as specified in 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

(2) On or before the second Tuesday in August of each year, the department shall determine the names of all owners who have failed to provide the forest fire protection for their lands required by this chapter, together with the description of the lands and their acreage, and calculate the total amount due to the department from each owner for forest fire protection, which amount may not exceed the maximum specified in 28-109.

(3) The department shall certify in writing to the county assessor of each county the names of these owners of forest lands in his county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for forest fire protection.

(4) Upon receiving the certificate from the department showing the amount due, the county assessor shall extend the amounts upon the county tax rolls covering the lands, and the sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums collected shall be promptly transmitted to the state treasurer, who shall deposit them in the federal and private *revenue* fund."

Section 2. **Repealer.** Section 28-124, R.C.M. 1947, is repealed.

Approved March 25, 1977.

CHAPTER NO. 111

AN ACT TO AMEND SECTION 14-671, R.C.M. 1947, AUTHORIZING A CENTRAL CREDIT UNION WITH CORPORATE SHAREHOLDINGS EQUAL TO OR IN EXCESS OF 95% OF ITS TOTAL ASSETS TO ELECT EXEMPTION OF INSURANCE ON SHARE ACCOUNTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 14-671, R.C.M. 1947, is amended to read as follows:

"**14-671. Additional rights and powers.** (1) A central credit union shall have all of the rights and powers of any other credit union organized under this act and the additional rights and power specified in this section, notwithstanding any limitations or restrictions found elsewhere in this act.

(2) A central credit union may make loans to other credit unions; purchase shares of other credit unions; and obtain or acquire the assets and liabilities of any credit union operating in this state which enters into liquidation.

HeinOnline -- 1977 Vol. I 401 1977

(3) A central credit union may invest in and grant loans to associations of credit unions, central funds of credit unions, or organizations chartered to provide service to credit unions.

(4) A central credit union may borrow and accept money from any source, and issue notes or debentures.

(5) A central credit union with corporate shareholdings equal to or in excess of 95% of its total assets may, by vote of its board of directors, elect exemption of insurance on share accounts under the provisions of Title II of the National Credit Union Act."

Approved March 25, 1977.

CHAPTER NO. 112

AN ACT TO AMEND SECTION 53-644, R.C.M. 1947, TO EXCLUDE TOPPERS AND TRUCK CANOPY COVERS FROM THE DEFINITION OF CAMPERS AND TO AMEND SECTION 84-202, R.C.M. 1947, TO EXCLUDE TOPPERS AND TRUCK CANOPY COVERS FROM TAXATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-644, R.C.M. 1947, is amended to read as follows:

"**53-644. Camper — definition.** The term camper as used in this act includes but is not limited to truck camper, chassis mounted camper, cab over, half cab over, non cab over, telescopic, and telescopic cab over, *but does not include a truck canopy cover or topper weighing less than 300 pounds and having no accomodations attached.*"

Section 2. Section 84-202, R.C.M. 1947, is amended to read as follows:

"**84-202. Exemptions from taxation.** (1) (a) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated

HeinOnline -- 1977 Vol. I 402 1977

for gain or profit; and the terms "public art galleries and public observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(4) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(5) The following agricultural products are exempt from taxation:

(a) unprocessed, perishable fruits and vegetables in farm storage and owned by the producer;

(b) nonperishable unprocessed agricultural products except livestock, held in possession of the original producer for less than 7 months following harvest; *and*

(c) *livestock*, defined as cattle, sheep, horses, or mules, which have not attained the age of 9 months as of the last day of any month.

(6) Moneys and credits are exempt from taxation.

HeinOnline -- 1977 Vol. I 403 1977

(7) A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under 84-7403.

(8) A truck canopy cover or topper weighing less than 300 pounds and having no accommodations attached is exempt from taxation."

Approved March 25, 1977.

CHAPTER NO. 113

AN ACT TO AMEND THE MONTANA RELIGIOUS CORPORATIONS SOLE ACT TO REMOVE THE LIMITATION ON THE NUMBER OF MEMBERS OF A BOARD OF ADVISORS OR CONSULTORS; AMENDING SECTION 15-2408, R.C.M. 1947, AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2408, R.C.M. 1947, is amended to read as follows:

"**15-2408. Board of advisors or consultors — interim powers.** The bishop, chief priest, or presiding elder of the corporation sole created hereby, may appoint a board of advisors or consultors consisting of at least four persons of legal age and otherwise qualified according to the rules, regulations or discipline of the denomination, society or church, which board, in addition to its advisory function, shall exercise the powers of the corporation upon the death, resignation, transfer, removal or deprivation of office of the bishop, chief priest or presiding elder; and which shall elect an administrator to which it may delegate the executive and administrative functions of the corporation during the interim and until the successor bishop, chief priest or presiding elder is appointed, elected or qualified, according to the rules, regulations or discipline of the denomination, society or church."

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 25, 1977.

CHAPTER NO. 114

AN ACT TO REPEAL SECTION 82A-2101, R.C.M. 1947, WHICH TRANSFERRED THE FEDERAL-STATE COORDINATOR TO THE GOVERNOR'S OFFICE AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Section 82A-2101, R.C.M. 1947, is repealed.

HeinOnline -- 1977 Vol. I 404 1977

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 25, 1977.

CHAPTER NO. 115

AN ACT TO PROVIDE FOR A CHANGE IN THE DEFINITION OF TOTAL UNEMPLOYMENT AND TO REMOVE SUPERFLUOUS MATERIAL PERTAINING TO SUBJECTIVITY; AMENDING SECTION 87-149, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-149, R.C.M. 1947, is amended to read as follows:

"**87-149. Definitions — continued.** (a) Total unemployment:

(1) An individual shall be deemed "totally unemployed" in any week during which he performed no *work and earned no wages or a week of less than full-time work with wages of less than 2 times his weekly benefit amount. No individual is unemployed in any week that he is self-employed.*

(2) An individual's week of unemployment shall be deemed to commence only after his registration at an unemployment office, except as the division may by regulation otherwise prescribe.

(3) *(A) Partial payment for a week of unemployment as used in this subsection shall be the claimant's weekly benefit amount less 50% of wages earned in excess of one-fourth of his weekly benefit amount. Such wages and the one-fourth weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest dollar.*

(B) Claimant's weekly benefit amount shall also be reduced, as above, by the amount that he is receiving from a governmental or other pension, retirement pay, annuity, or other similar periodic payment which is based on work for and contributed to in whole or in part by a base-period employer. This provision does not apply to the receipt of benefits under the federal Social Security Act, as amended.

(b) "Unemployment compensation administration fund," means the unemployment compensation administration fund established by this act, from which administrative expenses under this act shall be paid.

(c) "Wages," means all remuneration payable for personal services, including commissions and bonuses and the cash value of all remuneration payable in any medium other than cash. The reasonable cash value of remuneration payable in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the division. Wage records kept by the division for the purposes of this act prior to January 1, 1941, shall be kept on the basis of wages payable, and wage records kept by the division for the purposes of this act after January 1, 1941, shall be kept on the basis of wages paid. Provided, however, that the term "wages" shall not include—

HeinOnline -- 1977 Vol. I 405 1977

(1) The amount of any payment made to, or on behalf of, an employee by an employer on account of:

(A) Retirement, or

(B) Sickness or accident disability, or

(C) Medical and hospitalization expenses in connection with sickness or accident disability, or

(D) Death.

(E) *Remuneration paid by any county welfare office from welfare assistance funds for services performed at the direction and request of such county welfare office.*

(d) "Week," means a period of seven (7) consecutive calendar days ending at midnight on Saturday.

(e) "Weekly benefit amount." An individual's "weekly benefit amount" means the amount of benefits he would be entitled to receive for one (1) week of total unemployment.

(f) "Gross misconduct," means a criminal act, other than a violation of a motor vehicle traffic law, for which an individual has been convicted in a criminal court or has admitted or conduct which demonstrates a flagrant and wanton disregard of and for the rights or title or interest of a fellow employee or his employer.

(g) The word "division" throughout the unemployment statutes refers to a unit of the Montana state department of labor and industry.

(h) The word "administrator" refers to a person appointed by the commissioner of labor and industry to direct and administer the unemployment compensation laws and federal laws falling within the administrator's jurisdiction.

(i) The words "board of labor appeals" used in this act mean three (3) persons appointed by the governor, who are not public employees but who are attached to the Montana state department of labor and industry. The function of said board is to act in a quasi-judicial capacity for the hearing of disputes concerning the administration of Montana's unemployment insurance laws."

Approved March 25, 1977.

CHAPTER NO. 116

AN ACT TO REORDER THE PLACEMENT OF OFFICES ON BALLOTS; AMENDING SECTION 23-3804, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3804, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 406 1977

"**23-3804. Preparation of machines for use.** (1) The registrar or city clerk shall put the proper ballots upon each voting machine corresponding with the sample ballots. The registrars or city clerks shall also:

(a) Set, adjust, and put the machines in order;

(b) Deliver the machines to the precincts together with necessary furniture and appliances;

(c) Place a shield painted black and marked "not in use" over the keys or levers not in use on the voting machine.

(2) In primary elections a separate row or column shall be assigned to each political party and at least 1 row shall separate the rows assigned to the 2 major political parties. This row shall be used for the nonpartisan judicial ballot. *The placement of the nonpartisan judicial ballot shall be such that the ballot of each political party appears in an unbroken row or column.*

(3) In general elections the ballot shall be arranged and the names of the candidates rotated to conform as nearly as possible to the requirements for paper ballots.

(4) Candidates of the 2 major parties shall be rotated between the first 2 horizontal rows or vertical columns, and candidates of minor parties and independent candidates shall be rotated between succeeding rows or columns.

(5) The party designation of each candidate shall appear below his name in type as large as machine design will allow.

(6) The judicial ballot shall appear in the first 2 horizontal or vertical rows or columns as prescribed by section 23-3513.

(7) The election judges shall compare the ballots on the machine with sample ballots, ensure that all counters are set at zero and the machine is in order. They shall not thereafter permit the machine to be operated or moved except by electors voting. They shall also see that arrangements are made for voting write-in ballots on the machine, if the machine is so arranged."

Approved March 25, 1977.

CHAPTER NO. 117

AN ACT TO AMEND SECTION 89-8-102.2, R.C.M. 1947, RELATING TO FEES FOR PREPARATION OF ENVIRONMENTAL IMPACT STATEMENTS BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION ON CERTAIN APPLICATIONS FOR PERMITS OR APPROVALS UNDER THE MONTANA WATER USE ACT; TO ESTABLISH A METHOD FOR DETERMINING THE MAXIMUM FEE PAYABLE; AUTHORIZE THAT DEPARTMENT TO CONTRACT WITH APPLICANTS FOR PAYMENT OF FEES AND THE USE THEREOF; AND, AUTHORIZE THAT DEPARTMENT TO UTILIZE

HeinOnline -- 1977 Vol. I 407 1977

VARIOUS SOURCES OF ENVIRONMENTAL DATA IN PREPARING ENVIRONMENTAL IMPACT STATEMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-8-102.2, R.C.M. 1947, is amended to read as follows:

"**89-8-102.2. Fees for environmental impact statements.** (1) Whenever the department determines that the filing of an application (or a combination of applications) for a permit or approval under this chapter requires the preparation of an environmental impact statement as prescribed by the Montana Environmental Policy Act (Title 69, chapter 65, R.C.M. 1947), and the application (or combination of applications) involves the use of ten thousand (10,000) or more acre feet per year or fifteen (15) or more cubic feet per second of water, the applicant shall pay to the department the fee prescribed in this section. The department shall notify the applicant in writing within thirty (30) days of receipt of a correct and complete application (or a combination of applications), if it determines that an environmental impact statement and fee is required.

(2) Upon notification by the department under subsection (1) of this section, the applicant shall pay a fee based upon the estimated cost of constructing, repairing or changing the appropriation and diversion facilities *as herein provided. The maximum fee that shall be paid to the department may not exceed the fees set forth in the following declining scale:* two percent (2%) of the estimated cost up to one million dollars ($1,000,000); plus one percent (1%) of the estimated cost over one million dollars ($1,000,000) and up to twenty million dollars ($20,000,000); plus one-half of one percent (0.5%) of the estimated cost over twenty million dollars ($20,000,000) and up to one hundred million dollars ($100,000,000); plus one-quarter of one percent (0.25%) of the estimated cost over one hundred million dollars ($100,000,000) and up to three hundred million dollars ($300,000,000); plus one-eighth of one percent (.125%) of the estimated cost over three hundred million dollars ($300,000,000). The fee shall be deposited in the earmarked revenue fund to be used by the department only to comply with the Montana Environmental Policy Act in connection with the application(s). Any amounts paid by the applicant but not actually expended by the department shall be refunded to the applicant.

(3) The department and the applicant may determine by agreement the estimated cost of any facility for purposes of computing the amount of the fee to be paid to the department by the applicant. The department may contract with an applicant for:

(a) the development of information by the applicant or a third party on behalf of the department and the applicant concerning the environmental impact of any proposed activity under an application;

(b) the division of responsibility between the department and an applicant for supervision over, control of, and payment for the development of information by the applicant or a third party on behalf of the department and the applicant under any such contract or contracts;

HeinOnline -- 1977 Vol. I 408 1977

(c) the use or nonuse of a fee or any part thereof paid to the department by an applicant.

(4) Any payments made to the department or any third party by an applicant under any such contract or contracts shall be credited against any fee the applicant must pay hereunder. The department and the applicant may agree on additional credits against the fee for environmental work performed by the applicant at the applicant's own expense.

(5) No fee as prescribed by this section may be assessed against an applicant for a permit or approval if the applicant has also filed an application for a certificate of environmental compatibility *or* public need pursuant to the Montana *Major Facility* Siting Act (Title 70, chapter 8, R.C.M. 1947), and the appropriation or use of water involved in the application(s) for permit or approval has been or will be studied by the department pursuant to that act.

(6) This act shall apply to all applications, pending or hereinafter filed, for which the department has not, as of the effective date of this act, commenced writing an environmental impact statement. This act shall not apply to any application the fee for which would not exceed two thousand five hundred dollars ($2,500).

(7) Failure to submit the fee as required by this section shall void the application(s).

(8) The department may, in its discretion, rely upon the environmental studies, investigations, reports, and assessments made by any other state agency or any person, including any applicant, in the preparation of its environmental impact statement."

Approved March 25, 1977.

CHAPTER NO. 118

AN ACT TO AMEND SECTION 82-401, R.C.M. 1947, RELATING TO THE DUTIES OF THE ATTORNEY GENERAL BY SPECIFYING THE EFFECT OF AN ATTORNEY GENERAL'S OPINION; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-401, R.C.M. 1947, is amended to read as follows:

"**82-401. General duties.** It is the duty of the attorney general:

1. To attend the supreme court and prosecute or defend all causes to which the state, or any officer thereof, in his official capacity, is a party; and all causes to which any county may be a party, unless the interest of the county is adverse to the state, or some officer thereof acting in his official capacity.

2. After judgment in any of the causes referred to in the preceding

subdivision, to direct the issuing of such process as may be necessary to carry the same into execution.

3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county.

4. To keep a register of all cases in which he is required to appear, which must, during business hours, be open to the inspection of the public, and must show the county, district, and court in which the cases have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not; if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention; and must deliver the same to his successor in office.

5. To exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business entrusted to their charge.

6. To give his opinion in writing, without fee, to the legislative assembly, or either house thereof and to any state officer, board, or commission, any county attorney, to the city attorney of any city or town, and to the board of county commissioners of any county of the state, when required upon any question of law relating to their respective offices. He shall give any such opinion within three (3) months following the date it is requested, unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time. *If an opinion issued by the attorney general conflicts with an opinion issued by a city attorney, county attorney, or an attorney employed or retained by any state officer, board, commission, or department, the attorney general's opinion shall be controlling unless overruled by a state district court or the supreme court.*

7. When required by the public service, or directed by the governor, to assist the county attorney of any county in the discharge of his duties.

8. To bid upon and purchase in the name of the state, and under the direction of the board of examiners, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases.

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, under the direction of the board of examiners to redeem such property from such prior judgment, lien, or encumbrance; and all sums of money necessary for such redemption must, upon the order of the board of examiners, be paid out of any money appropriated for such purposes.

HeinOnline -- 1977 Vol. I 410 1977

10. When in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must, when allowed by the board of examiners, be paid out of any appropriations for the prosecution of delinquents.

11. To discharge the duties of a member of the board of examiners, state board of land commissioners, board of state prison commissioners, and other duties prescribed by law.

12. To report to the governor, at the time prescribed by section 59-702 of this code, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by him from county attorneys, and to report to the governor as provided in section 59-705."

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved March 25, 1977.

CHAPTER NO. 119

AN ACT TO AUTHORIZE THE ESTABLISHMENT OF MUTUAL, STOCK, OR RECIPROCAL INSURANCE COMPANIES TO PROVIDE INSURANCE COVERAGE FOR PROFESSIONAL LIABILITY CLAIMS RESULTING FROM THE RENDERING OF OR FAILURE TO RENDER PROFESSIONAL SERVICES BY HEALTH CARE PROVIDERS OR OTHER PROFESSIONALS OF THE UNITED STATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 40-4759 that reads as follows:

40-4759. Definitions. As used in this act, the following definitions apply:

(1) "Commissioner" means the commissioner of insurance or a designee.

(2) "Health care provider" means any person, corporation, facility, or institution of a governmental unit of any state licensed by that state to provide health care, including but not limited to physician, osteopath, registered nurse, licensed practical nurse, dentist, optometrist, podiatrist, hospital, hospital-related facility, or long-term care facility.

(3) "Other professional" means an attorney, certified public accountant, public accountant, architect, veterinarian, pharmacist, and professional engineer licensed or otherwise legally authorized by a state to render professional services.

HeinOnline -- 1977 Vol. I 411 1977

Section 2. There is a new R.C.M. section numbered 40-4760 that reads as follows:

40-4760. Professionals as members, stockholders, or subscribers of mutual, stock, or reciprocal insurance insurers. A health care provider or other professional may be a member of a mutual insurer, a stockholder of a stock insurer, or a subscriber of a reciprocal insurer, whether such mutual, stock, or reciprocal insurer is domestic, foreign, or alien, for the purpose of protecting themselves by insurance against loss, damage, or expense incident to a claim arising out of a breach of contract, pecuniary or personal injury to or death of any person, or other loss as the result of negligence in rendering professional services by any health care provider or other professional.

Section 3. There is a new R.C.M. section numbered 40-4761 that reads as follows:

40-4761. Incorporation and regulation. A domestic mutual, stock, or reciprocal insurer, organized for the purpose of transacting insurance business as set forth in 40-4760, shall organize under the provisions of Title 40 and be regulated as therein provided. The provisions of this act govern whenever in conflict with other laws or parts of laws of any state.

Section 4. There is a new R.C.M. section numbered 40-4762 that reads as follows:

40-4762. Initial qualifications. No original certificate of authority for a mutual, stock, or reciprocal insurer may be issued by the commissioner until applications representing 250 members of the profession under consideration have been received by the commissioner or in the case of health care providers that are hospitals, hospital-related facilities, or long-term care facilities, applications representing 50% of the beds in the state or states affected, and until the commissioner has determined that such insurer or insurers have bona fide applications representing the number of applicants required.

Section 5. There is a new R.C.M. section numbered 40-4763 that reads as follows:

40-4763. Foreign or alien insurers — certification. Any mutual, stock, or reciprocal insurer organized under the laws of another state substantially similar to this act for the purpose of transacting the kind of business described in this act may, upon an application and without prior operating experience or examination, be admitted to solicit applications. If the necessary number of applications is obtained, the insurer may do business in this state if the commissioner finds such admission is in the public interest. Thereafter the insurer shall make all reports and be subject to taxation, examination, and supervision by the commissioner to the same extent and in the same manner as are other foreign or alien insurers.

Approved March 25, 1977.

HeinOnline -- 1977 Vol. I 412 1977

CHAPTER NO. 120

AN ACT TO ESTABLISH A 1-MILL LEVY ON THE ASSESSED VALUE OF ALL LIVESTOCK TO PROVIDE ADDITIONAL FUNDING FOR THE DEPARTMENT OF LIVESTOCK; AMENDING SECTIONS 84-5211 AND 84-5212, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-5211, R.C.M. 1947, is amended to read as follows:

"**84-5211. Limitation of levies — livestock moneys.** The amount of such levy shall not in any event exceed:

(1) 2 mills upon the assessed valuation of sheep and 3 mills upon the assessed valuation of other livestock, which shall be levied to aid in the payment of the general expense of the brands-enforcement functions of the department of livestock, including salaries, office expense, detective expense, expense of prosecution, travel, and all incidental expense;

(2) a separate levy of not exceeding 3 mills on all livestock for the use of the animal health functions of the department of livestock to be placed in the earmarked revenue fund for the payment of indemnity for animals slaughtered, and for salaries and expenses incurred in investigating, controlling and suppressing *of* diseases, including expenses of quarantine and salaries and expenses incurred for such purposes, and for laboratory maintenance; provided further that the state treasurer and state controller, at the written request of the department of livestock shall set aside in a separate account in the earmarked revenue fund such moneys as may be available and requested, which moneys shall be expended only when the department of livestock determines that a livestock disease emergency exists requiring its expenditure, and they shall then be expended for such purposes as the department of livestock may order and direct*; and*

(3) a separate levy of not to exceed 1 mill on the assessed value of all livestock, to be used at the discretion of the department of livestock for any or all of the purposes set forth in subsections (1) and (2) of this section or 46-1903."

Section 2. Section 84-5212, R.C.M. 1947, is amended to read as follows:

"**84-5212. Use of moneys arising from taxes prescribed in preceding section.** The money received from the tax levied on sheep, as provided in 84-5211*(1)*, shall be placed to the credit of the earmarked revenue fund, and shall be used to aid in the payment of the general expenses, salaries, office expense, detective expense, expenses of prosecution, travel, and other expense of the brands-enforcement functions of the department of livestock, and the moneys received from the tax on all other stock, as provided in the preceding section, shall be placed to the credit of the earmarked revenue fund, to be used for like purposes by the department of livestock. The moneys received from the tax levied by *84-5211(2)* shall be placed in the earmarked revenue fund, to be used for the animal health

HeinOnline -- 1977 Vol. I 413 1977

functions of the department of livestock for the payment of indemnity for animals slaughtered and for the payment of expenses in investigating and suppressing diseases, including quarantine and all expenses connected therewith. *The moneys received from the tax levied by 84-5211(3) shall be placed in the earmarked revenue fund to be used at the discretion of the department for payment of expenses incurred in the discharge of its animal health, brands-enforcement, or predatory animal control functions.*"

Approved March 25, 1977.

CHAPTER NO. 121

AN ACT TO MAKE CLEAR THE APPLICATION OF RETIREMENT FUND PROVISIONS TO COMMUNITY COLLEGE DISTRICTS; TO CHANGE THE DATE FOR COMMUNITY COLLEGE ELECTIONS TO THE FIRST TUESDAY IN APRIL; TO INCREASE TRAVEL EXPENSE REIMBURSEMENT OF TRUSTEES; TO CLARIFY COUNTY ATTORNEYS' DUTIES; AND TO GENERALLY REVISE AND CLARIFY POWERS AND DUTIES OF COMMUNITY COLLEGE DISTRICT TRUSTEES; AMENDING SECTIONS 75-7204, 75-8114, 75-8117, 75-8119, AND 75-8305, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7204, R.C.M. 1947, is amended to read as follows:

"**75-7204. Retirement fund.** The trustees of any district employing personnel who are members of the teachers retirement system or the public employees retirement system, or who are covered by unemployment compensation, or who are covered by any federal social security system requiring employer contributions shall establish a retirement fund for the purposes of budgeting and paying the employer's contributions to such systems. The district's contribution for each employee who is a member of the teachers retirement system shall be calculated in accordance with section 75-6207. The district's contribution for each employee who is a member of the public employees retirement system shall be calculated in accordance with *68-2504. The district may levy a special tax to pay its contribution to the public employees retirement system under the conditions prescribed in 68-1704.* The district's contributions for each employee covered by any federal social security system shall be paid in accordance with federal law and regulation. The district's contribution for each employee who is covered by unemployment compensation shall be paid in accordance with section 87-109.

The trustees of any district required to make a contribution to any such system shall include in the retirement fund of the preliminary budget the estimated amount of the employer's contribution and such additional moneys, within legal limitations, as they may wish to provide for the retirement fund cash reserve. After the final retirement fund budget has

HeinOnline -- 1977 Vol. I 414 1977

been adopted, the trustees shall pay the employer contributions to such systems in accordance with the financial administration provisions of this title.

When the final retirement fund budget has been adopted, the county superintendent shall establish the levy requirement by:

(1) determining the sum of the moneys available to reduce the retirement fund levy requirement by adding:

(a) any anticipated moneys that may be realized in the retirement fund during the ensuing school fiscal year; and

(b) any cash available for reappropriation as determined by subtracting the amount of the end-of-the-year cash balance earmarked as the retirement fund cash reserve for the ensuing school fiscal year by the trustees from the end-of-the-year cash balance in the retirement fund. The retirement fund cash reserve shall not be more than thirty-five per cent (35%) of the final retirement fund budget for the ensuing school fiscal year and shall be used for the purpose of paying retirement fund warrants issued by the district under the final retirement fund budget.

(2) subtracting the total of the moneys available for reduction of the levy requirement as determined in subsection (1) from the budgeted amount for expenditures in the final retirement fund budget.

The county superintendent shall total the net retirement fund levy requirements separately for all elementary school districts, all high school districts, *and all community college districts* of the county, including any prorated joint district levy requirements, and shall report each such levy requirement to the county commissioners on the second Monday of August as the respective county levy requirements for elementary district, high school district, *and community college district* retirement funds. The county commissioners shall fix and set such county levy in accordance with section 75-6717.

The net retirement fund levy requirement for a joint elementary district or a joint high school district shall be prorated to each county in which a part of such district is located in the same proportion as the district ANB of the joint district is distributed by pupil residence in each such county. The county superintendents of the counties affected shall jointly determine the net retirement fund levy requirement for each county as provided in section 75-6721."

Section 2. Section 75-8114, R.C.M. 1947, is amended to read as follows:

"**75-8114. Election of trustees after organization of community college district.** After organization, the registered electors of the community college district shall vote for trustees on the first *Tuesday* in April, and such elections shall be conducted by the component elementary school districts within such community college district upon the order of the board of trustees of the community college district. Such order shall be transmitted to the appropriate trustees not less than forty (40) days prior to the regular school election day.

HeinOnline -- 1977 Vol. I 415 1977

Notice of the community college district trustee election shall be given by the board of trustees of the community college district by publication in one (1) or more newspaper of general circulation within each county, not less than once a week for two (2) consecutive weeks, the last insertion to be no longer than one (1) week prior to the date of the election. This notice shall be in addition to the election notice to be given by the trustees of the component elementary districts under the school election laws.

Should trustees be elected other than at large throughout the entire district, then only those qualified voters within the area from which the trustee or trustees are to be elected shall cast their ballots for the trustee or trustees from that area. All candidates for the office of trustee shall file their declarations of candidacy with the secretary of the board of trustees of the community college district not less than thirty (30) days prior to the date of election. If an electronic voting system or voting machines are not used in the component elementary school district or districts which conduct the election, then the board of trustees of the community college district shall cause ballots to be printed and distributed for the polling places in such component districts at the expense of the community college district, but in all other respects said elections shall be conducted in accordance with the school election laws. All costs incident to election of the community college trustees shall be borne by the community college district including one-half (½) of the compensation of the judges for the school elections; provided that, if the election of the community college district trustees is the only election conducted, the community college district shall compensate the district for the total cost of the election."

Section 3. Section 75-8117, R.C.M. 1947, is amended to read as follows:

"**75-8117. Board of trustees meetings, quorum, travel, reimbursements and seal.** The board of trustees of the community college shall hold monthly meetings within the community college district on such day of the month the trustees may set. The president and secretary of the board or a majority of the board may also call special meetings of the board of trustees at any time and place within the community college district, if in their judgment necessity requires it. The secretary of the board shall give each member a forty-eight (48) hour written notice of all special meetings.

A majority of the board of trustees shall constitute a quorum for the transaction of business except that no contract shall be let, teacher employed or dismissed, or bill approved unless a majority of the total board membership shall vote in favor of such action.

The members of the board of trustees shall receive *mileage as provided for in 59-801* for the distance necessarily traveled in going to and returning from the place of the meeting and his place of residence each day that such trip is actually made.

The board shall keep a common seal with which to attest its official acts."

Section 4. Section 75-8119, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 416 1977

"**75-8119. Courses of instruction and tuition fees.** *(1)* A community college district shall provide instruction in academic, occupational, and adult education, subject to the approval of the *board of* regents *of higher education.* The board of trustees of such district may, in their discretion *and upon approval of the board of regents, prescribe:*

(a) tuition rates for in-district students, out-of-district students who are residents of the state of Montana, and students who are not residents of the state of Montana;

(b) matriculation charges; and

(c) incidental fees, including building fees, for students in the community college.

(2) In addition thereto, such board of trustees may *prescribe* such *other fees* as it *considers* necessary to maintain courses, taking into consideration such other funds as may be available under law for the support of such courses."

Section 5. There is a new section in Title 75, chapter 81, R.C.M. 1947, that reads as follows:

75-8117.1. Powers and duties. The trustees of a community college district shall, subject to supervision by the board of regents:

(1) have general control and supervision of the community college;

(2) adopt rules, not inconsistent with the constitution and the laws of the state, for the government and administration of the community college;

(3) grant certificates and degrees to the graduates of the community college;

(4) keep a record of its proceedings;

(5) have, when not otherwise provided by law, control of all books, records, buildings, grounds, and other property of the community college;

(6) receive from the state board of land commissioners, other boards, agencies, or persons or from the government of the United States all funds, incomes, and other property the community college may be entitled to receive or accept and use and appropriate the property for the specific purpose of the entitlement, grant, or donation;

(7) have general control of all receipts and disbursements of the community college;

(8) appoint and dismiss a president and faculty for the community college, appoint and dismiss any other necessary officers, agents, and employees, fix their compensation, and set the terms and conditions of their employment;

(9) administer the tuition provision and otherwise govern the students of the community college district in accordance with the provisions of this chapter;

HeinOnline -- 1977 Vol. I 417 1977

(10) call and conduct the elections of the district in accordance with the school election chapter of this title;

(11) participate in the teachers' retirement system of the state of Montana in accordance with the provisions of the teachers' retirement system chapter of this title; and

(12) participate in district boundary change actions in accordance with the provisions of the district organization chapter of this title.

Section 6. Section 75-8305, R.C.M. 1947, is amended to read as follows:

"**75-8305. Duty of county attorney.** Upon request of the county superintendent or the trustees of any school district *or community college district*, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party, however, the trustees of any school district *or community college district* may, upon consent of the county attorney, employ any other attorney licensed in Montana to perform any legal services in connection with school *or community college* board business."

Section 7. **Effective date.** This act is effective on its passage and approval.

Approved March 25, 1977.

CHAPTER NO. 122

AN ACT TO ESTABLISH A FUEL CONSERVATION SPEED LIMIT OF 65 MILES PER HOUR; AMENDING SECTION 32-2144.1, R.C.M. 1947; REPEALING SECTIONS 32-2144.3 AND 32-2144.4, R.C.M. 1947; AND PROVIDING A CONTINGENT DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2144.1, R.C.M. 1947, is amended to read as follows:

"**32-2144.1. Conservation speed limits — exception to the basic rule.** *To assist in the conservation of valuable and scarce motor fuel resources while providing for the safe and convenient flow of traffic, no person may operate a motor vehicle in excess of 65 miles per hour on a public highway in this state unless otherwise limited under 32-2144. The* speed limit imposed pursuant to this act is an exception to the basic rule requirements of section 32-2144 and a speed in excess of the speed limit established pursuant to this act is unlawful notwithstanding any provision of that section."

Section 2. **Repealer.** Sections 32-2144.3 and 32-2144.4, R.C.M. 1947, are repealed.

Section 3. **Effective date.** The governor may issue a declaration

HeinOnline -- 1977 Vol. I 418 1977

implementing the provisions of this act when such implementation will not jeopardize the state's continued eligibility to receive funds authorized by the Federal Highways Act. This act is effective upon the issuing of the declaration of implementation.

Approved March 25, 1977.

CHAPTER NO. 123

AN ACT TO AMEND SECTION 84-429.7, R.C.M. 1947, TO BROADEN THE TAX INCENTIVE FOR INTRODUCTION OF IRRIGATION SYSTEMS TO INCLUDE ANY IRRIGATION SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-429.7, R.C.M. 1947, is amended to read as follows:

"**84-429.7. Classification and appraisal — duties of the department of revenue.** (1) It is hereby made the duty of the state department of revenue to accomplish the following:

a. The classification of all taxable lands.

b. The appraisal of all taxable city and town lots.

c. The appraisal of all taxable rural and urban improvements.

A record thereof must be kept upon such maps, plats and forms, and entered in such books of record as may be prescribed by the state department of revenue. Such maps, plats, forms and books of record shall be official records of the state. A certified copy of all such records as may be desired shall be furnished to the state department of revenue.

It shall be the duty of the state department of revenue to maintain current, the classification of all taxable lands and appraisal of city and town lots, and rural and urban improvements, as provided for herein.

(2) The department shall continue to assess, without consideration of any increase in productivity resulting from the introduction of *an* irrigation system, at the current rate all nonirrigated farm land and nonirrigated continuously cropped farm land for a period of three (3) years after introduction to the land of *an* irrigation system.

The records of this assessment shall be maintained in the office of the agent of the department in each county of this state and a copy sent to the department."

Approved March 25, 1977.

CHAPTER NO. 124

AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF

LAWS RELATING TO RECREATIONAL VEHICLES AND CONVEYANCES; AMENDING SECTIONS 53-1014, 53-1017, 53-1019, 53-1026, 69-3502 THROUGH 69-3505, 69-3507, 69-3508, 69-3508.1, 69-3512 THROUGH 69-3514, 69-3516, 69-3516.1, 69-3517, 69-3518, 69-6601, 69-6610, AND 69-6615, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1014, R.C.M. 1947, is amended to read as follows:

"**53-1014. Transfer of title or interest.** (1) Upon a transfer of any title *to* or interest *in* a snowmobile, registered *as required* under the provisions of this act, the person whose title or interest is to be transferred shall write *his signature* with pen and ink upon the certificate of ownership issued for *the snowmobile*, in the appropriate space provided upon the reverse side of *the* certificate, and such signature shall be acknowledged before a notary public.

(2) Within 10 days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under this act, to the registrar, who shall file *them* upon receipt thereof. *No* certificate of ownership *or* certificate of registration *may* be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. The registrar of motor vehicles shall collect a fee of $2 for each application for transfer of ownership.

(3) The provisions of *subsection* (2) of this section, requiring a transferee to forward the certificate of ownership after endorsement and the certificate of registration to the registrar, shall not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell *the snowmobile* who operates *it* only for demonstration purposes, but every such dealer, upon transferring such interest, *shall* deliver *the* certificate of ownership and certificate of registration with an application for registration executed by the new owner in accordance with the provisions of this act. *The* registrar, upon receipt of *the* certificate of ownership, certificate of registration, and application for registration, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien."

Section 2. Section 53-1017, R.C.M. 1947, is amended to read as follows:

"**53-1017. Report of stolen and recovered snowmobiles.** It *is* the duty of the sheriff of every county of the state and of the chief of police or commissioner of police of every city to make immediate report to the registrar of motor vehicles of all snowmobiles reported to him as stolen or recovered, upon forms provided by the registrar of motor vehicles. Failure on the part of any officer *is* misfeasance in office and *constitutes* grounds for removal. Upon receipt of such information, the registrar of motor vehicles shall file the same in an index to be known as the "stolen

HeinOnline -- 1977 Vol. I 420 1977

and recovered snowmobile index". It *is* also the duty of the registrar of motor vehicles to file reports of stolen and recovered snowmobiles reported to him from other states. *Once a month the* registrar of motor vehicles shall prepare a list of all snowmobiles stolen or recovered during the previous month and forward a copy of the same to every sheriff and all police departments in cities of the first, second, and third class. Such list shall also be forwarded to the secretary of state or other proper official in each state of the United States. Before a certificate of title, as heretofore provided, shall be issued under this act, the motor and serial number on the motor vehicle to be registered shall be checked against the stolen and recovered snowmobile index."

Section 3. Section 53-1019, R.C.M. 1947, is amended to read as follows:

"**53-1019. Unlawful operation on streets and highways.** It shall be unlawful for any person to drive or operate any snowmobile upon a public street or highway in any one or more of the following manners:

(1) *at* a rate of speed greater than provided by law for motor vehicles;

(2) *while* under the influence of intoxicating liquor or narcotics or habit-forming drugs;

(3) *in* a careless or reckless manner so as to endanger the person or property of another or to cause injury or damage to either; *or*

(4) operation of a snowmobile or permitting such operation by any person who by reason of age or physical or mental disability is incapable of operating the snowmobile as required for safety under the prevailing circumstances."

Section 4. Section 53-1026, R.C.M. 1947, is amended to read as follows:

"**53-1026. Application to be made annually — grace period — proof of purchase.** (1) Application must be made to the county treasurer for the issuance of tax-paid decals annually. All tax-paid decals expire on June 30 of each year.

(2) An owner of a newly purchased snowmobile shall have a grace period of 10 days from the date of purchase to make application for a current tax-paid decal, provided that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase shall be carried by the operator or with the snowmobile. An owner or operator of such a snowmobile being operated after the 10-day grace period without a current tax-paid decal displayed on the snowmobile shall be subject to the penalties of 53-1027, *as amended.*"

Section 5. Section 69-3502, R.C.M. 1947, is amended to read as follows:

"**69-3502. Definitions.** As used in this act, unless the context clearly requires a different meaning *the following definitions apply*:

(1) "Vessel" means every description of watercraft, unless otherwise defined by the commission, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

HeinOnline -- 1977 Vol. I 421 1977

(2) "Motorboat" means any vessel propelled by *any* machinery, motor, or engine of any description, whether or not such machinery, motor, or engine is the principal source of propulsion. *The term includes* boats temporarily equipped with detachable motors or engines but *does* not include a vessel which has a valid marine document issued by the U.S. coast guard of the United States government or any federal agency successor thereto.

(3) "Owner" means a person, other than a lien holder, having the property in or title to a motorboat or vessel. The term includes a person entitled to the use or possession of a motorboat or vessel subject to an interest in another person, reserved or created by *an* agreement securing payment or performance of an obligation, but the term excludes a lessee under a lease not intended as security.

(4) "Waters of this state" means any waters within the territorial limits of this state.

(5) "Person" means an individual, partnership, firm, corporation, association, or other entity.

(6) "Operate" means to navigate or otherwise use a motorboat or a vessel.

(7) *"Commission" means* the fish and game commission of the state of Montana.

(8) "Certificate of number" means the certificate issued annually by the *county treasurer* to the owner of a motorboat *or by the registrar of motor vehicles to dealers or manufacturers, assigning* such motorboat an identifying number and *containing* such information as required.

(9) "Identifying number" means the boat number set forth in the certificate of number and properly displayed on the motorboat.

(10) "License decals" *means* the serially numbered license stickers issued annually by the *county treasurer* and displayed as required by law.

(11) "Passenger" means every person carried on board a vessel other than:

(a) the owner or his representative;

(b) the operator;

(c) bona fide members of the crew engaged in the business of the vessel who have contributed no consideration for their carriage and who are paid for their services; or

(d) any guest on board a vessel which is being used exclusively for pleasure purposes who has not contributed any consideration, directly or indirectly, for his carriage.

(12) "Operator" means the person who navigates, drives, or is otherwise in immediate control of a motorboat or vessel.

(13) "Documented vessel" means a vessel which has and is required to have a valid marine document as a vessel of the United States.

HeinOnline -- 1977 Vol. I 422 1977

(14) "Uniform state waterway marking system" means one of two categories:

(a) a system of aids to navigation to supplement the federal system of marking in state waters;

(b) a system of regulatory markers to warn a vessel operator of dangers or to provide general information and directions."

Section 6. Section 69-3503, R.C.M. 1947, is amended to read as follows:

"**69-3503. Operation of unnumbered motorboats prohibited — display of decals.** (1) Every motorboat on the waters of this state propelled by *a* motor or engine of any description shall be properly numbered and display valid license decals. No person *may* operate or give permission for the operation of any motorboat on such waters unless the motorboat is numbered and displays valid license decals in accordance with this act, in accordance with applicable federal law, or in accordance with a federally approved numbering system of another state, *and* unless:

(a) the certificate of number awarded to *the* motorboat is in full force and effect; and

(b) the identifying number set forth in the certificate of number and the valid license decals are displayed on such motorboat.

(2) Any person who operates a motorboat on the waters of this state without displaying the appropriate numbers and license decals as required by this section *is* punishable by a fine not to exceed $10. However, the arresting officer may issue a courtesy citation in lieu of the penalty provided for in this subsection."

Section 7. Section 69-3504, R.C.M. 1947, is amended to read as follows:

"**69-3504. Identification number.** *(1)* The owner of each motorboat requiring numbering by this state shall file an application for number in the office of the county treasurer wherein the motorboat is owned or taxable on forms prepared and furnished by the registrar of motor vehicles. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of $1. Any alteration, change, or false statement contained in the application will render the certificate of number void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the registrar of motor vehicles, stating the number awarded to the motorboat and the name and address of the owner. The number awarded must be painted on or attached to each outboard side of the forward half of the motorboat or, if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat for which it is issued. The number awarded shall read from left to right, *be* in Arabic numerals, in block characters of good proportion, a minimum of 3 inches in height excluding border or trim, of a color which shall contrast with the color of the background, and *be* so maintained as to be clearly visible and legible. The number shall not be placed on the obscured

HeinOnline -- 1977 Vol. I 423 1977

underside of the flared bow where the angle is such that the numbers cannot be easily seen from another vessel or ashore. No numerals, letters, or devices, other than those used in connection with the identifying number issued, *may* be placed in the proximity of the identifying number, and no numerals, letters, or devices which might interfere with the ready identification of the motorboat by its identifying number *may* be carried as to interfere with the motorboat's identification. The certificate of number shall be pocket size and shall be available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat for which issued whenever the motorboat is on waters of this state. *Boat* liveries are not required to have the certificate of number on board each motorboat, *but* a rental agreement must be carried on board livery motorboats in place of the certificate of number.

(2) Before filing such application with the county treasurer, the applicant shall submit the same to the county assessor, *who* shall enter on *the* application, in a space to be provided for that purpose, the full and true and assessed valuation of *the motorboat* for the year for which *the* application for registration is made.

(3) The applicant, upon the filing of the application, *shall* pay to the county treasurer the registration fee and shall also pay the personal property taxes assessed against the motorboat or vessel for the current year of registration before the application for registration or reregistration may be accepted by the county treasurer.

(4) The numbering requirements of this act shall apply to motorboats operated by dealers, manufacturers, or their employees as follows:

(a) A dealer or manufacturer may apply directly to the registrar of motor vehicles for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on a dealer's or manufacturer's boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer.

(b) The application for a dealer's or manufacturer's identifying number shall include the name of the dealer or manufacturer and *his* business address. Each dealer or manufacturer shall have one identifying number assigned to his business.

(c) An application for dealer's or manufacturer's identifying number and certificate of number shall be accompanied by the following fees:

(i) for the identifying number, first certificate of number, and set of license decals, $5;

(ii) for each additional certificate of number and set of license decals applied for in any application, $2.

(d) The registrar of motor vehicles shall issue certificates of number for identifying *numbers* awarded to a dealer or manufacturer in the same manner as provided in 69-3504 *(1), as amended,* except that no boat shall be described in the certificate and each certificate shall state that the identifying number has been awarded to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on April 30 of the year for which it is issued.

HeinOnline -- 1977 Vol. I 424 1977

(e) A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in 69-3504 *(1), as amended,* except that the number may be temporarily attached. *The* last three letters shall be "DLR" for dealer and "MFR" for manufacturer. *These* letters shall be included, respectively, in dealer or manufacturer identification numbers only.

(f) No person other than a dealer or manufacturer or an employee of a dealer or manufacturer *may* display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer.

(g) No dealer or manufacturer or employee of a dealer or manufacturer *may* use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection *(4)(a)* of this section.

(5) Should the ownership of a motorboat change, within a reasonable time a new application form with fee shall be filed with the county treasurer and a new certificate of number shall be awarded in the same manner as provided for in an original award of number.

(6) If an agency of the United States government has in force an *overall* system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this act by the registrar of motor vehicles shall be in conformity therewith.

(7) Every certificate of number and the license decals awarded under this act shall continue in effect for a period not to exceed 1 year, unless sooner terminated or discontinued in accordance with the provisions of this act. Certificates of number and license decals shall show the date of expiration thereon and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(8) Certificates of number shall expire on April 30 of each calendar year and shall no longer be of any effect unless renewed under this act.

(9) In event of transfer of ownership, the purchaser shall *within a reasonable time* furnish the county treasurer notice of the acquisition of all or any part of his interest other than the creation of a security interest in a motorboat numbered in this state under this section or of the loss, theft, destruction, or abandonment of the motorboat. Such transfer, loss, theft, destruction, or abandonment shall terminate the certificate of number for the motorboat, except that in the case of a recovery from theft or transfer of a part interest which does not affect the owner's right to operate the motorboat, the recovery or transfer does not terminate the certificate of number.

(10) A holder of a certificate of number shall notify the county treasurer within reasonable time if his address no longer conforms to the address appearing on the certificate and shall, as a part of the notification, furnish the county treasurer with his new address. The registrar of motor vehicles may provide *by rule* for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

HeinOnline -- 1977 Vol. I 425 1977

(11) No number other than the number and license decal awarded to a motorboat or granted reciprocity under this act shall be painted, attached, or otherwise displayed on either side of the forward half of the motorboat.

(12) Fees collected under this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of an earmarked revenue fund. These fees shall be used only for the administration and enforcement of 69-3501 through 69-3518, *as amended.*

(13) An owner of a motorboat must notify the registrar of motor vehicles *within a reasonable time,* giving the motorboat's identifying number and the owner's name, when that motorboat becomes documented as a vessel of the United States, is transferred, lost, destroyed, abandoned, *or* frauded, or within 60 days after change of state of principal use."

Section 8. Section 69-3505, R.C.M. 1947, is amended to read as follows:

"69-3505. Equipment. (1) Every motorboat or vessel shall have aboard:

(a) *one* United States coast guard approved personal flotation device in good and serviceable condition for each person on board, provided that any person who has not reached his *12th* birthday shall have a United States coast guard approved life preserver properly fastened to his person when occupying a motorboat or vessel under 26 feet in length while such motorboat or vessel is in motion;

(b) if carrying or using any inflammable or toxic fluid in any enclosure for any purpose, and if *the motorboat or vessel is* not an entirely open *one,* an efficient natural or mechanical ventilation system prescribed by the *commission* which shall be used and be capable of removing resulting gases prior to and during the time the motorboat or vessel is occupied by a person;

(c) United States coast guard approved hand portable fire extinguishers, the number of which is to be determined by the commission, or a United States coast guard approved fixed fire extinguishing system, except that motorboats less than 26 feet in length of entirely open construction, propelled by outboard motors, and not carrying passengers for hire need not carry such portable fire extinguishers or fire extinguishing systems.

(2) Every motorboat or vessel shall have the carburetor or carburetors of every engine therein (except outboard motors) using gasoline as fuel equipped with an efficient flame arrester, backfire trap, or other similar device.

(3) *When in operation or at anchor or moored away from a docking facility between sunset and sunrise, all vessels shall display lights as prescribed by the commission.*

(4) *The commission may designate waters where and the time of year*

HeinOnline -- 1977 Vol. I 426 1977

on these waters when all persons aboard a motorboat or vessel must wear approved life preservers at all times.

(5) Vessels, including houseboats and floating cabins, equipped with a galley or toilet shall have a wastewater holding system sealed to prevent the discharge of *water carried waste products*, whether treated or untreated, into the surrounding waters.

(6) The commission may adopt rules modifying the equipment requirements contained in this section to the extent necessary to keep these requirements in conformity with the provisions of the federal navigation and safety laws or with the navigation and safety rules promulgated by the United States coast guard.

(7) A person may not operate or give permission for the operation of a vessel which is not equipped as required by this section."

Section 9. Section 69-3507, R.C.M. 1947, is amended to read as follows:

"69-3507. Boat liveries. *(1)* The owner of a boat livery shall cause to be kept a record of the name and address of the person or persons hiring any vessel which is permitted by him to be operated, the identification number *of such vessel*, the departure date and time, and the expected time of return. The record shall be preserved for at least 6 months.

(2) Neither the owner of a boat livery nor his agent or employee shall permit any motorboat or any vessel permitted by him to be operated as a motorboat or vessel to depart from his premises unless it shall have been provided, either by owner or renter, with the equipment required pursuant to 69-3505 and any rules made pursuant thereto."

Section 10. Section 69-3508, R.C.M. 1947, is amended to read as follows:

"69-3508. Prohibited operation and mooring — enforcement. *(1)* No person *may* operate or knowingly permit any person to operate any motorboat or vessel or manipulate any *water skis*, surfboard, or similar device or other contrivance in a reckless or negligent manner so as to endanger the life, limb, or property of any person.

(2) No person *may* operate or knowingly permit any person to operate any motorboat or vessel or manipulate any *water skis*, surfboard, or similar device or other contrivance while intoxicated or under the influence of any narcotic drug, barbiturate, or marijuana.

(3) It *is* unlawful for the owner of any motorboat or vessel or any person having such in charge or in control to authorize or knowingly permit the same to be operated by any person who by reason of physical or mental disability is incapable of operating such watercraft under the prevailing circumstances.

(4) No person *may* operate or knowingly permit any person to operate any motorboat or vessel at a rate of speed greater than will permit such person, in the exercise of reasonable care, to bring the vessel to a stop within the assured clear distance ahead. *However*, nothing in this act is intended to prevent the operator of a vessel actually competing in a

HeinOnline -- 1977 Vol. I 427 1977

regatta which is sanctioned by an appropriate governmental unit from attempting to attain high speeds on a marked racing course.

(5) No person *may* make *a* reckless approach to, departure from, or passage by a dock, ramp, diving board, or float.

(6) Skiers being pulled by motorboats must have on their person a life preserver, buoyant vest, or *ski belt.*

(7) No person *may* moor a vessel to any of the buoys or beacons placed in any waters of this state by the authority of the United States, an agency of the United States, or the *commission or* in any manner hang on with a vessel to such buoy or beacon, except in the act of maintenance work on such buoy or beacon, nor *may* any person deface, remove, or destroy any such buoy, beacon, or other authorized navigational marker maintained in the waters of this state.

(8) If an officer whose duty it is to enforce the sections of this law observes a vessel being used without sufficient lifesaving or firefighting devices or in an overloaded or other unsafe condition and in his judgment such use creates an especially hazardous condition, he may direct the operator to take whatever immediate and reasonable steps would be necessary for the safety of those aboard the vessel, including directing the operator to return to mooring or launching site and to remain there until the situation creating the hazard is corrected or ended."

Section 11. Section 69-3508.1, R.C.M. 1947, is amended to read as follows:

"**69-3508.1. Discharge of waste from vessel prohibited.** No person shall discharge or cause, permit, or suffer to be discharged any garbage, refuse, waste, or sewage from any vessel into, upon, *or near* the waters at any stream, river, or lake within the boundaries of the state of Montana."

Section 12. Section 69-3512, R.C.M. 1947, is amended to read as follows:

"**69-3512. Collisions, accidents, and casualties.** *(1) The* operator of a vessel involved in a collision, accident, or other casualty, so far as he can do so without serious danger to his own vessel, crew, and passengers (if any), *shall* render to other persons affected by the collision, accident, or other casualty such assistance as may be practicable and as may be necessary in order to save them from or minimize any danger caused by the collision, accident, or other casualty and give his name, address, and identification of his vessel in writing to any person injured and to the owner or person in control of any property damaged in the collision, accident, or other casualty.

(2) The *commission* shall prepare and distribute to each sheriff's office and *each* game *warden* of this state a standardized accident report form. *Any* person involved in a collision, accident, or other casualty involving a death, disappearance, personal injury, or property damage in excess of $100 shall immediately report such collision, accident, or other casualty to the sheriff's office or game warden of the county in which the collision, accident, or casualty occurred and fill out a standardized accident report form.

HeinOnline -- 1977 Vol. I 428 1977

(3) A sheriff advised of a collision, accident, or other casualty reported under this act *shall:*

(a) conduct an appropriate investigation of such collision, accident, or other casualty; and

(b) prepare and submit a report of the results of *the* investigation, together with the completed standardized accident report forms, to the *commission.*"

Section 13. Section 69-3513, R.C.M. 1947, is amended to read as follows:

"**69-3513. Transmittal of information.** In accordance with any request duly made by an authorized official or agency of the United States, any information compiled or otherwise available to the *commission* pursuant to *subsections (2) and (3) of* 69-3512, *as amended,* shall be transmitted to *such* official or agency of the United States."

Section 14. Section 69-3514, R.C.M. 1947, is amended to read as follows:

"**69-3514. Water skis and surfboards.** *(1)* No person *may* operate a motorboat or vessel on any waters of this state for the purpose of towing a person or persons on *water skis,* a surfboard, or similar device or other contrivance unless *the* operator is at least 12 years of age and there is a second person, at least 12 years of age, in the vessel to act as observer to observe the person being towed.

(2) No person *may* engage in *waterskiing,* surfboarding, or similar activity or towing some other contrivances at any time between the hours from *1* hour after sunset to *1* hour before sunrise, *except* that this subsection *does* not apply to a performer engaged in a professional exhibition or a person engaged in a regatta or race authorized under this act.

(3) All *right-of-way* rules applying to the towing vessel shall apply."

Section 15. Section 69-3516, R.C.M. 1947, is amended to read as follows:

"**69-3516. Filing of rules.** A copy of the *rules* adopted pursuant to this act and of any amendments thereto shall be filed in the office of the *commission* and in the office of the secretary of state. Rules shall be published by the *commission* in a convenient form and made easily available to all vessel operators."

Section 16. Section 69-3516.1, R.C.M. 1947, is amended to read as follows:

"**69-3516.1. Education program.** The *commission* shall coordinate a statewide boat safety education program."

Section 17. Section 69-3517, R.C.M. 1947, is amended to read as follows:

"**69-3517. Enforcement of act.** It shall be the duty of the commission to enforce the sections of this law. The state fish and game director shall

HeinOnline -- 1977 Vol. I 429 1977

employ all the necessary personnel to comply with this section. All sheriffs and peace officers of the state of Montana and all United States coast guard law enforcement officers shall have authority to enforce provisions of 69-3501 through 69-3518, *as amended.*"

Section 18. Section 69-3518, R.C.M. 1947, is amended to read as follows:

"**69-3518. Penalty.** Violations of any section of this *chapter* unless otherwise specified shall be a misdemeanor and be punishable by fine of not less than $15 or more than $500 or by imprisonment up to 6 months or by both such fine and imprisonment. All fine and bond forfeitures shall be transmitted to the state treasurer who shall deposit such fines and forfeitures in the motorboat account of an earmarked fund. *The* moneys shall be used only by the commission for enforcement of 69-3501 through 69-3518, *as amended.*"

Section 19. Section 69-6601, R.C.M. 1947, is amended to read as follows:

"**69-6601. Policy of state.** In order to safeguard the life, health, property, and welfare of the citizens of Montana while using passenger tramways, as defined in 69-6602, it shall be the policy of the state to protect its citizens and visitors from unnecessary mechanical hazards in the design, construction, and operation of passenger tramways, but not from the hazards inherent in the sports of mountaineering, skiing, and hiking or from the hazards of the area *utilized* by the skier or other sportsman and that periodic inspections be required of passenger tramways with a view to assuring that each one of them meets the rules set forth by the department. The state, through the department, shall register all passenger tramways in the state, establish reasonable standards of design, construction, and operational practices, and cause to be made such inspections as may be necessary in carrying this policy into effect."

Section 20. Section 69-6610, R.C.M. 1947, is amended to read as follows:

"**69-6610. Additional powers and duties of department.** In addition to all other powers and duties conferred and imposed upon the department by this *chapter*, the department shall:

(1) adopt reasonable rules relating to public safety in the design, construction, and operation of passenger tramways but which *may* not relate or pertain to an area served by a passenger tramway. In adopting such rules the department shall:

(a) use as a guideline the standards contained in "The American National Standards Institute—Safety Requirements for Aerial Passenger Tramways", ANSI B 77.1—1970, as amended from time to time, or equivalent and as amended or supplemented from time to time by the department;

(b) hold hearings and take in all evidence relating to the adoption of these rules.

(2) supply to each operator a copy of its rules and each amendment thereto or revision thereof;

HeinOnline -- 1977 Vol. I 430 1977

(3) avoid discrimination in application of the rules to operators of passenger tramways;

(4) hold hearings and take evidence in all matters relating to the exercise and performance of the powers and duties vested in the department, subpoena witnesses, administer oaths, and compel the testimony of witnesses and the production of books, papers, and records relevant to any inquiry;

(5) approve, deny, revoke, and renew the registrations provided for in this chapter;

(6) cause the prosecution and enjoinder of all persons violating the provisions of this chapter and incur the necessary expenses thereof;

(7) employ, within the funds available, and prescribe the duties of such personnel as the department *considers* necessary."

Section 21. Section 69-6615, R.C.M. 1947, is amended to read as follows:

"**69-6615. Tramways not common carriers or public utilities.** Passenger tramways shall not be construed to be common *carriers* or public utilities for the purposes of regulation within the meaning of the laws of the state of Montana."

Approved March 25, 1977.

CHAPTER NO. 125

AN ACT ACCEPTING THE RETROCESSION OF SUCH JURISDICTION AS HAD BEEN CEDED TO THE UNITED STATES OVER THE LANDS WITHIN THE BOUNDARIES OF THE BIG HOLE NATIONAL BATTLEFIELD; RECOGNIZING RESERVATION IN THE UNITED STATES OF CONCURRENT LEGISLATIVE JURISDICTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 83-115 that reads as follows:

83-115. Acceptance of concurrent jurisdiction over Big Hole national battlefield. The state of Montana accepts the retrocession in public Law 88-24, which was approved May 17, 1963 and made effective upon acceptance of the retrocession by the state of Montana, of such jurisdiction as had been ceded by this state to the United States over the lands within the boundaries of the Big Hole national battlefield. This state recognizes the reservation in the United States of concurrent legislative jurisdiction over such lands.

Approved March 25, 1977.

HeinOnline -- 1977 Vol. I 431 1977

CHAPTER NO. 126

AN ACT TO CORRECT GRAMMAR AND INTERNAL REFERENCES, AND DELETE REDUNDANT, OBSOLETE, OR UNCONSTITUTIONAL PROVISIONS IN THE PROPERTY TAX AND LICENSE TAX LAWS; AMENDING SECTIONS 82-1104, 84-201, 84-202, 84-406, 84-437.5, 84-501, 84-1608, 84-4002, 84-4166, 84-4169, 84-41-100, 84-4216, 84-5606.18, AND 84-5606.26, R.C.M. 1947; AND REPEALING SECTIONS 84-514, 84-713, 84-1902, 84-1903, 84-4011, 84-4144 THROUGH 84-4150, 84-4159, 84-5703 THROUGH 84-5717, 84-5718, AND 84-5719, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-201, R.C.M. 1947, is amended to read as follows:

"**84-201. Property subject to taxation.** All property in this state is subject to taxation, except as provided *otherwise*."

Section 2. Section 84-202, R.C.M. 1947, is amended to read as follows:

"**84-202. Exemptions from taxation.** (1) (a) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries; buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church; such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used or held for private or corporate profit; institutions of purely public charity; evidence of debt secured by mortgages of record upon real or personal property in the state of Montana; and public art galleries and public observatories not used or held for private or corporate profit are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" *includes* organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" mean only such art galleries and observatories, whether of public or private ownership, as are open to the public, without charge or fee, at all reasonable hours and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States *military personnel* is used exclusively for educational, fraternal, benevolent, or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of *U.S. military service* or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by

HeinOnline -- 1977 Vol. I 432 1977

the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, *and* wearing apparel of members of the family, used by the owner for personal and domestic purposes or for furnishing or equipping the family residence are exempt from taxation.

(4) *(a)* Freeport merchandise *is* exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state for storage in transit prior to shipment to a final destination outside the state and which have acquired a taxable situs within the state.

(b) Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled, or repackaged.

(c) Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the department of revenue in such manner or form as may be required by the department.

(5) The following agricultural products are exempt from taxation:

(a) *all* unprocessed, perishable fruits and vegetables in farm storage and owned by the producer*;*

(b) *all* nonperishable unprocessed agricultural products, except livestock, held in possession of the original producer for less than 7 months following harvest*; and*

(c) *livestock*, defined as cattle, sheep, horses, or mules, which have not attained the age of 9 months as of the last day of any month.

(6) Moneys and credits are exempt from taxation.

(7) A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under 84-7403."

Section 3. Section 84-406, R.C.M. 1947, is amended to read as follows:

"84-406. Time of assessment — motor vehicles — mobile homes — livestock — snowmobiles. (1) The department of revenue or its agent must, between January *1* and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property in each county subject to taxation, except such as is required to be *centrally* assessed by the department, and must assess such property to the persons by whom it was owned or claimed or in whose possession or control it was at 12 midnight of January *1* next preceding. It must also ascertain and assess all mobile homes arriving in the county after 12 midnight of January *1* next preceding.

(2) The procedure provided by this section shall not apply to:

(a) *motor* vehicles which are required by *subsection* (2) hereof to be

assessed as of January *1* or upon their anniversary registration date; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid;

(b) *livestock* which are required by *subsection* (3) of this section to be assessed on an average inventory basis in each county;

(c) *property* defined in 53-642 as "special mobile equipment" which is subject to assessment of personal property taxes on the date that application is made for a special mobile equipment plate;

(d) *mobile* homes held by a distributor or dealer of mobile homes as a part of his stock in trade;

(e) snowmobiles which are required by *subsection (4)* to be assessed as of July *1.*

(3) (a) The department or its agent must ascertain and assess all motor vehicles, except mobile homes, in each county subject to taxation as of January 1, or as of the anniversary registration date of those vehicles subject to 53-154 through 53-162, in each year, and the same shall be assessed to the persons by whom owned or claimed or in whose possession or control such vehicle was at 12 midnight of January *1* or the anniversary registration date thereof, whichever is applicable, in each year. *The* tax *may* not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but *such* vehicles and all other motor vehicles brought into the state subsequent to January 1 as motor vehicle dealer's inventory shall be assessed to their respective purchasers as of the dates *the* vehicles are registered by *the* purchasers. *"Purchasers"* means dealers who apply for registration or *reregistration* of motor vehicles, except as otherwise provided by 32-3315. Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at full and true value as of January *1.*

(b) This subsection (2) does not apply to an applicant for registration or *reregistration* of a mobile home *and* nothing herein contained *relieves* the applicant for registration or *reregistration* of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or *reregistration* in the event *the* taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(4) The assessed value of livestock in each county on the assessment date shall be computed by adding the assessed value of all livestock more than 9 months of age owned by the taxpayer in each county on the last day of each month since the last assessment date and dividing the sum by 12. For purposes of this subdivision "livestock" means cattle, sheep, horses, and mules.

(5) The department of revenue or its agent must ascertain and assess all snowmobiles in each county subject to taxation as of July 1 in each year, and the same shall be assessed to the persons by whom owned or claimed or in whose possession or control such snowmobile was at 12 midnight on July *1* in each year. *Snowmobiles* which constitute inventory

HeinOnline -- 1977 Vol. I 434 1977

of snowmobile dealers shall be assessed to the dealers as of 12 midnight *on* January *1* in each year."

Section 4. Section 84-437.5, R.C.M. 1947, is amended to read as follows:

"**84-437.5. Roll-back tax procedures governed by nonagricultural provisions.** The assessment of the roll-back tax imposed by *84-437.4*, the attachment of the lien for such taxes, and the right of the owner or other interested party to review any judgment of the department of revenue or local tax appeal board affecting such roll-back tax shall be governed by the procedures provided for the assessment and taxation of real property not valued, assessed, and taxed under the provisions of this act. The roll-back tax collected shall be paid into the county treasury and paid by the treasurer to the various taxing units pro rata in accordance with the levies for the current year."

Section 5. Section 84-501, R.C.M. 1947, is amended to read as follows:

"**84-501. Property — how listed.** The department of revenue must prepare an assessment book with appropriate headings, alphabetically arranged, in which must be listed all property within the state and in which must be specified in separate columns, under the appropriate head:

(1) the name of the person to whom the property is assessed;

(2) land, by township, range, section, or fractional section and, when such land is not a United States land division or subdivision, by metes and bounds or other description sufficient to identify it, giving an estimate of the number of acres, not exceeding in each and every tract *640* acres, locality, and the improvements thereon;

(3) city and town lots, naming the city or town, and the number of the lot and block, according to the system of numbering in such city or town, and the value of same with improvements thereon;

(4) all taxable personal property, showing the number, kind, amount, and quality; but a failure to enumerate in detail such personal property does not invalidate the assessment;

(5) the assessed value of real estate, other than city or town lots;

(6) the assessed value of city and town lots with improvements thereon, except that a lot and improvements thereon shall be separately listed when required under 84-401, R.C.M. 1947;

(7) the assessed value of improvements on real estate assessed to persons other than the owners of the real estate. *Taxable improvements owned by the person, firm, association, or corporation located upon land exempt from taxation shall, as to the manner of assessment, be assessed as other real estate upon the assessment roll. No value, however, may be assessed against the exempt land, nor under any circumstances may the land be charged with or become responsible for the assessment made against any taxable improvements located thereon.*

(8) the assessed value of all *taxable* personal property;

HeinOnline -- 1977 Vol. I 435 1977

(9) the school, road, and other revenue districts in which each piece of property assessed is situated;

(10) the total assessed value of all property."

Section 6. Section 84-1608, R.C.M. 1947, is amended to read as follows:

"**84-1608. False statements constitute perjury.** Any person, officer, partner, agent, or representative of any producer referred to in 84-1601 who *makes* any false statement, affidavit, certificate, report, or statement required to be made to the department of revenue *is* guilty of perjury and upon conviction shall be punished *as provided in the Criminal Code of 1973, as amended.*"

Section 7. Section 84-4002, R.C.M. 1947, is amended to read as follows:

"**84-4002. County clerk to prepare duplicate statement.** The county clerk *shall*, on or before the second Monday in August of each year, prepare from the assessment book of such year, as corrected by the department of revenue or its agent, duplicate statements, showing in separate columns:

(1) the total value of all property;

(2) the value of real estate, including mining claims, stated separately;

(3) the value of the improvements thereon;

(4) the value of *taxable* personal property;

(5) the number of acres of land and the number of mining claims, stated separately."

Section 8. Section 84-4166, R.C.M. 1947, is amended to read as follows:

"**84-4166. Defense to action — redemption of parcels.** Any defendant may appear in *the* action within the time provided by law for appearances in civil actions, may set up any defense to the action he may have, and may therein question the legality, validity, or the sufficiency of any act had in connection with the assessment or sale of *the* land. *Any* defendant to *the* action may make redemption of *the* lands from *the* tax sale by paying the total amount of delinquent taxes and penalties *which plaintiff has paid*, with interest thereon at 8% *a year* from date of payment, together with costs of the action. *Upon* such payment, a certificate of redemption shall be issued by the county treasurer to the defendant so paying, and thereupon the action shall be dismissed. *Whenever* a defendant *desires* to redeem from a tax sale and pay all subsequent taxes upon any lots, piece, or parcel of real estate, which *a* person, firm, *partnership*, corporation, or association *owns* or *holds* a mortgage or other lien against or *has* any interest in, the county treasurer of the county in which such real estate is situated *shall* permit such redemption and payment. *In* case the real estate *has* been assessed against any other property *and is* a lien thereon, then *the* county treasurer *shall* compute and apportion the tax that should have properly been assessed against the real estate sought

HeinOnline -- 1977 Vol. I 436 1977

to be redeemed and upon which the taxes are sought to be paid, the same as if *the* property had been separately assessed. Any personal property tax which is a lien upon *such* real estate shall be likewise computed and apportioned on the same percentage basis as the tax assessed against the real estate is apportioned."

Section 9. Section 84-4169, R.C.M. 1947, is amended to read as follows:

"**84-4169. Form of tax deed issued on filing copy of decree with treasurer.** *When* a certified copy of the decree *has been filed with the county treasurer,* he must issue a tax deed for the real estate described in the judgment, which deed in substance shall be as follows: "This indenture, made by and between....(insert name of treasurer)...., county treasurer of the county....(insert name of county)...., in the state of Montana, the party of the first part, and....(insert name of grantee)...., the party of the second part, witnesseth:

Whereas, there was assessed for the year....(insert year)...., in the name of....(insert name)...., that certain tract of land hereinafter described, and the taxes for said year levied against said property amounted to the sum of....(insert amount).... dollars; and

Whereas, said taxes were not paid and said property was sold for the payment of said taxes to....(insert name of grantee),.... on the.... (insert day).... of....(insert month).... A. D.,....(insert year), ... for the sum of....(insert amount).... dollars, and certificates of sale were duly issued and filed as required by law; and

Whereas, by virtue of a judgment and decree entered by the District Court of the.... Judicial District of the state of Montana in and for the county of....(insert name of county).... in an action wherein.... was plaintiff and.... defendant, a certified copy thereof being filed in my office, I, the said county treasurer aforesaid, am ordered and directed to issue this deed of conveyance for said lands.

Now, therefore, I,....(insert name of treasurer),.... county treasurer of the county of....(insert name of county),.... in the state of Montana, for and in consideration of the sum of (insert amount).... dollars paid, do grant to....(insert name of grantee),.... all the property situated in....(insert name of county).... county, state of Montana, described as follows:....(here insert description of the land sold for taxes and sought to be conveyed).

Witness my hand this....(insert day).... of....(insert month), A. D.,....(insert year).

....
County treasurer of....
County, state of Montana.""

Section 10. Section 84-41-100, R.C.M. 1947, is amended to read as follows:

"**84-41-100. Validation of tax deeds notwithstanding failure to classify lands.** No tax deed issued in this state *may* be held invalid, nor *may* its legality be in any manner affected by reason of the prior failure of the board of county commissioners of any county to provide for the

HeinOnline -- 1977 Vol. I 437 1977

classification of the lands in such county as required by *84-429.7 through 84-429.11 or prior law.* This enactment shall be retroactive and shall apply to all tax deeds issued under any law of the state of Montana providing a method of applying for and securing *a* deed to lands sold for delinquent taxes. All tax deeds issued *before July 1, 1941,* under the laws of Montana are hereby legalized and declared to be valid, notwithstanding that the lands thereby conveyed may not have been classified under the statutes herein referred to."

Section 11. Section 84-4216, R.C.M. 1947, is amended to read as follows:

"**84-4216. Cancellation of such taxes and obligations — filing of lists.** Upon receipt of such list or lists and within 30 days thereafter, the board of county commissioners shall examine the same and make any necessary corrections. Thereupon the board of county commissioners shall make its order canceling all such personal property taxes and contractual obligations contained in such list or lists, as corrected, required by this act to be canceled, and spread such order upon its minutes. *Such* order and minutes need not set forth in full the contents of such list or lists, a proper reference therein for their identification being sufficient. *At* the time of making such order, the original or copy of such list or lists, as corrected, shall be filed with and as a part of the records of the board. *One* legible copy thereof shall be filed with the county clerk and recorder as a public record, and one legible copy thereof shall be filed with the county treasurer as a permanent record of his office."

Section 12. Section 84-5606.18, R.C.M. 1947, is amended to read as follows:

"**84-5606.18. Sale and use of cigarettes a misdemeanor if insignia requirements not met.** Every person who sells any *package* of cigarettes which does not bear the insignia required by this act and every person who *uses or consumes a cigarette* within this state, *taken from a package which does not bear the required insignia,* is guilty of a misdemeanor and shall be punished as hereinafter provided."

Section 13. Section 84-5606.26, R.C.M. 1947, is amended to read as follows:

"**84-5606.26. Department's duties and powers — arrest, entry of complaint, and lawful search and seizure authorized.** The department *shall administer and enforce* this act, and the director and his agents *have* the powers of peace officers and *may* arrest any person violating any provision of this act, enter *a* complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence any unlawful or unlawfully possessed license, stamp, or insignia found in the possession of any person or *in any* place."

Section 14. Section 82-1104, R.C.M. 1947, is amended to read as follows:

"**82-1104. Prison made goods not affected.** Nothing in this act *modifies, amends, or abridges* 4-347, 4-348, 79-601, 84-1603, 84-1901, 84-2012, and 84-2203 or any law pertaining to the making or marketing

HeinOnline -- 1977 Vol. I 438 1977

of prison made goods or any law regulating or prohibiting the use or employment of convict labor."

Section 15. **Repealer.** Sections 84-514, 84-713, 84-1902, 84-1903, 84-4011, 84-4144 through 84-4150, 84-4159, 84-5703 through 84-5717, 84-5718 and 84-5719, R.C.M. 1947, are repealed.

Approved March 25, 1977.

CHAPTER NO. 127

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO TEACHERS' RETIREMENT AND DEATH AND DISABILITY BENEFITS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6201, R.C.M. 1947, is amended to read as follows:

"**75-6201. Definitions.** As used in this title, unless the context clearly indicates otherwise, *the following definitions apply*:

(1) "Retirement system" means the teachers' retirement system of the state of Montana provided for in 75-6202.

(2) "Retirement board" means the retirement system's governing board provided *for in* 82A-212.

(3) "Employer" means the state of Montana, *the* trustees of *a* district, or *any* other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(4) "Member" means *a* person who has an individual account in the annuity savings fund; an active member is *a* person included under the provisions of 75-6209; an inactive member is *a* person included under the provisions of 75-6210.

(5) "Beneficiary" means *a* person in receipt of a pension, annuity, retirement allowance, or other benefit provided by the retirement system.

(6) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of 75-6209.

(7) "Prior service" means employment of the same nature as service defined in subsection (6) of this section, but rendered before September 1, 1937.

(8) "Creditable service" is that service defined by 75-6212.

(9) "Regular interest" means interest at 4% per annum compounded annually or at such other rate as may be set by the retirement board in accordance with 75-6206*(2)*.

HeinOnline -- 1977 Vol. I 439 1977

(10) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(11) "Earnable compensation" means the full rate of the compensation, pay, or salary that would be payable to a member if he worked the full normal working time. In cases where compensation includes maintenance, the retirement board shall fix the value of that part of the compensation not paid in money.

(12) "Average final compensation" means the average of the earnable compensation of any 3 consecutive years on which contributions have been made by the member.

(13) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions. All annuities shall be paid in equal monthly installments. The retirement board may make an annual payment to the beneficiaries of the difference between the rate of interest used in calculating the benefit from the annuity reserve fund and the interest earned on investments.

(14) "Pension" means the payments made to a beneficiary for life which are paid *out of* the pension *accumulation* fund. All pensions shall be paid in equal monthly installments.

(15) "Retirement allowance" means the annuity plus the pension.

(16) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity computed, *with regular interest, on* the basis of *the* mortality tables adopted by the retirement board.

(17) "Pension reserve" means the present value of all payments to be made on account of a pension computed, *with regular interest,* on the basis of *the* mortality tables adopted by the retirement board.

(18) "Actuarial equivalent" means a benefit of equal value when computed, *with regular interest, on* the basis of *the* mortality tables adopted by the retirement board.

(19) "Former retirement system" means the retirement system established under 1113 *through* 1132 of the Revised Codes of Montana, 1935."

Section 2. Section 75-6205, R.C.M. 1947, is amended to read as follows:

"**75-6205. Powers and duties of retirement board.** The retirement board *shall* administer and operate the retirement system within the limitations prescribed by this *title and, to* this end, it *is* the duty of the retirement board to:

(1) establish rules necessary for the proper administration and operation of the retirement system;

(2) elect a chairman from its membership;

HeinOnline -- 1977 Vol. I 440 1977

(3) appoint a secretary who may be one of its members;

(4) employ technical or administrative employees who are necessary for the transaction of the business of the retirement system;

(5) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(6) keep a record of all its proceedings, which *must* be open to public inspection;

(7) publish a biennial report by January *1* of each year the *legislature* meets, *which reports* in detail the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system, and submit *the* biennial report to the governor and furnish copies to the *legislature*;

(8) when the retirement board *considers* it necessary, designate a medical board to be composed of three physicians who are not eligible to participate in the retirement system to investigate and report to the retirement board on all medical matters related to the administration of the retirement system;

(9) keep in convenient form that data which is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(10) designate an actuary to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which *includes* establishing mortality and service tables and making an actuarial investigation at least once every 5 years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system;

(11) prepare an annual valuation of the assets and liabilities of the retirement system;

(12) determine the eligibility of a person to become a member of the retirement system in accordance with the provisions of 75-6209;

(13) prescribe a form for membership application which will provide adequate and necessary information for the proper operation of the retirement system;

(14) adopt policies for the determination of creditable service in the retirement system implementing the following guidelines:

(a) 1 year's creditable service shall be awarded for each year of full-time service, outside of vacation periods, but no more than 1 year's creditable service shall be awarded for service during the same school fiscal year;

(b) *an* equitable proration of a year's creditable service shall be awarded for part-time service;

(c) *not* more than 1 month's creditable service shall be awarded for 1 or more continuous months of absence without pay;

(15) grant retirement, disability, and other benefits under the provisions of 75-6208;

(16) annually determine the rate of regular interest as prescribed in 75-6206;

(17) establish and maintain the funds of the retirement system in accordance with the provisions of 75-6207; and

(18) perform such other duties and functions as are required to properly administer and operate the retirement system."

Section 3. Section 75-6206, R.C.M. 1947, is amended to read as follows:

"**75-6206. Financial administration of moneys.** The *members of the* retirement board *are* the trustees of all moneys collected for the retirement system, and, as such trustees, they shall provide for the financial administration of the moneys in the following manner:

(1) The moneys shall be invested and *reinvested* by the state board of investments.

(2) The retirement board annually shall establish the rate of regular interest.

(3) The retirement board annually shall divide among the several funds of the retirement system an amount equal to the average balance of *the* funds during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of 75-6207*(4)(e)*, the amount to be credited to each fund shall be allocated from the interest and other earnings on the moneys of the retirement system actually realized during the preceding fiscal year, less the amount allocated to the expense fund under the provisions of 75-6207*(5)*.

(4) The state treasurer is the custodian of the collected retirement system moneys and of the securities in which *the* moneys are invested. All expenditures from *the* moneys *may* be made only upon claims signed by two persons designated by the retirement board. A properly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of each person shall be filed with the department of administration as *its* authority for approving such claims.

(5) Except as herein provided, no member of the retirement board *or* any of its employees *may* have an interest, direct or indirect, in the gains or profits of any investment of moneys of the retirement system. No member of the retirement board *or* any of its employees *may*, directly or indirectly, for himself or as an agent, in any manner use the moneys or deposits of the retirement system except to make such current and necessary expenditures as are authorized by the retirement board. No member of the retirement board *or* any of its employees *may* become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the retirement system.

(6) The retirement board may, in its discretion, transfer the amount

HeinOnline -- 1977 Vol. I 442 1977

in the annuity savings account of an inactive member to the pension accumulation fund if the account has been dormant for a period of 7 years. No right of the member *may* be jeopardized by such transfer, and the amount shall be transferred back to the member's annuity savings account upon his request.

(7) All the funds established by 75-6207, except the expense fund, shall be accounts in the agency fund of the treasury fund structure of the state. The expense fund shall be an account in the earmarked revenue fund of the same treasury fund structure."

Section 4. Section 75-6207, R.C.M. 1947, is amended to read as follows:

"**75-6207. Method of financing.** *(1)* The retirement board shall establish and maintain the funds *described in subsections (2) through (5),* in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

(2) Annuity savings fund—*the* annuity savings fund *is* a fund in which the contributions from the members to provide for their annuities shall be accumulated in individual accounts for each member. Contributions to and payments from the annuity savings fund shall be made in the following manner:

(a) Each employer shall deduct from the compensation of each active member on *the* payroll for each payroll period subsequent to the date on which *the* member became a member an amount equal to 6 ⅛% of *the* member's earnable compensation, but no employer *may* make any deductions for annuity purposes from the compensation of a member who has attained the age of 60 and rendered 30 years of creditable service if such member elects not to contribute.

(b) *The* deductions shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member *is considered* to consent to the deductions prescribed by this section, and payment of salary or compensation less the deductions *is a* complete discharge of all claims whatsoever for the services rendered by *the member* during the period covered by *the* payment, except as to the benefits provided by the retirement system.

(c) In addition to the contributions deducted from compensation and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund, by a single payment or by an increased rate of contribution, an amount equal to *any* accumulated contributions *which he has previously withdrawn, or any part thereof,* plus interest in the amount the contributions would have earned had the contributions not been withdrawn.

(d) The accumulated contributions of a member, withdrawn by him or paid to his estate or to his designated beneficiary in event of his death, shall be paid from the annuity savings fund, and an amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount paid shall be transferred to the pension accumulation fund. Upon the retirement of a member, his accumulated

HeinOnline -- 1977 Vol. I 443 1977

contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(3) Annuity reserve fund—*the* annuity reserve fund *is* the fund in which the reserves on all annuities in force *shall be held* and from which shall be paid all annuities and all benefits in lieu of annuities *shall be paid. If* a beneficiary retired on account of disability *is* restored to active service with a compensation not less than his average final compensation at the time of his last retirement, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(4) Pension accumulation fund—*the* pension accumulation fund *is* the fund in which *the* reserves for payment of pensions *shall be accumulated* and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each employer shall pay into the pension accumulation fund an amount equal to 6 ¼% of the earnable compensation of each member employed during the whole or part of the preceding payroll period.

(b) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of 75-7204.

(c) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system, or the Montana state *school for the* deaf and blind, the *legislature* shall appropriate to *the* employer an adequate amount to allow the payment of the employer's contribution.

(d) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under *the* budget.

(e) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund, and the amounts required to allow regular interest on the annuity savings fund and the annuity reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(f) All pensions and benefits in lieu thereof, including pensions payable under 75-6218, shall be paid from the pension accumulation fund.

(g) The retirement board may, in its discretion, transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also *an amount to cover expenses of administration.*

(5) Expense fund—*the* expense fund *is* the fund to which all moneys for the administrative expenses of the retirement system *shall be credited* and from which the expenses of administration of the retirement system shall be paid, exclusive of amounts payable as retirement allowances or

HeinOnline -- 1977 Vol. I 444 1977

other benefits. The retirement board shall determine annually the amount required for the expense fund to defray the administrative expense in the ensuing fiscal year and shall credit such an amount to the expense fund from interest and other earnings realized on the moneys of the retirement system."

Section 5. Section 75-6208, R.C.M. 1947, is amended to read as follows:

"**75-6208. Benefits.** *(1)* The retirement, disability, and other benefits of the retirement system shall be granted on the basis of the provisions *of subsections (2) through (8).*

(2) Superannuation retirement:

(a) *A* member *who has at least* 5 years of creditable service, *whose* last 5 years of *creditable service were* in this state and who has attained the age of 60 or has completed 30 years of creditable service may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement.

(b) *(i)* Any member in service who has attained the age of 70 years during any school year shall be retired on September *1* following his *70th* birthday. *This* provision *does* not apply to teachers in the Montana university system, who may be employed beyond the age of 70 upon the recommendation of the president of the employing unit to the board of regents.

(ii) Members over 70 years of age *may* not:

(A) be allowed creditable service for services rendered after the end of the school year in which the age of 70 *was* attained;

(B) contribute to the retirement system after the end of such school year; and

(C) have the compensation received after the end of such school year used in computing average final salary.

(c) Initial employment of teachers in the Montana university system beyond the age of 70 may be made upon the recommendation of the president of the employing unit and the approval of the board of regents, but such employees shall be denied membership in the retirement system.

(d) Any retired member may be employed as a part-time or substitute teacher in Montana and may earn an amount not to exceed one-fourth of his average final compensation without loss of retirement benefits.

(3) Allowance for superannuation retirement:

(a) Upon superannuation retirement a member shall receive a retirement allowance *consisting* of:

(i) *a* pension which, together with an annuity, *provides* a retirement allowance equal to one-half of his average final compensation, *if* his creditable service is at least 30 years; *or*

(ii) a pension together with *an* annuity *equal to one-sixtieth* of his average final compensation multiplied by the number of years of creditable service, *if his creditable service is less than 30 years.*

HeinOnline -- 1977 Vol. I 445 1977

(b) The minimum annual retirement allowance for a member who has completed 30 or more years of service *is* $2,400, and the minimum retirement allowance for a member whose service is less than 30 years *is* based on *an amount which bears the same ratio to* $2,400 *as* his service bears to 30 years.

(c) On July 1, 1975, and July 1, 1976, every beneficiary receiving a retirement allowance *will* be entitled to an increase in his monthly retirement allowance of *¼ of 1%* multiplied by the number of months he has been retired during the preceding fiscal year.

(d) A member who has *at least* 5 years of creditable service, *whose* last *5* years of *creditable service were* in this state, and who has attained the age of 55 may retire from service and be eligible *for* an early retirement allowance, if he files with the retirement board his written application setting forth the fact of his retirement. The early retirement allowance shall be determined as prescribed in subsections *(3)(a) and (3)(b)*, with the *exception* that *the* allowance will be reduced by *½ of 1%* multiplied by the number of months *by* which the retirement date precedes the date on which he would have retired had he attained 60 years of age or had he completed 30 years of creditable service.

(e) In the event of *the* death of a member after retirement, a death benefit of $500 *is* payable to his designated beneficiary.

(f) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(4) Disability retirement:

(a) Upon the application of an active member or of his employer *for a disability retirement allowance*, any active member who has 5 or more years of creditable service may be retired by the retirement board the month immediately following the month in which his disability caused his retirement. *In order for a* member *to* be eligible for disability retirement, the *retirement* board *must* certify that he is mentally or physically incapacitated for the further performance of his duties, that such incapacity is likely to be permanent, and that he should be retired.

(b) Once each year during the first 5 years following the retirement of a member on *a* disability retirement allowance and once in every 3-year period thereafter, the retirement board may *require*, and upon *the beneficiary's* application, shall *permit* a disability beneficiary who has not yet attained the age of 60 to undergo a medical examination by the medical board or a physician or physicians designated by the medical board. The examination shall be made at the place of residence of the beneficiary or other place mutually agreed upon. Should *a* disability beneficiary who has not yet attained the age of 60 refuse to submit to at least one medical examination in any year by the medical board or its representative, his allowance may be discontinued until his withdrawal of such refusal, and, should his refusal continue for 1 year, all his rights in and to his disability pension may be revoked by the retirement board.

HeinOnline -- 1977 Vol. I 446 1977

(c) *If* the medical board *reports* and *certifies* to the retirement board that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and *if* the retirement board *concurs* in such report, his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, *is equal to* his average final compensation. *If* his earning capacity *is* changed later, his pension may be further modified, but the new pension *may* not exceed the pension originally granted *or* an amount which, when added to the amount earnable by the beneficiary, together with his annuity equals his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired *may* not become a member of the retirement system while receiving a reduced benefit.

(d) *If* a disability beneficiary under age 60 *is* restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease and he shall again become an active member of the retirement system. Any prior service certificate on the basis of which his service was computed at the time of his disability retirement shall be restored to full force, and, upon his subsequent retirement, he shall be credited with *such prior service and* all his subsequent service as a member. *If* he *is* restored to active service on or after the attainment of the age of 55 years, his pension upon subsequent retirement *may* not exceed the pension that he would have received had he remained in service during the period of his previous retirement *or* the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new member.

(5) Allowance for disability retirement*:*

(a) Upon retirement for disability, a member shall receive *the* superannuation allowance *and other benefits* prescribed under subsection *(3),* if he is eligible.

(b) If he is not eligible for the benefits prescribed under subsection (3), he shall receive a disability retirement allowance which *consists* of:

(i) an annuity which *is* the actuarial equivalent of his accumulated contributions at the time of retirement*; and*

(ii) a pension which, together with his annuity, *provides* a total retirement allowance equal to *one-sixtieth* of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds *one-fourth* of his average final compensation; otherwise, a pension which, together with his annuity, *provides* a total retirement allowance equal to *one-fourth* of his average final compensation.

(c) No allowance *under subsection (5)(b) may* exceed *one-sixtieth* of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

HeinOnline -- 1977 Vol. I 447 1977

(d) In the event payments made to *an annuitant* do not equal the amount of *the member's* accumulated contributions prior to *the annuitant's* death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(6) Withdrawal of accumulated contributions—*any* inactive member electing to do so or any person whose membership terminates may withdraw his accumulated contributions *from* his annuity account in the retirement system in accordance with the following provisions:

(a) An inactive member under the provisions of *subsection* (1) or (3) of 75-6210 may elect, without right of revocation, to withdraw his accumulated contributions. *If* he does not withdraw his accumulated contributions, he *remains* an inactive member of the retirement system with the right to qualify for *its* benefits.

(b) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of 75-6210*(2)* may withdraw his accumulated contributions unless he returns to active membership.

(c) Any person whose membership terminates under the provisions of 75-6211*(4)* may withdraw his accumulated contributions.

(7) Allowances for death of member:

(a) *If* a member *dies* before retirement, *his* accumulated contributions shall be paid to his estate or such person as he may have *nominated by a written designation filed with the retirement board prior to his death in the manner prescribed by the board.*

(b) *(i)* In lieu of benefits provided *for* in *subsection (7)*(a), if the deceased member qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in subsections *(3)(a), (b), and (d) in the same manner as if* the member elected option A *provided for* in subsection *(8)(b)(i).*

(ii) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total annuity payments made and the amount of the accumulated contributions shall be paid to the beneficiary.

(c) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, a *lump-sum* death benefit of $500 *is* payable to his designated beneficiary.

(d) If the deceased member had 5 or more years of creditable service and was an active member in the state of Montana within 1 year prior to his death, the sum of $100 per month shall be paid to each minor child of the deceased member until such child reaches his 18th birthday.

(8) Optional allowances:

(a) Until the first payment on account of any benefit becomes normally

due, any member may elect to receive one of the optional allowances described in subsection (8)(b) in lieu of the normal form of retirement allowance, which is provided for in subsections (3) and (5). If a beneficiary dies within 30 days after retirement, his election to receive an optional allowance is void and his death will be considered as that of an active member.

(b) An optional allowance *is* the actuarial equivalent *of the member's retirement or disability allowance* at the time of his retirement and *provides* an allowance payable *to him* throughout his lifetime and, upon his death, *an allowance payable* to *the* person *that* he *nominated* by written designation, duly acknowledged and filed with the retirement board at the time of his retirement, *in accordance with one of the following options:*

(i) Option A—*the* optional allowance will *be paid* to the member *throughout* his lifetime and, upon his death, continue throughout the lifetime of his designated beneficiary;

(ii) Option B—*the* optional allowance will *be paid to the member* throughout his lifetime and, upon his death, one-half of *the* optional allowance will be continued throughout the lifetime of his designated beneficiary;

(iii) Option C—*the* optional *allowance* will *be paid to the member* throughout his lifetime and, upon his death, two-thirds of the optional allowance *will* be continued throughout the lifetime of his designated beneficiary;

(iv) Option D—*the* optional allowance *will be paid to the member* while both the member and his designated beneficiary are living and, upon the death of either, one-half of the optional allowance *will* be continued throughout the lifetime of the survivor;

(v) Option E—*the* optional allowance will be *paid to the member* while both the member and his designated beneficiary are living and, upon the death of either, two-thirds of the optional allowance *will* be continued throughout the lifetime of the survivor; or

(vi) Option F—*some* other benefit *will* be paid either to the member or his surviving designated beneficiary *in accordance with* provisions approved by the retirement board."

Section 6. Section 75-6209, R.C.M. 1947, is amended to read as follows:

"**75-6209. Active membership.** *(1) Unless otherwise provided by this title,* the following persons *must* be active members of the retirement system, *with the exception that* those persons who became eligible for membership on September *1,* 1937, or on September *1,* 1939, and who elected not to *become members* under the provisions of the law at that time *are not required to be members:*

(a) any person who is a teacher, principal, or district superintendent as defined *in* 75-6101*;*

(b) any person who is an administrative officer or a member of the

HeinOnline -- 1977 Vol. I 449 1977

instructional or scientific staff of a unit of the Montana university system, *except as provided in 75-6208(2)(c);*

(c) any person employed in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a public institution of the state of Montana, the Montana state *school for the* deaf and blind, or a *school* district;

(d) any person who *has* elected not to become a member of the retirement system and is *reentering* service in a capacity prescribed by *subsection (1)(a), (b), or (c);*

(e) any person who *has* elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by *subsection (1)(a), (b), or (c);* time of such election, and who may thereafter elect to become a member of the retirement system;

(2) In order to be eligible for active membership, any person described in subsection (1) must:

(a) be employed full time, outside of vacation periods, in the capacity prescribed for his eligibility; except that, when a person is employed less than full time, the retirement board may allow *him* to become a member of the retirement system; *and*

(b) have the compensation for *his* creditable service totally paid by an employer as defined herein; except that, when this requirement is not satisfied, the retirement board may allow *the* person to become a member of the retirement system.

(3) At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership."

Section 7. Section 75-6211, R.C.M. 1947, is amended to read as follows:

"**75-6211. Membership termination.** The active or inactive membership in the retirement system of any person *terminates* when:

(1) he retires on a retirement allowance of the retirement system;

(2) he dies;

(3) he withdraws his accumulated *contributions* to the retirement system under the provisions of 75-6208*(6)*; or

(4) he ceases to be employed in a capacity that allows his membership, he has less than 5 years of creditable service in the retirement system, and he cannot qualify under the provisions of 75-6210*(2)*."

Section 8. Section 75-6212, R.C.M. 1947, is amended to read as follows:

"**75-6212. Membership application and creditable service.** *(1)* Whenever a person becomes eligible for membership in the retirement system, he shall apply for membership on the application form prescribed by the retirement board.

HeinOnline -- 1977 Vol. I 450 1977

(2) The creditable service of a member *begins* on the receipt of the membership application by the retirement board and *accumulates* to the member's credit on the basis of the retirement board's policy governing creditable service.

(3) The creditable service of *a* member *includes* the following:

(a) each year of service for which contributions to the retirement system were deducted from his compensation under the provisions of *Chapter* 87, Laws of 1937, *Chapter* 215, Laws of 1939, this act, and their subsequent amendments, except that no credit *may* be awarded for those years of service for which the contributions have been withdrawn and not replaced;

(b) any service awarded by a prior service certificate issued under the provisions of *Chapter* 87, Laws of 1937, *Chapter* 215, Laws of 1939, and their subsequent amendments or under the provisions of 75-6213;

(c) any out-of-state employment service awarded by the retirement board under the provisions of 75-6213;

(d) any service awarded for employment while on leave under 75-6213*; and*

(e) any service in the military, red cross, or merchant marine awarded by the retirement board under 75-6213.

(4) The retirement board's determination of creditable service under this section is final and conclusive for the purposes of the retirement system unless, at any time, the board discovers an error or fraud in the establishment of creditable service, in which case the board shall redetermine the creditable service."

Section 9. Section 75-6213, R.C.M. 1947, is amended to read as follows:

"75-6213. Creditable service for out-of-state employment, employment while on leave, service in the military, red cross, or merchant marine, and prior service. *(1) A* person applying for membership may *also* apply for creditable service in the retirement system for out-of-state employment service that would have been acceptable under the provisions of this title if such service *had been* performed in the state of Montana. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, *not exceeding 5, that* the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the employee contribution for his first full year's teaching salary earned in Montana after his out-of-state service for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for *such* service. The contributions may be *made in* a lump-sum payment or in installments as agreed between the person and the retirement board.

HeinOnline -- 1977 Vol. I 451 1977

(2) A person applying for membership may *also* apply for creditable service in the retirement system for employment while on leave. The person shall be awarded creditable service, conditional upon his having been a member prior to his leave and upon *his* completing 5 years of active membership in Montana subsequent to his return, *if* his employment while on leave enhanced his teaching experience as determined by the board. The person shall be awarded creditable service as determined by the board *in an amount not exceeding* 2 years, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana after his return from leave for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon the completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contribution may be *made in* a lump-sum payment or in installments as agreed between the person and the retirement board.

(3) A person applying for membership may *also* apply for creditable service in the retirement system for active service in the armed forces of the United States, which includes the army, navy, marine corps, air force, and coast guard, or in the American red cross or merchant marine. The person shall be awarded creditable service, conditional upon his completing 5 years of active membership in Montana, for the number of years, *not exceeding 2, that* the retirement board determines to be creditable service, if he contributes to the retirement system an amount equal to the combined employer and employee contributions for his first full year's teaching salary earned in Montana following the active service in the armed forces of the United States or in the American red cross or merchant marine for each year of creditable service plus interest at the rate the contribution would have earned had the contribution been in his account upon completion of 5 years of membership service in Montana. The contribution rate shall be that rate in effect at the time he is eligible for such service. The contribution may be *made in* a lump-sum payment or in installments as agreed between the person and the retirement board.

(4) The total creditable service for out-of-state teaching, employment while on leave, *and* active service in the armed forces of the United States or the American red cross or merchant marine *may not* exceed 5 years.

(5) A member *who* is retiring with at least 5 years of creditable service and *who* has been an active member for at least 5 consecutive school fiscal years may request creditable service for any employment service he rendered prior to September *1*, 1937, for which he has not received a prior service certificate. In order to receive *the* creditable service, he *must* apply for it and provide certification of *the prior* service. The retirement board shall determine the amount of creditable service to be awarded, if any, and issue a prior service certificate."

Section 10. Section 75-6214, R.C.M. 1947, is amended to read as follows:

"75-6214. Duties of employer. *Each* employer *shall*:

HeinOnline -- 1977 Vol. I 452 1977

(1) deduct the contribution of each member employed by him at the rate prescribed by 75-6207*(2)* from each salary payment for each payroll period and transmit the contribution each month to the secretary of the retirement board;

(2) pay to the secretary of the retirement board the employer's contribution prescribed by 75-6207*(4)*, at the time that the employee contributions are transmitted to the secretary;

(3) keep records and, as required by the retirement board, furnish information to the board that is required in the discharge of the board's duties;

(4) upon the employment of *a* person who is required to become a member of the retirement system, inform him of his rights and obligations *relating* to the retirement system*; a* person *who accepts* employment *for which membership is required is considered to have consented* to membership and to the withholding of contributions from his compensation;

(5) at the request of the retirement board, certify the names of all persons who are eligible for membership or *who* are members of the retirement *system*; and

(6) notify the retirement board of the employment of a person eligible for membership and forward his membership application to the board."

Section 11. Section 75-6216, R.C.M. 1947, is amended to read as follows:

"**75-6216. Guarantee by state.** Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund, and the maintenance of annuity reserves in the annuity reserve fund, as provided for in this *title*, and the payment of all annuities, pensions, refunds, and other benefits granted under the retirement system are obligations of the state of Montana."

Section 12. Section 75-6217, R.C.M. 1947, is amended to read as follows:

"**75-6217. Penalty for fraud — correction of erroneous payments.** *(1) A* person who knowingly *makes a* false statement or *who falsifies* or *permits* to be falsified any record of *the* retirement system in *an* attempt to defraud *the* system *is* guilty of a misdemeanor and *is* punishable *as provided by law.*

(2) If a change or error in *the* records *results* in *a* member or beneficiary receiving from the retirement system more or less than he would have been entitled to receive had the records been correct, then, on discovery of *the* error, the retirement board shall correct *the* error and, as far as practicable, shall adjust the payments in such a manner that the actuarial equivalent of the benefit to which *the* member or beneficiary was correctly entitled *will* be paid."

Approved March 25, 1977.

HeinOnline -- 1977 Vol. I 453 1977

CHAPTER NO. 128

AN ACT TO PROVIDE FOR PAYMENT FOR MEDICAL EXAMINATION OF VICTIMS OF ALLEGED SEXUAL INTERCOURSE WITHOUT CONSENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 95-1813 that reads as follows:

95-1813. Payment for medical evidence. (1) The local law enforcement agency within whose jurisdiction an alleged incident of sexual intercourse without consent occurs shall pay for the medical examination of a victim of alleged sexual intercourse without consent, when the examination is directed by such agency and when evidence obtained by the examination is used for the investigation or prosecution of an offense.

(2) This act does not require a law enforcement agency to pay any costs of treatment for injuries resulting from the alleged offense.

Approved March 25, 1977.

CHAPTER NO. 129

AN ACT TO REQUIRE TAXIDERMISTS TO KEEP RECORDS OF ALL DEAD WILDLIFE MOUNTED, PRESERVED, OR PREPARED BY THEM; AMENDING SECTION 26-907, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-907, R.C.M. 1947, is amended to read as follows:

"**26-907. Taxidermist's license — fee — penalty for violations.** Any person who shall engage in, or who is at the present time engaged in conducting any taxidermist business, as the term is generally understood, or any person who conducts a business for the purpose of mounting, preserving or preparing any of the dead bodies of any *wildlife*, or any part thereof, must first obtain from the state fish and game director a taxidermist's license and shall pay an annual license fee of $15 therefor. Such person shall keep a written record of all the articles of *wildlife in his possession or control*, the kind and number of each, by whom owned, and the residence of owner, also of all the articles of *wildlife* shipped and to whom and where shipped. The above record shall be kept for *as long as such articles remain in the possession of the licensee but, in any event, at least 5 years. These records shall be* open to inspection by any state game warden at any reasonable time. Any person violating the provisions hereof shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished as provided by 26-324. In all cases of conviction of violation of this *section,* the license of the person convicted *may* be revoked *by the court.*"

Approved March 25, 1977.

HeinOnline -- 1977 Vol. I 454 1977

CHAPTER NO. 130

AN ACT TO ALLOW TRUSTEES OF ELEMENTARY AND HIGH SCHOOL DISTRICTS TO PROVIDE FOR A RELIGIOUS INSTRUCTION RELEASED TIME PROGRAM; AMENDING SECTION 75-7403, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7403, R.C.M. 1947, is amended to read as follows:

"**75-7403. School day and week.** *Subject to 75-7403.1, a* school day of pupil instruction shall be at least two (2) hours for kindergartens and all other preschool programs, unless a variance has been granted by the superintendent of public instruction in accordance with the policies of the board of public education, at least four (4) hours for grades one (1) through three (3), and at least six (6) hours for grades four (4) through twelve (12). The number of hours in any one school day for grades four (4) through twelve (12) may be reduced by one (1) hour if the total number of hours in the school week is not less than thirty (30) hours. The number of hours in a school week may be reduced, in an emergency, with the approval of the board of public education."

Section 2. There is a new R.C.M. section numbered 75-7403.1 that reads as follows:

75-7403.1. Religious instruction released time program. (1) The trustees of an elementary or high school district may provide for a religious instruction released time program under which a pupil may be released from regular school attendance for a period not to exceed 2 hours per week for the purpose of receiving religious instruction upon written request, renewed at least annually, of the pupil's parent or guardian.

(2) No religious instruction released time program may be established or administered in such a way that public school property is utilized for the purpose of religious instruction.

(3) No public moneys may be used, directly or indirectly, for such religious instruction.

(4) Any period for which a pupil is released under a religious instruction released time program is part of the school day and week for purposes of 75-6304, 75-6902, 75-7402, 75-7403, and all other provisions of Title 75, and such release may not adversely affect the pupil's attendance record.

Approved March 25, 1977.

CHAPTER NO. 131

AN ACT TO PRESERVE EXISTING GARBAGE AND SOLID WASTE SERVICES IN THE EVENT OF ANNEXATION AND PROHIBIT

HeinOnline -- 1977 Vol. I 455 1977

COMPETITIVE OR SIMILAR SERVICE PROVIDED BY THE MUNICIPALITY FOR 3 YEARS FOLLOWING ANNEXATION EXCEPT UPON A PROPER SHOWING THAT EXISTING SERVICE IS NOT ADEQUATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-526 that reads as follows:

11-526. Preservation of existing garbage or solid waste service in the event of annexation. A municipality that annexes or incorporates additional area receiving garbage and solid waste disposal service by a motor carrier authorized by the public service commission to conduct such service may not provide competitive or similar garbage and solid waste disposal service to the area for 3 years following annexation except upon a proper showing to the public service commission that the existing carrier is unable or refuses to provide adequate service to the annexed or incorporated area.

Approved March 25, 1977.

CHAPTER NO. 132

AN ACT TO CHANGE THE NAME OF THE BOARD OF ADMINISTRATION OF THE DEPARTMENT OF ADMINISTRATION TO THE "PUBLIC EMPLOYEES' RETIREMENT BOARD" AND TO CONSOLIDATE SUCH BOARD, THE MONTANA STATE GAME WARDENS' RETIREMENT BOARD, AND THE MONTANA JUDGES' RETIREMENT BOARD; AMENDING SECTIONS 68-1401, 68-1405, 82A-210, AND 93-1107, R.C.M. 1947; REPEALING SECTIONS 82A-210.1 AND 82A-210.2, R.C.M. 1947; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-1401, R.C.M. 1947, is amended to read as follows:

"**68-1401. Definition of terms.** Unless the context requires otherwise, in this act:

(1) "Accumulated deductions" means the total of the amount deducted from the salary of a contributor and paid into the account, and standing to his credit in the account together with the regular interest thereon.

(2) "Beneficiary" means a person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

(3) "Retired state game warden" means any person in receipt of a retirement allowance under this act.

HeinOnline -- 1977 Vol. I 456 1977

(4) "Board" means the *public employees'* retirement board.

(5) "Contributor" means any person who has accumulated deductions in the account, standing to his credit.

(6) "Final salary" means the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made, or, in the event a member has not served 3 years, the total retirement compensation earned, divided by the number of years served.

(7) "Actuarial equivalent" means the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on the person's attained age and sex at the time the option becomes available.

(8) "Account" means the Montana state game wardens' retirement account in the agency fund.

(9) "Involuntary retirement" means a retirement not for cause and before retirement age.

(10) "Member's annuity" means payments for life derived from contributions made by the contributor.

(11) "Optional retirement age" means the age at which a contributor may retire after 20 years service or more; provided that the contributor has reached the age of 55 years.

(12) "Retirement age" means the age at which a member retires after 25 years of creditable service as a state game warden of the department of fish and game. All members must retire at age 60.

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "State annuity" means payments for life derived from contributions made by the state of Montana fish and game moneys in the earmarked revenue fund."

Section 2. Section 68-1405, R.C.M. 1947, is amended to read as follows:

"**68-1405. Payments into the Montana game wardens' retirement system.** All contributions by the state fish and game moneys in the earmarked revenue fund and all contributions by the state game wardens as designated by 68-1401 above, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the board, who shall credit such payments to the Montana state game wardens' retirement account in the agency fund. Such board shall have exclusive control of the administration of such account. The state treasurer shall be custodian of the account, subject to the exclusive control of the board as to the administration thereof and the board of investments as to the investment thereof. Whenever there

HeinOnline -- 1977 Vol. I 457 1977

is on deposit in the Montana state game wardens' retirement account a sum in excess of $25,000, such excess will be invested by the board of investments as part of the long-term investment fund and any of the account less than $25,000 in amount shall be invested by the board of investments as part of the short-term investment fund when so directed by the *public employees'* retirement board."

Section 3. Section 82A-210, R.C.M. 1947, is amended to read as follows:

"82A-210. Public employees' retirement board — composition — terms — allocated. (1) There is a *public employees' retirement* board.

(2) The board consists of five members appointed by the governor. The members are:

(a) *three* public employees who shall be members of a public retirement system. Not more than one of these members may be an employee of the same department.

(b) *two* members at large.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 82A-108.

(5) Members of the board shall be paid their actual and necessary expenses and members of the board who are not members of the public retirement system shall be entitled, in addition to actual and necessary expenses, compensation as established for quasi-judicial board in 82A-112(7)."

Section 4. There is a new R.C.M. section that reads as follows:

Implementation of board name change. All references to "board" or "board of administration" contained in Title 68 and all references to "board of administration" contained in Title 11, chapter 20; Title 31, chapter 2; and Title 59, chapter 11, mean the public employees' retirement board provided for in 82A-210.

Section 5. Section 93-1107, R.C.M. 1947, is amended to read as follows:

"93-1107. Judges' retirement system — definitions. The following words and phrases as used in this act, unless a different meaning is plainly implied by the context, shall have the following meanings:

(1) "Accumulated deductions" *means* the total of the amounts deducted from the salary of a contributor and paid into the fund and standing to his credit in the fund, together with the regular interest thereon.

(2) "Beneficiary" *means* such person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

(3) "Retired judge" *means* any person in receipt of a retirement allowance under this act.

HeinOnline -- 1977 Vol. I 458 1977

(4) "Board" *means the public employees'* retirement board.

(5) "Penalty retirement age" *means* 70 years of age.

(6) "Contributor" *means* any person who has accumulated deductions in the fund standing to his credit.

(7) "Final salary" *means* the annual current salary for the office retired from.

(8) "Actuarial equivalent" *means* the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on such person's attained age and sex at the time the option becomes available.

(9) "Fund" *means* the Montana judges' retirement fund.

(10) "Involuntary retirement" *means* a retirement not for cause and before retirement age.

(11) "Member's annuity" *means* payments for life derived from contributions made by the contributor.

(12) "Retirement allowance" *means* the state annuity plus the member's annuity.

(13) "State annuity" *means* payments for life derived from contributions made by the state of Montana."

Section 6. **Repealer.** Sections 82A-210.1 and 82A-210.2, R.C.M. 1947, are repealed.

Section 7. **Effective date.** This act is effective upon passage and approval.

Approved March 25, 1977.

CHAPTER NO. 133

AN ACT TO AMEND SECTION 87-106, R.C.M. 1947, TO PROVIDE FOR A CHANGE IN DISQUALIFICATION FOR BENEFITS FOR VOLUNTARILY LEAVING WORK WITHOUT GOOD CAUSE, DISCHARGE FOR MISCONDUCT OR FOR REFUSING SUITABLE WORK; FOR THE REMOVAL TO AN APPROPRIATE SECTION OF THE PROVISIONS PERTAINING TO RETIREMENT COMPENSATION AND PREGNANCY DISQUALIFICATION; AND FOR DISQUALIFICATION OF THOSE RECEIVING SOCIAL SECURITY DISABILITY OR WHO ARE SELF-EMPLOYED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-106, R.C.M. 1947, is amended to read as follows:

"87-106. Disqualification for benefits. *Effective April 1, 1977, an* individual shall be disqualified for benefits—

(a) If he has left work without good cause attributable to the employment:

(1) *Until 6 weeks have elapsed from the effective date of his claim, with 6 weeks' reduction of his benefit duration; or*

(2) Until he has performed services from the effective date of his claim other than self-employment for which remuneration is received equal to or in excess of his weekly benefit amount in 4 separate weeks subsequent to the week in which the act causing the disqualification occurred, with 4 weeks' reduction of benefit duration, as determined by the division, provided he has not left this work under disqualifying circumstances.

(3) Except that he may not be disqualified if the division finds that he left his employment because of personal illness or injury not associated with misconduct or left his employment upon the advice of a licensed and practicing physician and, after recovering from his illness or injury when recovery is certified by a licensed and practicing physician, he returned to his employer and offered his service and his regular or comparable suitable work was not available, if so found by the division, provided he is otherwise eligible.

(b) If he has been discharged:

(1) For misconduct connected with his work, or affecting his employment:

(A) Until 8 weeks have elapsed from the effective date of his claim, with 8 weeks' reduction of his benefit duration; or

(B) Until he has performed services from the effective date of his claim other than self-employment for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the week in which the act causing the disqualification occurred, with 6 weeks' reduction of benefit duration, as determined by the division, provided he has not left this work under disqualifying circumstances.

(2) For gross misconduct connected with his work or committed on the employer's premises, as determined by the division, for a period of 12 months.

(c) If he failed, without good cause, either to apply for available and suitable work when so directed by the employment office or the division or to accept suitable work offered to him which he is physically able and mentally qualified to perform, or to return to his customary self-employment (if any) when so directed by the division. Such disqualification shall continue for *the week in which such failure occurred and until he has performed services, other than self-employment, for which remuneration is received equal to or in excess of his weekly benefit amount in 6 separate weeks subsequent to the date the act causing the disqualification occurred, with 6 weeks' reduction in benefit duration, as determined by the division, provided he has not left this work under disqualifying circumstances.*

(1) In determining whether or not any work is suitable for an individual, the division shall consider the degree of risk involved to his health,

HeinOnline -- 1977 Vol. I 460 1977

safety, and morals, his physical fitness and prior training, his experience and previous earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence.

(2) Notwithstanding any other provisions of this act, no work shall be deemed suitable and benefits shall not be denied under this act to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(A) If position offered is vacant due directly to a strike, lockout, or other labor dispute;

(B) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;

(C) If as a condition of being employed the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

(d) For any week with respect to which the division finds that his total unemployment is due to a stoppage of work which exists because of a labor dispute at the factory, establishment, or other premises at which he is or was last employed, provided that this subsection shall not apply if it is shown to the satisfaction of the division that—

(1) He is not participating in or financing or directly interested in the labor dispute which caused the stoppage of work; and

(2) He does not belong to a grade or class of workers of which immediately before the commencement of the stoppage, there were members employed at the premises at which the stoppage occurs, any of whom are participating in or financing or directly interested in the dispute;

Provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises are conducted in separate departments of the same premises, each such department shall, for the purpose of this subsection, be deemed to be a separate factory, establishment, or other premises; provided, further, that if the division, upon investigation, shall find that such labor dispute is caused by the failure or refusal of any employer to conform to the provisions of any law of the state wherein the labor dispute occurs or of the United States pertaining to collective bargaining, hours, wages or other conditions of work, such labor dispute shall not render the workers ineligible for benefits.

(e) For any week with respect to which he is receiving or has received payment in the form of—

(1) Wages in lieu of notice or separation or termination allowance;

(2) Compensation for disability under the *Workers'* Compensation Law or the Occupational Disease Law of this or any other state or under a similar law of the United States *or under the social security disability law,* provided, however, that when an injured claimant has ceased to draw

compensation benefits and shall have returned to the labor market, he shall then be entitled to receive unemployment compensation benefits under this title, if he shall be otherwise qualified. Provided further, that compensation which is received as a payment for a permanent partial disability shall not be computed to be spread over a period of weeks in advance so as to bar the recipient from receiving unemployment compensation benefits under this title, provided the recipient has returned to the labor market and is otherwise qualified;

(3) Benefits under the Railroad Unemployment Insurance Act or any state unemployment compensation act or similar laws of any state or of the United States. This disqualification does not apply to any week with respect to which an individual is receiving or has received benefits under an unemployment compensation law of another state or of the United States, if such benefits are paid pursuant to section 87-129.

Receipt of any wages, compensation or benefits as set forth in subsection (1), (2), or (3) above, after payment of unemployment benefits, and with respect to the same week for which unemployment benefits were received, will thereupon require such individual to repay such unemployment benefits and the division may collect such unemployment benefits in the same manner as provided for collection of benefits under section 87-145(d).

(f) During the school year (within the autumn, winter and spring seasons of the year) or the vacation periods within such school year or during any prescribed school term if claimant is a student regularly attending an established educational institution. Notwithstanding any other provisions in this subsection, no otherwise eligible individuals shall be denied benefits for any week because he is in training approved by the division, nor shall such individual be denied benefits with respect to any week in which he is in training approved by the division by reason of the application of provisions in subsection (c) of this section or the application of provisions in section 87-105(c).

(g) *If his principal occupation is self-employment.*

(h) *A disqualification pursuant to the provisions of this section may not be confined to a single benefit year.*"

Approved March 25, 1977.

CHAPTER NO. 134

AN ACT TO REQUIRE COUNTY TREASURERS TO INCLUDE ADDITIONAL INFORMATION IN PROPERTY TAX NOTICES SENT TO TAXPAYERS; AMENDING SECTION 84-4101, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4101, R.C.M. 1947, is amended to read as follows:

"**84-4101. Treasurer to publish notice of delinquency.** Within ten

HeinOnline -- 1977 Vol. I 462 1977

(10) days after the *receipt* of the assessment book, the county treasurer must publish a notice specifying:

1. That one-half (½) of all taxes levied and assessed will be due and payable before five o'clock p.m. on the 30th day of November next thereafter, and that unless paid prior thereto the amount then due will be delinquent and will draw interest at the rate of two-thirds (⅔) of one per centum (1%) per month from and after such delinquency, and two per centum (2%) will be added to the amount thereof as a penalty and that one-half (½) of all taxes levied and assessed will be due and payable on or before five o'clock p.m. on the 31st day of May next thereafter, and that unless paid prior to said date said taxes will be delinquent and will draw interest at the rate of two-thirds (⅔) of one per centum (1%) per month from and after such delinquency, and two per centum (2%) will be added to the amount thereof as a penalty.

2. The time and place at which payment of taxes may be made: And he must send to the last-known address of each taxpayer written notice, postage prepaid, showing the amount of taxes due the current year and the amount due and delinquent for other years. *The written notice shall include:*

(a) the taxable value of the property;

(b) the total mill levy applied to that taxable value;

(c) the value of each mill in that county;

(d) the number of the school district in which the property is located; and

(e) the amount of the total tax due that is levied as city tax, county tax, state tax, school district tax, and other tax.

(3) Any failure to give notice *of the tax due for the current year or of delinquent tax* will not affect the legality of the tax."

Approved March 25, 1977.

CHAPTER NO. 135

AN ACT TO EXTEND THE DEADLINE FOR FILING APPLICATIONS FOR VIETNAM VETERANS' HONORARIUMS; AMENDING SECTION 77-2506, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 77-2506, R.C.M. 1947, is amended to read as follows:

"**77-2506. Deadline for applications.** All applications for the payment of grants under this law shall be filed on or before July 1, *1977,* with the board of examiners or with a county clerk and recorder of any

HeinOnline -- 1977 Vol. I 463 1977

county of this state. Upon receiving any such application, the clerk and recorder shall give the applicant a receipt therefor, stating therein the exact time of such filing, and shall immediately endorse the fact and time of filing upon the application, over his signature and seal, and immediately transmit the application to the board of examiners. Any filing at a place and within the time specified in this section shall preserve the rights of the applicant to the grant, notwithstanding any defect in his application, provided that any such defects are later corrected under reasonable rules to be adopted by the board of examiners."

Section 2. **Effective date.** This act is effective upon its passage and approval.

Approved March 25, 1977.

CHAPTER NO. 136

AN ACT TO CLARIFY THAT THE CONSUMER COUNSEL HAS DISCOVERY POWERS IN CONTESTED CASES THAT ARISE BEFORE ANY ADMINISTRATIVE AGENCY OF THE STATE OF MONTANA; AMENDING SECTION 70-707, R.C.M. 1947; AND REPEALING SECTION 70-708, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-707, R.C.M. 1947, is amended to read as follows:

"70-707. Powers and duties of consumer counsel — annual report. The consumer counsel:

(1) may appear at public hearings conducted by the commission, as the representative of the consuming public, on all matters which come before the commission which in any way affect the consuming public, and shall have all the rights and powers of any party in interest appearing before the commission regarding examination and cross-examination of witnesses, presentation of evidence and other matters;

(2) may institute proceedings before the commission against regulated companies;

(3) has all the investigatory powers necessary to perform his duties as provided herein and all discovery powers sanctioned by the Montana rules of civil procedure and the Montana Administrative Procedure Act. *It is the specific intent of this section to provide the authority and availability of the process of discovery to the consumer counsel in administrative contested-case procedure. Violations of discovery procedure shall be heard and administered by the district court. In the event of an appeal to district court for enforcement of discovery procedures, the time limits imposed by section 70-113, R.C.M. 1947, shall be suspended pending order of the district court.*

(4) may examine in any commission proceedings under oath any officer, director, manager, or employee of any regulated company and inspect

HeinOnline -- 1977 Vol. I 464 1977

the business and corporate records of any regulated company in accordance with the law to aid in the exercise of his duties;

(5) may institute, intervene in, or otherwise participate in appropriate proceedings in the state and federal courts and administrative agencies in the name of and on behalf of the utility and transportation consuming public of the state of Montana or substantial elements thereof including review of decisions rendered by, or failure to act by the commission and applications for restraining orders pending the investigation of and decision upon a matter by the commission, pursuant to section 93-4215;

(6) shall meet and confer with members or representatives of the consuming public at such times and places as he determines appropriate;

(7) shall prepare and submit a yearly report and such other interim reports he determines advisable concerning his activities during the year and may recommend appropriate remedial legislation to the committee; *and*

(8) has such other powers necessary to fully represent the interests of the consuming public before the commission as may be granted and promulgated by the committee in accordance with the provisions of the Montana Administrative Procedure Act."

Section 2. **Repealer.** Section 70-708, R.C.M. 1947, is repealed.

Approved March 25, 1977.

CHAPTER NO. 137

AN ACT TO MANDATE THE PUBLIC SERVICE COMMISSION TO ADOPT RULES OF PRACTICE AND PROCEDURE FOR RATE CASES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 70-104.1 that reads as follows:

70-104.1. Adoption of rules for rate cases. The commission shall adopt such rules of practice and procedure for the filing, investigation, and hearing of petitions or applications to increase or decrease rates and charges of railroads, motor carriers, and public utilities as the commission finds necessary or appropriate to enable it to reach a final decision in an orderly manner. The rules shall be promulgated and adopted prior to October 31, 1977.

Section 2. In the event the public service commission fails to adopt rules in accordance with 70-104.1 prior to the time designated, the appropriation of the 1977 general session to the public service commission shall be subject to revision by the legislature at any special or general session.

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved March 25, 1977.

HeinOnline -- 1977 Vol. I 465 1977

CHAPTER NO. 138

AN ACT CREATING A CLASS "D" MOTOR CARRIER ENCOMPASSING ALL MOTOR CARRIERS TRANSPORTING GARBAGE AND SOLID WASTE; AMENDING SECTION 8-102, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 8-102, R.C.M. 1947, is amended to read as follows:

"8-102. Classification of motor carriers — operation according to provisions of act required. (a) Motor carriers are hereby divided into *four* classes for the purposes of this act, to be known as:

Class A motor carriers,

Class B motor carriers,

Class C motor carriers,

Class D motor carriers.

Class A motor carriers shall embrace all motor carriers operating between fixed termini or over a regular route, under regular rates or charges, based upon either station-to-station rates or upon a mileage rate or scale.

Class B motor carriers shall embrace all motor carriers operating under regular rates or charges based upon either station-to-station rates or upon a mileage rate or scale, and not between fixed termini or over a regular route.

Class C motor carriers shall embrace all motor carriers operating motor vehicles for distributing, delivering or collecting wares, merchandise, or commodities, or transporting persons, where the remuneration is fixed in and the transportation service furnished under a contract, charter, agreement or undertaking. Such class C motor carriers distributing, delivering or collecting wares, merchandise or commodities, or transporting persons shall do so under six (6) contracts, charters, agreements or undertakings or less annually. Every class C motor carrier providing such transportation services by means of more than six (6) contracts, charters, agreements or undertakings shall be deemed to be providing common carriage and shall operate under a class B motor carrier certificate in lieu of such class C motor carrier certificate. All class C motor carriers must annually submit to this commission the names and addresses of all persons, firms, corporations or other legal entity with whom the said class C carrier has executed a contract, charter, agreement or undertaking for the distribution, delivery or collection of wares, merchandise or commodities, or transporting persons.

The provisions of this section requiring certain class C motor carriers

HeinOnline -- 1977 Vol. I 466 1977

to operate under a class B motor carrier certificate and to submit an annual statement to the commission shall not apply to solid waste contractors, to household goods carriers as defined by the department of public service regulation, nor to any carrier whose authority is confined by certificate to transportation within a distance of fifty (50) miles or less from a particular location and that is performing pick up and delivery service under contract for one or more common carriers within that area.

Class D motor carriers embraces all motor carriers operating motor vehicles transporting, including pickup and disposal of, ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter. Class D carriers shall conduct operations pursuant to a certificate of public convenience and necessity issued by the commission authorizing the transportation of the above-described commodities. Class D carriers when applying for a new or additional authority shall file an application with the commission in accordance with the requirements of the Montana Motor Carrier Act and the rules of the commission.

(b) It shall be unlawful for any corporation or person, its or their officers, agents, employees, or servants, to operate any motor vehicle for the transportation of persons and/or property for hire on any public highway in this state except in accordance with the provisions of this act."

Section 2. There is a new R.C.M. section numbered 8-102.1 that reads as follows:

8-102.1. Implementation. All Class D motor carriers, whether property carriers or otherwise, who have conducted a motor carrier transportation service for hire utilizing motor vehicle equipment and appropriate disposal sites consistent with the laws of this state and rules of the commission and the department of health and environmental sciences shall, upon written proof consisting of prior business records reflecting a transportation service for 1 year prior to the effective date of this act, which business records shall be submitted to the commission in an informal manner, receive a certificate of public convenience and necessity as a Class D carrier authorizing transportation of the above-described commodities within the geographical area described in the written proof submitted. Such proof must be submitted to the commission within 4 months following the effective date of this act; and the commission shall issue such Class D certificates within an additional 90 days, and thereafter, no Class A, B, or C carrier will be authorized or permitted to transport ashes, trash, waste, refuse, rubbish, garbage, or organic and inorganic matter within the state of Montana.

Approved March 25, 1977.

CHAPTER NO. 139

AN ACT ESTABLISHING MOTOR VEHICLES TRANSPORTING GARBAGE AND SOLID WASTE AS BEING WITHIN THE TERM "MOTOR CARRIER" AS DEFINED IN THE MONTANA MOTOR CARRIER ACT; AMENDING SECTION 8-101, R.C.M. 1947.

HeinOnline -- 1977 Vol. I 467 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 8-101, R.C.M. 1947, is amended to read as follows:

"**8-101. Definition of terms.** Unless the context requires otherwise, in this act:

(1) "Commission" or "board" means the public service commission provided for in section 82A-1702.

(2) "Corporation" means a corporation, company, association or joint-stock association.

(3) "Person" means an individual, firm, or copartnership.

(4) "Certificate" means the certificate of public convenience and necessity issued under this act.

(5) "Public highway" means a public street, road, highway, or way in this state.

(6) "Motor vehicle" includes vehicles or machines, motor trucks, tractors or other self-propelled vehicles used for the transportation of property or persons over the public highways of the state, and any trailer, semi-trailer, dollie or other vehicle drawn thereby.

(7) "Between fixed termini or over a regular route" means the termini or route between or over which a motor carrier usually or ordinarily operates motor vehicles, even though there may be periodical or irregular departures from the termini or route. Whether or not a motor vehicle is operated by a motor carrier between fixed termini, or over a regular route, or otherwise, under this act, is a question of fact to be determined by the commission.

(8) "Motor carrier" means a person or corporation, their lessees, trustees, or receivers, appointed by any court, operating motor vehicles upon any public highway in this state for the transportation of persons or property for hire, on a commercial basis either as a common carrier or under private contract, agreement, charter, or undertaking. *The term includes any motor carrier serving the public in the business of transportation of ashes, trash, waste, refuse, rubbish, garbage, and organic and inorganic matter.* However, this act does not affect motor vehicles used in carrying property consisting of agricultural commodities (not including manufactured products thereof), if the motor vehicles are not used in carrying other property or passengers for compensation; the operation of school buses which are used in conveying pupils or other students enrolled in classes to and from district or other schools, or in transportation movements related to school activities which are sponsored or supervised by school authorities, the transportation by means of motor vehicles in the regular course of business of employees, supplies, and materials by a person, firm, or corporation engaged exclusively in the construction or maintenance of highways, or engaged exclusively in logging or mining operations, in so far as the use of employees, supplies, and materials in construction and production is concerned; the transportation of property

HeinOnline -- 1977 Vol. I 468 1977

by motor vehicle in a city, town, or village with a population, according to the latest United States census, of less than five hundred (500) persons, or in the commercial areas thereof as determined by the commission; the transportation of newspapers, newspaper supplements, periodicals or magazines; tow trucks and wreckers designed and exclusively used in towing abandoned, wrecked, or disabled vehicles or while these tow trucks and wreckers are rendering assistance to abandoned, wrecked, or disabled vehicles; motor vehicles used exclusively in carrying junk vehicles from a collection point to a motor vehicle wrecking facility or a motor vehicle graveyard; or ambulances.

(9) "For hire" means for remuneration of any kind, paid or promised, either directly or indirectly, or received or obtained through leasing, brokering, or buy-and-sell arrangements from which a remuneration is obtained or derived for transportation service. An accommodative transportation movement by a person not in the transportation business is not a service for hire, even though the persons owning the property transported or persons transported share in the cost or pay for the movement. This act does not prevent bona fide leases, brokerage agreements, or buy-and-sell agreements.

(10) "Compensation" means the charge imposed on motor carriers for the use of the highways in this state by motor carriers, under section 8-116.

(11) "Railroad" means the movement of cars on rails, regardless of the motive power used."

Approved March 25, 1977.

CHAPTER NO. 140

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO ENVIRONMENTAL PROTECTION; AMENDING SECTIONS 26-1514, 26-1517, 32-4728, 69-3911, 69-3912, 69-3914, 69-3915, 69-3916, 69-3917, 69-4820.1, 69-4824, 69-5003, 69-5602, 69-5603, 69-5607, 69-5803, 69-5806, 69-6807, AND 69-6811, R.C.M. 1947; AND REPEALING SECTION 26-339, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-1514, R.C.M. 1947, is amended to read as follows:

"**26-1514. Procedure for considering projects — team.** (1) The supervisors shall receive all notices of proposed projects within their district. They shall, within 5 days of receipt of a notice, examine and investigate the notice and determine whether the proposal is for a project. *Within the 5 days, they* shall send a copy of their determination to the department and the applicant. If the supervisors determine that the proposal is not a project, the applicant may, upon receipt of written notice, proceed with the proposed activity.

HeinOnline -- 1977 Vol. I 469 1977

(2) If the supervisors determine that the proposal is for a project, the department shall, within 5 days of receipt of *the* determination, notify the supervisors whether the department requests an on-site inspection by a team.

(3) The supervisors shall call a team together within 20 days of receipt of the request of the department for an on-site inspection. *A* member of the team shall notify the supervisors in writing, within 5 days after notice of the call for an inspection, of his waiver of participation in the inspection. If the department does not request an on-site inspection within the time specified above, the supervisors may deny or approve the project or may make recommendations for alternative plans.

(4) Each member of the team shall recommend in writing, within 50 days of *the* date of application, denial, approval, or modification of the project to the supervisors. The applicant may waive participation in this recommendation.

(5) The supervisors shall review the proposed project and affirm, overrule, or modify the individual team recommendations and notify the applicant and team members, within 60 days of the date of application, of their decision.

(6) When a member of the team disagrees with the supervisors' action, he may ask, within 5 days of receipt of the supervisors' decision, that an arbitration panel, as provided in 26-1515, be appointed to hear the dispute and make a final written decision thereon.

(7) Upon written notice, with *a* recommendation or alternative plan, by the supervisors to the applicant, the applicant, within 15 days, shall notify the supervisors in writing if he wishes to proceed with the project in accordance with the recommendations or alternative plans. No work may be commenced on a project *before* the *end* of this 15-day period unless written permission is given by all team members. If the written decision of the supervisors approves the proposed project without recommendation or alternative plan, the applicant may proceed with the project upon the expiration of 10 days after receipt of the decision.

(8) The supervisors may extend, *upon* the request of *a* team member, the time limits provided in *subsections* (4) and (5) where, in their determination, the time provided is not sufficient to carry out the purposes of this act. The time extension may not, in total, exceed 1 year from date of application. The applicant shall be notified, within 60 days of date of application, of the initial time extension and shall be notified immediately of any subsequent time extensions.

(9) No work on a project under this act may take place without the written consent of the supervisors."

Section 2. Section 26-1517, R.C.M. 1947, is amended to read as follows:

"**26-1517. Emergencies — procedure.** (1) The provisions of this act *do* not apply to those actions which are necessary to safeguard life or property, including growing crops, during periods of emergency. The

HeinOnline -- 1977 Vol. I 470 1977

person responsible for *a* project under this section shall notify the supervisors in writing within 15 days of the action taken as a result of an emergency.

(2) The supervisors shall send one copy of the notice, within 5 days *of its receipt,* to the department.

(3) A team, called together as described in 26-1514(3), shall make an on-site inspection and individual written reports to the supervisors within 30 days giving their observations and opinions on the emergency project.

(4) If the same or a similar emergency occurs to the same applicant more than once within *a* 5-year period, the supervisors shall request the team members to include in their reports a determination of the validity of the emergency action and to ascertain the feasibility of a more permanent solution to *the* emergency.

(5) The supervisors shall determine the feasibility of a more permanent solution and shall recommend, within 30 days, that the person put the solution into effect within a reasonable period of time, as determined by the supervisors. Failure of the person to put that solution into effect is not a violation of this act unless a subsequent emergency action results from this failure.

(6) When a member of the team or the applicant disagrees with the supervisors' recommendation, he may ask that an arbitration panel, as provided in 26-1515, be appointed to hear the dispute and make a final written decision thereon."

Section 3. Section 32-4728, R.C.M. 1947, is amended to read as follows:

"**32-4728. Nonconforming advertising as nuisance.** All outdoor advertising which does not conform to the requirements of this act *is a* public *nuisance.*"

Section 4. Section 69-3911, R.C.M. 1947, is amended to read as follows:

"**69-3911. Permits.** (1) The board may by rule prohibit the construction, installation, alteration, or use of *a* machine, equipment, device, or facility which it finds may directly or indirectly cause or contribute to air pollution or which is intended primarily to prevent or control the emission of air pollutants, unless a permit therefor has been obtained.

(2) Not later than 180 days *before* construction begins and not later than 120 days *before* installation, alteration, or use *begins,* the owner or operator shall file with the department the appropriate permit application on forms available from the department.

(3) *The* department may, for good cause shown, waive the provisions of subsection (2) or shorten the time required for filing the appropriate applications.

(4) The department shall require that applications for permits be accompanied by any plans, specifications, and other information it *considers* necessary.

HeinOnline -- 1977 Vol. I 471 1977

(5) An application is not considered filed until the applicant has submitted all information and completed all application forms required by subsections (2), (3), and (4). However, if the department fails to notify the applicant in writing, within 30 days after the purported filing of an application, that the application is incomplete and fails to list the reasons why the application is considered incomplete, the application is considered filed as of the date of the purported filing.

(6) The department shall provide for the issuance, suspension, revocation, and renewal of *a permit* issued under this section.

(7) Where an application for a permit requires the compilation of an environmental impact statement under the Montana Environmental Policy Act, the department shall notify the applicant *in writing*, within 180 days of the receipt of a filed application as defined in subsection (5), of the approval or denial of the application. However, where an application does not require the compilation of an environmental impact statement, the department shall notify the applicant *in writing*, within 60 days of the receipt of a filed application, as defined in subsection (5), of the approval or denial of the application.

(8) When the department approves or denies the application for a permit under this section, *a* person who is jointly or severally adversely affected by the department's decision may request, within 15 days after the department renders its decision, upon affidavit setting forth the grounds therefor, a hearing before the board. A hearing shall be held under the provisions of the Montana Administrative Procedure Act. The department's decision on the application is not final unless 15 days have elapsed and there is no request for a hearing under this section. The filing of a request for a hearing postpones the effective date of the department's decision until the conclusion of the hearing and issuance of a final decision by the board."

Section 5. Section 69-3912, R.C.M. 1947, is amended to read as follows:

"**69-3912. Inspections.** (1) The department may enter and inspect, at any reasonable time, any property, premises, or place, except a private residence, on or at which an air contaminant source is located or is being constructed or installed for the purpose of ascertaining the state of compliance with this act and rules in force under it.

(2) A person may not refuse entry or access to an authorized representative of the department *who presents appropriate credentials* when *the department* requests entry for purposes of inspection. A person may not obstruct, hamper, or interfere with an inspection.

(3) At his request, the owner or operator of the premises shall receive a report *stating* all facts found which relate to compliance status."

Section 6. Section 69-3914, R.C.M. 1947, is amended to read as follows:

"**69-3914. Enforcement.** (1) When the department *believes* that a violation of this act or a rule made under it has occurred, it may cause

HeinOnline -- 1977 Vol. I 472 1977

written notice to be served on the alleged violator. The notice shall specify the provision of this act or rule alleged to be violated and the facts alleged to constitute a violation and may include an order to take necessary corrective action within a reasonable period of time stated in the order. The order becomes final unless, *within* 30 days after the notice is received, the person named requests in writing a hearing before the board. On receipt of the request, the board shall hold a hearing.

(2) If, after a hearing held under subsection (1) of this section, the board finds that violations have occurred, it shall either affirm or modify an order previously issued or issue an appropriate order for the prevention, abatement, or control of the emissions involved or for the taking of other corrective action it considers appropriate. If, after hearing on an order contained in a notice, the board finds that no violation is occurring, it shall rescind the order. An order issued as part of a notice or after *a* hearing may prescribe the date by which the violation shall cease and may prescribe time limits for particular action in preventing, abating, or controlling the emissions.

(3) Instead of issuing the order provided for in subsection (1), the department may either:

(a) *require* that the alleged violators appear before the board for a hearing at a time and place specified in the notice and answer the charges complained of; or

(b) *initiate* action under 69-3921 *or 69-3921.1.*

(4) This chapter does not prevent the board or department from making efforts to obtain voluntary compliance through warning, conference, or any other appropriate means.

(5) In connection with a hearing held under this section, the board may, and on application by a party shall, compel the attendance of witnesses and the production of evidence on behalf of the parties."

Section 7. Section 69-3915, R.C.M. 1947, is amended to read as follows:

"**69-3915. Emergency procedure.** (1) Any other law to the contrary notwithstanding, if the department finds that a generalized condition of air pollution exists and that it creates an emergency requiring immediate action to protect human health or safety, the department shall order persons causing or contributing to the air pollution to *immediately* reduce or discontinue the emission of air contaminants. Upon issuance of this order, the department shall fix a place and time *within* 24 hours for a hearing to be held before the board. *Within* 24 hours after the commencement of the hearing, and without adjournment, the board shall affirm, modify, or set aside the order of the department.

(2) In the absence of a generalized condition such as that referred to in subsection (1), if the department finds that emissions from the operation of one or more air contaminant sources *are* causing imminent danger to human health or safety, it may order the person responsible for the operation in question to reduce or discontinue emissions immediately, without regard for 69-3914. In this event, the requirements for hearing

HeinOnline -- 1977 Vol. I 473 1977

and affirmance, modification, or setting aside of orders *as provided* in subsection (1) apply.

(3) This section does not limit any power which the governor or any other officer may have to declare an emergency and act on the basis of this declaration, whether the power is conferred by statute *or* constitutional provisions, or inheres in the office."

Section 8. Section 69-3916, R.C.M. 1947, is amended to read as follows:

"69-3916. Variances — filing fees. (1) *A* person who owns or is in control of *a* plant, building, structure, process, or equipment may apply to the board for an exemption or partial exemption from rules governing the quality, nature, duration, or extent of emissions of air pollutants. The application shall be accompanied by such information and data as the board may require. The board may grant *an* exemption or partial exemption if it finds that:

(a) *the* emissions occurring or proposed to occur do not constitute a danger to public health or safety; and

(b) *compliance* with the rules from which exemption is sought would produce hardship without equal or greater benefits to the public.

(2) No exemption or partial exemption *may* be granted pursuant to this section except after public hearing on due notice and until the board has considered the relative interests of the applicant, other owners or property likely to be affected by the emissions, and the general public.

(3) No exemption or partial exemption pursuant to this section *may* be granted for a period to exceed 1 year, but *the* exemption or partial exemption may be renewed for like periods if no complaint is made to the board *because of it* or if, *after the* complaint *has* been made and duly considered at a public hearing held by the board on due notice, the board finds that renewal is justified. No renewal *may* be granted except on application therefor. *An* application shall be made at least 60 days *before* the expiration of the exemption or partial exemption. Immediately *before* application for renewal the applicant shall give public notice of *his* application in accordance with rules of the board. *A* renewal pursuant to this subsection shall be on the same grounds and subject to the same limitations and requirements as provided in subsection *(1).*

(4) An exemption, partial exemption, or renewal thereof *is* not a right of the applicant or holder thereof but shall be *granted at* the discretion of the board. However, *a* person adversely affected by an exemption, partial exemption, or renewal granted by the board may obtain judicial review thereof as provided by 69-3917.

(5) Nothing in this section and no exemption, partial exemption, or renewal granted pursuant *to this section may* be construed to prevent or limit the application of the emergency provisions and procedures of 69-3915 to *a* person or his property.

(6) *A* person who owns or is in control of *a* plant, building, structure, process, or equipment (hereinafter called a facility) who applies to the

HeinOnline -- 1977 Vol. I 474 1977

board for an exemption or partial exemption or a renewal of an exemption or partial exemption from *a* rule governing the quality, nature, duration, or extent of emissions of air pollutants shall submit with the application for variance a sum of not less than $500 or 2% of the cost of the equipment to bring the facility into compliance with the rule for which a variance is sought, whichever is greater, but not to exceed $80,000. The department shall prepare a statement of actual costs, and funds in excess of this shall be returned to the applicant. The person requesting the variance shall describe the facility in sufficient detail, with accompanying estimates of cost and verifying materials, to permit the department to determine with reasonable accuracy the sum of the fee. For a renewal of an exemption or partial exemption, if no public hearing, *environmental impact statement, or appreciable investigation by the department* is necessary, the minimum filing fee shall apply or the fee may be waived by the department. The filing fee shall be deposited in the earmarked revenue fund provided for in 79-410. It is the intent of the legislature that the revenues derived from the filing fees shall be used by the department:

(a) to compile the information required for rendering a decision on the request;

(b) to compile the information necessary for any environmental impact statements;

(c) to offset the costs of a public hearing, printing, or mailing; and

(d) to carry out its other responsibilities under this chapter."

Section 9. Section 69-3917, R.C.M. 1947, is amended to read as follows:

"**69-3917. Hearings and judicial review.** (1) No rule and no amendment or repeal thereof *may* take effect except after public hearing on due notice and after the advisory council has been *given at least* 30 days *before* publication of the proposed text to comment thereon. *The* notice shall be given by public advertisement not less than 20 or more than 30 days *before* the date set for *the public* hearing.

(2) Nothing in this section *may* be construed to require a hearing *before* the issuance of an emergency order pursuant to 69-3915.

(3) *A* person aggrieved by *an* order of the board or local control authority may apply for rehearing upon one or more of the following grounds, and upon no other grounds:

(a) *the* board or local control authority acted without or in excess of its powers;

(b) *the* order was procured by fraud;

(c) *the* order is contrary to the evidence;

(d) *the* applicant has discovered new evidence, material to him, which he could not, with reasonable diligence, have discovered and produced at the hearing; *or*

(e) *competent* evidence was excluded to the prejudice of the applicant.

HeinOnline -- 1977 Vol. I 475 1977

The petition must be in such form and filed in such time as the board shall prescribe.

(4) (a) Within 30 days after the application for rehearing is denied or, if the application is granted, within 30 days after the decision on the rehearing, *a* party aggrieved thereby may appeal to the district court of *the* judicial district of the state which is the situs of property affected by the order.

(b) The appeal shall be taken by serving a written notice of appeal upon the *chairman* of the board, which service shall be made by the delivery of a copy of the notice to *the chairman* and by filing the original with the clerk of the court to which the appeal is taken. Immediately *after* service upon the board, the board shall certify to the district court the entire record and proceedings, including all testimony and evidence taken by the board. Immediately upon receiving the certified record, the district court shall fix a day for filing of briefs and hearing arguments on the cause, and shall cause a notice of the same to be served upon the board and the appellant.

(c) The court shall hear and decide the cause upon the record of the board. The court shall determine whether or not the board regularly pursued its authority, whether or not the findings of the board were supported by substantial competent evidence, and whether or not the board made errors of law prejudicial to the appellant.

(5) Either the board or the person aggrieved may appeal from the decision of the district court to the supreme court. The proceedings before the supreme court shall be limited to a review of the record of the hearing before the board and of the district court's review of that record."

Section 10. Section 69-4820.1, R.C.M. 1947, is amended to read as follows:

"**69-4820.1. Additional sanctions authorized.** (1) In addition to all other remedies created by this act, the department is authorized to take appropriate enforcement action on its own initiative to:

(a) prevent, abate, and control the pollution of state waters;

(b) prevent, abate, and control any violation of a condition or limitation imposed by a permit issued under *69-4809.1(1)(a)*;

(c) prevent, abate, and control any *violation* of *rules* relating to pretreatment standards.

(2) In furtherance of subsection (1), *a* person violating *a* condition, limitation, standard, or other requirement established pursuant to this chapter may be served with a compliance order issued by the department. *The* order must specify the condition, limitation, standard, or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard, or other requirement that has been violated. The compliance order issued under this section shall be personally served by an authorized representative of the department.

HeinOnline -- 1977 Vol. I 476 1977

(3) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for *a* violation which would be subject to a compliance order under subsection (2). *An* action under this subsection may be commenced in the district court of *the* county in which the defendant is located or resides or is doing business, and the court shall have jurisdiction to restrain *the* violation and to require compliance.

(4) *A* person found to be in violation of a condition, limitation, standard, or other requirement established pursuant to this section shall be subject to the penalty provisions of 69-4823.

(5) For the purpose of this subsection, the term "person" shall mean, in addition to the definition contained in 69-4802, any responsible corporate officer."

Section 11. Section 69-4824, R.C.M. 1947, is amended to read as follows:

"**69-4824. Emergencies.** Notwithstanding any other provisions of this chapter, if the department finds that a person is committing or is about to commit an act in violation of this chapter or an order or rule issued under it which, if it occurs or continues, will cause substantial pollution the harmful effects of which will not be remedied immediately after the commission or cessation of the act, the department shall order *the* person to stop, avoid, or moderate the act so that the substantial injury will not occur. The order shall be effective immediately upon receipt by the person to whom it is directed, unless the department provides otherwise. Notice of the order shall conform to the requirements of 69-4820(1) so far as practicable; the notice shall indicate that the order is an emergency order. Upon issuing such an order, the department shall fix a place and time for a hearing before the board, not later than 5 days thereafter, unless the person to whom the order is directed shall request a later time. The department may deny a request for a later time if it finds that the person to whom the order is directed is not complying with the order. The hearing shall be conducted in the manner specified in 69-4820. As soon as practicable after the hearing, the board shall affirm, modify, or set aside the order of the department. The order of the board shall be accompanied by the statement specified in 69-4820*(5)*. An action for review of the order of the board may be initiated in the manner specified in 69-4821. The initiation of such an action or taking of an appeal *may* not stay the effectiveness of the order, unless the court *finds* that the board did not have reasonable cause to issue an order under this section."

Section 12. Section 69-5003, R.C.M. 1947, is amended to read as follows:

"**69-5003. Approval of plans for facilities in subdivisions.** (1) A person may not file a subdivision plat with a county clerk and recorder, make disposition of *a* lot within a subdivision, erect *a* building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy *a* permanent building in a subdivision until the department has indicated that the subdivision is subject to no sanitary restriction.

HeinOnline -- 1977 Vol. I 477 1977

(2) A county clerk and recorder may not accept a subdivision plat for filing until:

(a) the person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department; and

(b) the department has indicated by stamp or certificate that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction.

(3) When a subdivision as defined in this chapter is excluded from the provisions of 11-3862, except 11-3862(8), and the subdivision is otherwise subject to the provisions of this chapter, plans and specifications of the *subdivision* shall be submitted to the department, and the department shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the department shall be as follows:

(a) The developer shall present to the department a preliminary plan of the proposed development and whatever information the developer feels necessary for its subsequent review. Within 60 days of *receipt of* this submission by the department, the department shall notify the developer if the material submitted is satisfactory to determine if sanitary restrictions are necessary and, if not, what additional information is required for subsequent action by the department.

(b) If additional information is necessary to determine if sanitary restrictions are necessary, no further processing will be made on the request until the *missing* information is made available to the department by the developer.

(c) The department must notify the developer within 30 days if his submission of additional requested material is satisfactory. If the material is not satisfactory, the provision of subsection (b) shall apply.

(d) After the department has notified the developer that *it has* all the necessary information required for review, the department must give final action of the proposed plan within 60 days, unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(4) A person may not construct or use *a facility* which *deviates* from the plans and specifications filed with the department until the department has approved the deviation."

Section 13. Section 69-5602, R.C.M. 1947, is amended to read as follows:

"**69-5602. Department authorized to adopt rules.** The department shall adopt rules for *constructing* and operating tourist campgrounds and trailer courts to insure sanitation and protect public health."

Section 14. Section 69-5603, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 478 1977

"**69-5603. License required — inspections.** A person operating a tourist campground or trailer court shall:

(1) obtain a license from the department;

(2) permit inspections by state *or* local health officers, sanitarians, or other authorized persons at all reasonable times."

Section 15. Section 69-5607, R.C.M. 1947, is amended to read as follows:

"**69-5607. Violations — penalties — disposition of fines.** *A* person violating *a* provision of this chapter or *a rule* made under it shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $50 *or* more than $100 for the first offense, and not less than $75 *or* more than $200 for the second offense; and for the third and subsequent offenses, *he shall be punished* by a fine of not less than $200 and imprisonment in the county jail not to exceed 90 days. Fines shall be paid to the county treasurer of the county in which the tourist campground or trailer court is located. The county treasurer shall send all fines collected to the state treasurer for deposit in the state general fund."

Section 16. Section 69-5803, R.C.M. 1947, is amended to read as follows:

"**69-5803. Definitions.** (1) "By-product material" means *a* radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Ionizing radiation" means gamma rays and *X rays*, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles but not sound or radio waves or visible, infrared, or *ultraviolet* light.

(3) "General license" means a license effective pursuant to *rules* promulgated by the department without the filing of an application to transfer, acquire, own, possess, or use quantities of or devices or equipment utilizing quantities of by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially. General licenses are effective without the filing of applications with the department or the issuing of licensing documents to the user.

(4) "Specific license" means a license issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of or devices or equipment utilizing quantities of by-product, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(5) "Person" means *an* individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States atomic energy commission, any successor thereto, or federal agencies licensed by the atomic energy commission.

(6) "Source material" means uranium, thorium, or any other material

HeinOnline -- 1977 Vol. I 479 1977

which the department or the United States atomic energy commission declares by order to be source material or ores containing one or more of the foregoing materials, in such concentration as the department or the atomic energy commission declares by order to be source material after the atomic energy commission has determined the material in such concentration to be source material.

(7) "Special nuclear material" means plutonium, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the department or the United States atomic energy commission, or any successor thereto, declares by order to be special nuclear material or any material artificially enriched by any of the foregoing, but does not include source material.

(8) "Registration" means the registering by the legal owner, user, or authorized representative with the department of sources of ionizing radiation *in the manner prescribed by rule.*

(9) "Department" means the department of health and environmental sciences."

Section 17. Section 69-5806, R.C.M. 1947, is amended to read as follows:

"69-5806. Licensing and registration. (1) The department shall provide by rule for general or specific licensing of persons to receive, possess, or transfer radioactive materials and devices or equipment utilizing such materials. *The* rules shall provide for amendment, suspension, or revocation of licenses pursuant to *69-5812.*

(2) Each application for a specific license shall be in writing and shall state such information as the department by rule may determine to be necessary to decide the technical, insurance, and financial qualifications or any other qualification of the applicant as the department *considers* reasonable and necessary to protect the occupational and public health and safety. The department may, at any time after the filing of the application and before the expiration of the license, require further written statements and may make such inspections as the department *considers* necessary in order to determine whether the license should be granted, denied, modified, suspended, or revoked. All applications and statements shall be signed by the applicant or licensee. The department may require *an application* or *statement* to be made under oath or affirmation.

(3) Each license shall be in such form and contain such terms and conditions as the department may by rule prescribe.

(4) No license issued pursuant to the provisions of this act and no right to possess or utilize sources of ionizing radiation granted by any license *may* be assigned or in any manner disposed of.

(5) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules or orders issued in accordance with the provisions of this act.

(6) The department may require registration and inspection of persons dealing with sources of ionizing radiation which do not require a specific

HeinOnline -- 1977 Vol. I 480 1977

license and may require compliance with specific safety standards to be promulgated by the department.

(7) The department is authorized to exempt certain users from the licensing or registration requirements set forth in this section when the department makes a finding that the exemption of *the* users will not constitute a significant risk to the health and safety of the public.

(8) *A* report of investigation or inspection or information concerning trade secrets or secret industrial processes obtained under this act shall not be disclosed or opened to public inspection except as may be necessary for the performance of the functions of the department.

(9) Rules promulgated pursuant to this act may provide for recognition of *such* other state or federal licenses as the department *considers* desirable, subject to such registration requirements as the department *prescribes.*"

Section 18. Section 69-6807, R.C.M. 1947, is amended to read as follows:

"**69-6807. Deposit of fees — special junk vehicle assessment fee.** (1) All motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for control, collection, and disposal of junk vehicles.

(2) *A* special junk vehicle disposal fee *shall be assessed* on each new application for a motor vehicle title and on each transfer of motor vehicle title in the amount of $2 on passenger cars and trucks under 8001 pounds GVW. *An* additional special junk vehicle disposal fee *shall be assessed* in the amount of *50* cents on each passenger car and truck under 8001 pounds GVW registered for licensing. The *fees* shall be collected by the county treasurer. However, the following are exempt from payment of the fees:

(a) vehicles leased or owned by the state or by a county or municipality;

(b) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(c) vehicles displaying dealers' license plates, as provided in 53-122, while owned by a dealer; *and*

(d) house trailers or equipment which are not self-propelled or which require towing upon a highway of this state.

(3) The department shall report to each legislature the amount collected under this act and the cost of administration of the act to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected.

(4) The department shall pay to a county the amount of the approved *junk vehicle collection and graveyard* budget of the county. The yearly payment may not exceed $1 for each motor vehicle under 8001 pounds GVW that is licensed in that county. However, for those counties that

HeinOnline -- 1977 Vol. I 481 1977

have fewer than 5,000 such motor vehicles, the department may pay up to $5,000, providing the county can justify this payment."

Section 19. Section 69-6811, R.C.M. 1947, is amended to read as follows:

"**69-6811. Prohibition.** It is unlawful to place junked motor vehicles or the body portion of junked motor vehicles between *high-water* channel banks of any stream or to reinforce banks of a stream *with such junked motor vehicle or the body portion of such junked motor vehicles.*"

Section 20. **Repealer.** Section 26-339, R.C.M. 1947 is repealed.

Approved March 29, 1977.

CHAPTER NO. 141

AN ACT REVISING THE EGG DEALER'S LAW TO REFLECT CURRENT MARKETING PRACTICES, TO LOWER THE COST OF A WHOLESALE EGG DEALER'S LICENSE, AND TO REMOVE ARCHAIC OR REDUNDANT LANGUAGE; AMENDING SECTIONS 3-2301, 3-2303, 3-2305, 3-2311, AND 3-2313; REPEALING SECTIONS 3-2304, 3-2309, AND 3-2315, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2301, R.C.M. 1947, is amended to read as follows:

"**3-2301. Egg dealer's license — fee.** *(1) No person may buy, sell, or deal in eggs without first obtaining* a license from the department of livestock for each establishment at which business is conducted. *A licensee* shall send to the department the reports which are requested by the department. The fee for the license is $5 per year for dealers buying eggs for sale at retail. The fee for the license is *$20* per year for dealers buying eggs for resale at wholesale. All licenses shall be posted in a conspicuous place in each place of business. Licenses expire March 31 each year after the date of issuance.

(2) A person buying, selling, or dealing in eggs, a major portion of which are produced by his own fowl, or in amounts less than an average of 25 cases per month, is exempt from the requirements of this section."

Section 2. Section 3-2303, R.C.M. 1947, is amended to read as follows:

"**3-2303. Candling eggs intended for human consumption — candling defined.** Every person engaged in the business of buying eggs intended for human consumption for resale shall maintain an adequate place for the proper candling and handling of *the eggs by an egg grader licensed pursuant to this chapter or shall purchase only eggs which have already been properly candled and graded under the supervision of an egg grader licensed pursuant to this chapter. The term "candling" as used in this chapter means the careful examination, in a partially dark room or place, of the whole egg by means of a strong light.*"

HeinOnline -- 1977 Vol. I 482 1977

Section 3. Section 3-2305, R.C.M. 1947, is amended to read as follows:

"**3-2305. Certificate of candling or packing.** Every person buying eggs for resale at retail, except persons or firms who do not buy and sell more than 25 cases of eggs per month, shall candle all eggs offered to him which have not been candled *under supervision of* a licensed egg grader and shall refuse to buy eggs unfit for human food as defined in 3-2306. "Rejects" shall be returned to the producer, if possible, or, if requested, the candling shall be done in the presence of the producer. A certificate shall be placed *in or* on *every case of eggs, if candled and graded, in a manner which permits its easy reading and shall* state exact grade and size, date of candling, *or other date approved by the department of livestock, and name and address of packer.* If not candled or graded the certificate should state "not candled or graded", the name of the dealer, and when packed. *The certificate shall be printed in letters large enough to be easily read.*"

Section 4. Section 3-2311, R.C.M. 1947, is amended to read as follows:

"**3-2311. Penalties.** *Any* person failing to comply with the *provisions* of this *chapter* or any *rules adopted pursuant to this chapter is* guilty of a misdemeanor and upon conviction for the first offense shall be punished by a fine of not less than $25 *or* more than $75. Upon conviction for the second or any subsequent violation of the foregoing provisions of the act the violator shall be fined not less than $50 *or* more than $200."

Section 5. Section 3-2313, R.C.M. 1947, is amended to read as follows:

"**3-2313. Licensed egg graders.** Wholesale and retail dealers who handle more than 25 cases of eggs per month supplying eggs to consumers *must, when selling candled eggs, sell only eggs candled by or under the supervision of* experienced and licensed graders. The fee for a grader's license is $5 per year. All candlers and graders must pass an examination required by the department of livestock. The license expires March 31 each year after the date of issuance."

Section 6. **Repealer.** Sections 3-2304, 3-2309, and 3-2315, R.C.M. 1947, are repealed.

Approved March 29, 1977.

CHAPTER NO. 142

AN ACT TO REVISE AND MODERNIZE STATUTES GOVERNING THE STATE LAW LIBRARY; REMOVING THE STATE AUDITOR AND SECRETARY OF STATE FROM THE BOARD OF TRUSTEES; BROADENING THE AUTHORITY OF THE LIBRARIAN; AMENDING SECTIONS 44-402 AND 44-405, R.C.M. 1947; AND REPEALING SECTIONS 44-404, 44-408, 44-409, AND 44-410, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-402, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 483 1977

"**44-402. Location — board of trustees.** The state law library of the state of Montana shall be located in the capitol building at Helena, Montana, and shall be in the immediate custody and subject to the control of a board of trustees, consisting of the chief justice and the justices of the supreme court of the state of Montana."

Section 2. Section 44-405, R.C.M. 1947, is amended to read as follows:

"**44-405. Rules for use of library.** *(1)* The state law library shall be maintained and operated for the use of the members of the supreme court, the members of the *legislature,* and the several officers of the senate and of the house of representatives, for state officers and employees, for members of the bar of the supreme court of Montana, for members of the bar of supreme courts of other states while in attendance before the supreme court of Montana, and members of the general public agreeing to the rules established by the librarian.

(2) The librarian shall develop and maintain an adequate collection and services to fulfill the needs of library users and shall establish procedures for the maintenance and control of the collection."

Section 3. **Repealer.** Sections 44-404, 44-408, 44-409, and 44-410, R.C.M. 1947, are repealed.

Approved March 29, 1977.

CHAPTER NO. 143

AN ACT TO AMEND SECTION 32-3928, R.C.M. 1947, TO PROVIDE THAT THE APPLICATION FOR RELOCATION ASSISTANCE BE REVIEWED BY THE DIRECTOR OF HIGHWAYS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-3928, R.C.M. 1947, is amended to read as follows:

"**32-3928. Review of application for assistance — director's decision final.** A displaced person aggrieved by a determination as to eligibility for a payment authorized by 32-3925 through 32-3927 or the amount of a payment may have his application reviewed by the *director of highways,* whose decision shall be final."

Approved March 29, 1977.

CHAPTER NO. 144

AN ACT TO AMEND SECTION 53-712, R.C.M. 1947, RELATING TO PROPORTIONAL REGISTRATION OF FLEET VEHICLES.

HeinOnline -- 1977 Vol. I 484 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-712, R.C.M. 1947, is amended to read as follows:

"**53-712. Proportional registration of fleet vehicles, application, fee-formula, and payment.** (1) An owner engaged in operating one or more fleets may, instead of registration of vehicles under other sections of this title, register and license each fleet for operation in this state by filing an application with the department which shall contain the following information, and *any* other information pertinent to vehicle registration the department requires:

(a) *total* fleet miles *which is* the total number of miles operated in all jurisdictions during the preceding year by the vehicles in the fleet during the year;

(b) *in-state* miles *which is* the total number of miles operated in this state during the preceding year by the vehicles in the fleet during the year; *and*

(c) *a* description and identification of each vehicle of the fleet which is to be operated in this state during the registration year for which proportional fleet registration is requested.

(2) The application for each fleet *may* be accompanied by a fee payment computed as follows:

(a) Divide in-state miles by total fleet miles.

(b) Determine the total amount necessary to register each vehicle in the fleet for which registration is requested, based on the regular annual registration fees prescribed by 53-122 *and* Title 32, *chapters* 32 and 33, and the property taxes which are due on the fleet.

(c) Multiply the sum obtained under subsection (2)(b) by the fraction obtained under subsection (2)(a).

(3) Applications submitted with fees shall be recomputed by the department and a statement furnished showing the overpayment or balance due.

(4) Applications submitted without fees shall be computed by the department and a statement furnished showing the amount of fees due."

Approved March 29, 1977.

CHAPTER NO. 145

AN ACT TO PROVIDE THAT A SHERIFF MAY QUALIFY NONSHERIFF MEMBERSHIP SERVICE IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM FOR CREDIT IN THE SHERIFFS' RETIREMENT SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 68-2622.1 that reads as follows:

HeinOnline -- 1977 Vol. I 485 1977

68-2622.1. Qualification of nonsheriff service in the public employees' retirement system. (1) A member who was a sheriff on July 1, 1974, may qualify nonsheriff membership service standing to his credit under the public employees' retirement system by submitting a written request to the board no later than January 1, 1978. Upon such a request, the member's accumulated contributions under the public employees' retirement system, together with regular interest thereon, and all contributions paid into that system by an employer, as defined in 68-1503(25), coincident with such accumulated contributions, together with regular interest thereon, shall be transferred from the public employees' retirement system retirement fund to the sheriff's retirement account, and credit for the service shall be transferred from the public employees' retirement system to the sheriff's retirement system.

(2) If a member who was a sheriff on July 1, 1974, has withdrawn his accumulated contributions from the public employees' retirement system, he may receive credit for his membership service in that system by submitting the request provided for in subsection (1) and depositing with the sheriffs' retirement account the amount provided for in 68-1906. Upon such a request and deposit, the employer contributions and credit for service shall be transferred as provided in subsection (1).

(3) Any service credit transferred under this section shall be treated as if it were service as a sheriff.

Approved March 29, 1977.

CHAPTER NO. 146

AN ACT TO AMEND SECTION 40-3343, R.C.M. 1947, TO ESTABLISH A FEE FOR EXAMINATION OF INSURANCE CONSULTANTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-3343, R.C.M. 1947, is amended to read as follows:

"**40-3343. Qualification — fee.** *(1)* In order to determine the competency of every applicant for license as an insurance consultant, the commissioner shall require membership in one or more of the following: the American college of life underwriters, the American college of property and liability underwriters, the society of actuaries, the casualty actuarial society, or the American academy of actuaries, or require the applicant to pass an examination.

(2) The fee for taking such an examination shall be $50. The commissioner shall deposit all fees collected in the general fund. The fee for taking a second or subsequent examination shall be no more than the cost of administering such examination, not to exceed $50."

Approved March 29, 1977.

HeinOnline -- 1977 Vol. I 486 1977

CHAPTER NO. 147

AN ACT TO AMEND SECTION 40-3427, R.C.M. 1947, TO INCREASE THE PREMIUM TAX ON INDEPENDENTLY PROCURED COVERAGES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-3427, R.C.M. 1947, is amended to read as follows:

"**40-3427. Report and tax of independently procured coverages.** (1) Every insured who in this state procures or causes to be procured or continues or renews insurance in an unauthorized foreign insurer, or any selfinsurer who in this state so procures or continues excess loss, catastrophe or other insurance, upon a subject of insurance resident, located or to be performed within this state, other than insurance procured through a surplus line agent pursuant to the surplus line insurance law of this state or exempted from such law under section 40-3426, shall within thirty (30) days after the date such insurance was so procured, continued, or renewed, file a written report of the same with the commissioner on forms designated by the commissioner and furnished to such an insured upon request. The report shall show the name and address of the insured or insureds, name and address of the insurer, the subject of the insurance, a general description of the coverage, the amount of premium currently charged therefor, and such additional pertinent information as is reasonably requested by the commissioner. If any such insurance covers also subject of insurance resident, located or to be performed outside this state a proper pro rata portion of the entire premium payable for all such insurance shall be allocated as to the subjects of insurance resident, located or to be performed in this state, for the purposes of this section.

(2) Any insurance in an unauthorized insurer procured through negotiations or an application in whole or in part occurring or made within or from within this state, or for which premiums in whole or in part are remitted directly or indirectly from within this state, shall be deemed to be insurance procured, or continued or renewed in this state within the intent of subsection (1) above.

(3) For the general support of the government of this state there is levied upon the obligation, chose in action, or right represented by the premium charged or payable for such insurance, a tax at the rate of *2 ¾%* of the gross amount of such premium. The insured shall withhold the amount of the tax from the amount of premium charged by and otherwise payable to the insurer for such insurance, and within thirty (30) days after the insurance was so procured, continued or renewed, and coincidentally with the filing with the commissioner of the report provided for in subsection (1) above, the insured shall pay the amount of the tax to the state treasurer through the commissioner.

HeinOnline -- 1977 Vol. I 487 1977

(4) If the insured fails to withhold from the premium the amount of tax herein levied, the insured shall be liable for the amount thereof and shall pay the same to the commissioner within the time stated in subsection (3) above.

(5) The tax imposed hereunder if delinquent shall bear interest at the rate of six per cent (6%) per annum, compounded annually.

(6) The tax shall be collectible from the insured by civil action brought by the commissioner.

(7) This section does not abrogate or modify, and shall not be construed or deemed to abrogate or modify, any provision of section 40-3401 (representing or aiding unauthorized insurers prohibited) or 40-3402 (suits by unauthorized insurers prohibited), or any other provision of this code.

(8) This section does not apply as to life or disability insurances."

Approved March 29, 1977.

CHAPTER NO. 148

AN ACT AMENDING SECTIONS 69-1601.1 AND 69-1607, R.C.M. 1947, RELATING TO THE LICENSING OF CRANE OPERATORS, BY CLARIFYING THE PROVISIONS OF THE LICENSING REQUIREMENTS AND PENALTY PROVISIONS; AND REPEALING SECTION 69-1609.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1601.1, R.C.M. 1947, is amended to read as follows:

"**69-1601.1. Crane and hoist licenses.** (1) It is unlawful for a person to operate any hoisting equipment, when used in hoisting or lowering personnel or material, that has a manufacturer's rating of above 6 tons and a boom length of more than 25 feet, without first obtaining a license from the division. This equipment includes overhead trolley cranes used in construction only and excludes equipment with excavation attachments or log loading equipment when in use. In emergencies, 69-1517 shall apply to the operation of the equipment named in this section.

(2) Licensing is as follows:

(a) First-class hoisting engineers are licensed to operate any hoisting equipment in industrial or construction operations.

(b) An applicant for a first-class hoisting engineer's license shall have: (i) no less than 3 years' experience operating equipment requiring a second-class hoisting engineer's license, or shall otherwise be shown to be equivalently competent by examination; (ii) passed his *18th* birthday; and (iii) passed a written test prescribed by the division. An annual physical exam is required of all licensees.

(c) Second-class hoisting engineers are licensed to operate hoisting equipment with a manufacturer's rating of 6 tons *and* a boom length of 25 feet up to equipment with a rating of 15 tons and a boom length of 60 feet.

(d) Applicants for a second-class hoisting engineer's license shall: (i) have no less than 2 years' experience in actual operation of hoisting equipment covered by this section or shall otherwise be shown to be equivalently competent by examination; (ii) successfully pass a written examination prescribed by the division; and (iii) have passed their *18th* birthday. An annual physical exam is required of all licensees.

(e) Third-class hoisting engineers are licensed to move all truck cranes driven by any power and of any capacity. This license *requirement* applies to truck crane oilers *who move truck cranes.*

(f) Applicants for a third-class hoisting engineer's license shall successfully pass a written test prescribed by the division, and shall be at least 18 years old, before receiving this license.

(3) The division shall reexamine each licensed engineer or operator every 5 years during the anniversary month of his license, if the licensee has not worked at the trade for five (5) years."

Section 2. Section 69-1607, R.C.M. 1947, is amended to read as follows:

"**69-1607. Penalty for operating machinery without license.** Every person who operates any of the engines and machinery named in 69-1601 *or 69-1601.1* for which a license is required, without first obtaining a license as required by the *sections referred to above,* and every owner, employer, or manager of any such engines or machinery who permits any unlicensed person to operate *such engines or machinery* or any person who violates any of the provisions of this act *is* guilty of a misdemeanor."

Section 3. **Repealer.** Section 69-1609, R.C.M. 1947, is repealed.

Approved March 29, 1977.

CHAPTER NO. 149

AN ACT TO FURTHER REGULATE THE USE OF SNARE TRAPS; AMENDING SECTION 26-504, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-504, R.C.M. 1947, is amended to read as follows:

"**26-504. Use of snare lawful under certain conditions.** *(1)* It shall be lawful to use a snare trap for the purpose of snaring any animal or bird *under the following conditions:*

(a) Each snare trap must be tagged with a numbered metal device identifying the owner's name, address, and telephone number.

HeinOnline -- 1977 Vol. I 489 1977

(b) It is unlawful to set snare traps on private property without the landowner's consent.

(c) Snare traps shall be set in a manner and at a time so as not to unduly endanger livestock.

(d) A person who injures livestock in snare traps is liable for damages to the owner of the livestock.

(2) A person convicted of violating the provisions of this section is guilty of a misdemeanor.

(3) The commission may adopt rules to enforce this section."

Approved March 29, 1977.

CHAPTER NO. 150

AN ACT TO AMEND SECTION 15-2011, R.C.M. 1947, TO CLARIFY WHICH CLASS OF SECURITIES IS CONSIDERED TO BE REGISTERED FOR NONISSUER TRANSACTIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2011, R.C.M. 1947, is amended to read as follows:

"**15-2011. General provisions regarding registration of securities.** (1) A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a registered broker-dealer. Any document filed under this act or a predecessor act within five (5) years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

(2) The commissioner may require as a condition of registration by qualification or co-ordination (1) that any security issued within the past three (3) years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (2) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may determine the conditions of any escrow or impounding required hereunder but he may not reject a depository solely because of location in another state.

(3) When securities are registered by notification, co-ordination, or qualification, they may be offered and sold by the issuer, any other person on whose behalf they are registered or by any registered broker-dealer. Every registration shall remain effective until revoked by the commissioner or until terminated upon request of the registrant with the consent

HeinOnline -- 1977 Vol. I 490 1977

of the commissioner; however, said registration shall be automatically suspended upon a stop order or suspension proceedings being instituted by the securities and exchange commission relative to said securities, and shall continue suspended so long as such proceedings are pending and until the registration or filing with the securities and exchange commission is effective. All outstanding securities of the same class as a *currently* registered security are considered to be registered for the purpose of any nonissuer transaction. A registration statement which has become effective may not be withdrawn for one (1) year from its effective date if any securities of the same class are outstanding.

(4) (a) The commissioner may require the person who filed the registration statement to file reports to keep reasonably current the information contained in the registration statement and to disclose the progress of the offering with respect to registered securities which (a) are issued by a face-amount certificate company or a redeemable security issued by an open-end management company or unit investment trust as those terms are defined in the Investment Company Act of 1940, or (b) are being offered and sold directly by or for the account of the issuer.

(b) During the period of public offering in the initial distribution of securities registered under the provisions of this act by notification or qualification, financial data or statements corresponding to those required under the provisions of sections 15-2008 (2) and 15-2010, and to the issuer's fiscal year, shall be filed with the commissioner annually, not less than ninety (90) days after the end of each such year. If such statements are not certified the commissioner may verify them by examining the issuer's books and records."

Approved March 29, 1977.

CHAPTER NO. 151

AN ACT AMENDING SECTION 75-7003, R.C.M. 1947, BY CHANGING THE AGE LIMIT FOR DRIVERS OF SCHOOL BUSES FROM 21 YEARS TO 18 YEARS OF AGE TO COMPLY WITH SECTION 31-127, R.C.M. 1947, AND THE MONTANA CONSTITUTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7003, R.C.M. 1947, is amended to read as follows:

"**75-7003. School bus driver qualifications.** Any driver of a school bus shall be qualified to drive such school bus by compliance with the following requirements:

(1) he is not less than *18* years of age;

(2) he is of good moral character;

(3) he is the holder of a chauffeur's license;

HeinOnline -- 1977 Vol. I 491 1977

(4) he has filed with the district a satisfactory medical examination report signed by a licensed physician of the state of Montana on a blank provided by the superintendent of public instruction;

(5) he has completed a standard first-aid course and holds a valid standard first-aid certificate from an authorized instructor. The issuance of such certificate shall be governed by rules and regulations established by the superintendent of public instruction, provided that such rules may suspend this requirement for a reasonable period of time where there has been an inadequate opportunity for securing the first-aid course and certificate;

(6) he has complied with any other qualifications established by the board of education; and

(7) he has filed with the county superintendent a certificate from the trustees of the district for which the school bus is to be driven certifying compliance with the several driver qualifications enumerated in this section."

Approved March 29, 1977.

CHAPTER NO. 152

AN ACT AMENDING SECTION 69-1501, R.C.M. 1947, BY GIVING THE DIVISION OF WORKERS' COMPENSATION DISCRETION AS TO WHETHER TO ACCEPT INSPECTION REPORTS OF SPECIAL BOILER INSPECTORS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-1501, R.C.M. 1947, is amended to read as follows:

"**69-1501. Boiler rules and regulations — state inspectors of boilers, appointment, term and compensation — special boiler inspectors.** (1) The division of workers' compensation shall formulate definitions, rules and regulations for the safe construction, installation, operation, inspection and repair of equipment covered by this act. The definitions, rules and regulations so formulated shall follow generally accepted nationwide engineering standards as published by the American society of mechanical engineers.

(2) Appointment, term and compensation of boiler inspectors. The division shall appoint state inspectors of boilers and shall prescribe their duties, term of office and fix their compensation.

(3) In addition to the state boiler inspectors the division shall issue to the inspectors of boiler insurance companies authorized to do business in the state, commissions, certificates or other recognition as special boiler inspectors and *may* accept the inspection reports of such special inspectors as equivalent to those of the state inspectors, provided that each such special inspector shall hold a certificate as boiler inspector issued by the

HeinOnline -- 1977 Vol. I 492 1977

national board of boiler and pressure vessels inspectors. Such special inspectors shall receive no salary or expenses from the state nor shall the state collect inspection fees for inspections made by such special inspectors."

Approved March 29, 1977.

CHAPTER NO. 153

AN ACT TO AMEND SECTION 91A-2-401, R.C.M. 1947, TO MAKE UNIFORM THE APPLICATION OF THE HOMESTEAD ALLOWANCE AND TO REMEDY CERTAIN TITLE PROBLEMS INHERENT IN THE PRESENT HOMESTEAD ALLOWANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 91A-2-401, R.C.M. 1947, is amended to read as follows:

"**91A-2-401. Homestead allowance.** A surviving spouse of a decedent who was domiciled in this state is entitled to a homestead allowance *of $20,000.* If there is no surviving spouse, each minor child and each dependent child of the decedent is entitled to a homestead allowance *amounting to $20,000,* divided by the number of minor and dependent children of the decedent. The homestead allowance is exempt from and has priority over all claims against the estate. Homestead allowance is in addition to any share passing to the surviving spouse or minor or dependent child by the will of the decedent unless otherwise provided, by intestate succession or by way of elective share."

Approved March 29, 1977.

CHAPTER NO. 154

AN ACT TO INCREASE THE FEES IN JUSTICE'S COURT IN CIVIL ACTIONS FROM $3.50 TO $5; AMENDING SECTION 25-301, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-301, R.C.M. 1947, is amended to read as follows:

"**25-301. Justice's court fees in civil actions.** The following is the schedule of fees which shall be paid in every civil action in a *justice's* court:

(1) $5 when complaint is filed, to be paid by the plaintiff;

(2) $5 when the defendant appears, to be paid by the defendant;

(3) $5 to be paid by the prevailing party when judgment is rendered.

HeinOnline -- 1977 Vol. I 493 1977

In cases where judgment is entered by default, no charge except the *$5* for the filing of the complaint shall be made for any services, including issuing and return of execution.

(4) *$5* for all services in an action where judgment is rendered by confession;

(5) *$5* for filing notice of appeal and transcript on appeal, justifying and approving undertaking on appeal, and transmitting papers to the district court with certificate."

Approved March 29, 1977.

CHAPTER NO. 155

AN ACT TO ALLOCATE THE DUTIES OF CONDUCTING ADMINISTRATIVE TAX CASE HEARINGS BETWEEN THE DEPARTMENT OF REVENUE AND THE STATE TAX APPEAL BOARD; SPECIFYING PROCEDURES IN APPEALS FROM COUNTY TAX APPEAL BOARD DECISIONS AND FROM DEPARTMENT DECISIONS; ABOLISHING PROCEDURES INCONSISTENT THEREWITH; AMENDING SECTIONS 67-2220, 67-2221, 84-603, 84-709, 84-711, 84-1841, 84-4923.1, 84-5606.24, AND 84-5606.25, R.C.M. 1947; REPEALING SECTIONS 84-440, 84-602, 84-609, AND 84-710, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-709, R.C.M. 1947, is amended to read as follows:

"**84-709. Appeal to state tax appeal board — hearing.** *(1)* Any person, firm, or corporation or the department of revenue in behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board by filing with the county tax appeal board a notice of appeal and a duplicate thereof with the state board within 10 days after the receipt of the decision of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. The state board shall set such appeal for hearing either in its office in the *capital* or such county seat as the board *considers* advisable to facilitate the performance of its duties or to accommodate parties in interest and shall give to the appellant and to the county board at least 5 days' notice of the time and place of such hearing.

(2) *At* the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements, or *the state board* may hear further testimony. For the purpose of expediting its work the state board may refer any such appeal to one of its members, and the person so designated shall have and exercise all the powers of the board in conducting such hearings and

HeinOnline -- 1977 Vol. I 494 1977

shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board, and the state board shall determine such appeal on the record so made.

(3) On all hearings at county seats throughout the state, the state board or the member designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received, and the cost thereof may be paid out of the general appropriation for the board.

(4) In connection with any appeal *under this section* the state board *shall not be bound by common law and statutory rules of evidence or rules of discovery and may* affirm, reverse, or modify any decision. *The* decision of the state tax appeal board shall be final and binding upon all interested parties unless reversed or modified by judicial review. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section shall supersede *that act.* The state tax appeal board *may* not amend or repeal any administrative rule *of the department of revenue.* The state tax appeal board must give an administrative rule full effect unless the board finds any such rule arbitrary, capricious, or otherwise unlawful."

Section 2. There is a new R.C.M. section numbered 84-709.4 that reads as follows:

84-709.4. Direct appeal from department decision to state tax appeal board — hearing. (1) A person may appeal to the state tax appeal board any action of the department of revenue involving:

(a) property centrally assessed under chapters 8, 9, 13, 54, 62, or 64 of this title;

(b) classification of property as new industrial property;

(c) any other tax (other than the property tax) imposed under this title; or

(d) any other matter in which such appeal is provided by law.

(2) The appeal is made by filing a complaint with the board within 30 days following receipt of notice of the department action. The complaint shall set forth the grounds for relief and nature of relief demanded. The board shall immediately transmit a copy of the complaint to the department.

(3) The department shall file with the board an answer within 30 days following filing of a complaint, and at such time mail a copy to the complainant. The answer shall set forth the department's response to each ground for and type of relief demanded in the complaint.

(4) The board shall thereafter hear the parties in accordance with the contested case provisions of the Montana Administrative Procedure Act.

Section 3. Section 84-603, R.C.M. 1947, is amended to read as follows:

"**84-603. Application for reduction in valuation.** No reduction *may* be made in the valuation of property unless the party affected or his agent

HeinOnline -- 1977 Vol. I 495 1977

makes and files with the county tax appeal board on or before the third Monday of July a written application therefor. *The* application shall state the post-office address of the applicant, shall specifically describe the property involved, and shall state the facts upon which it is claimed such reduction should be made."

Section 4. Section 84-711, R.C.M. 1947, is amended to read as follows:

"**84-711. Assessment of omitted property — limitation.** *(1)* Whenever the department of revenue in any year *discovers* that any taxable property of any person has *escaped assessment, has been erroneously assessed, or has been omitted from taxation, the department may assess the same, provided the property is under the ownership or control of the same person who owned or controlled it at the time it escaped assessment, was erroneously assessed, or was omitted from taxation. All such revised assessments must be made within 10 years after the end of the calendar year in which the original assessment was or should have been made.*

(2) Whenever the department or its agent proposes to increase the valuation of locally assessed property above the value reported by the taxpayer under 84-409, the action of the department is subject to the notice and conference provisions of this section.

(3) (a) Notice of revised assessment pursuant to this section shall be made by the department or its agent by postpaid letter addressed to the person interested within 10 days after the revised assessment has been made. The notice shall include opportunity for a conference on the matter, at the request of the person interested, not less than 15 or more than 30 days after notice is given.

(b) An assessment revision review conference is not a contested case as defined in the Montana Administrative Procedure Act. The department shall keep minutes of each assessment review conference in writing, which are public records.

(c) Following an assessment review conference or expiration of opportunity therefor, the department shall order such assessment as it considers proper. Any party to the conference aggrieved by the action of the department may appeal directly to the state tax appeal board within 30 days or, if the property is locally assessed, may appeal to the county tax appeal board at its next meeting.

(4) Immediately upon receipt of a revised assessment, the county official possessing the assessment roll book shall enter the revised assessment. If the revised assessment corrects an original assessment, the previous entry shall be canceled upon order of the department."

Section 5. Section 84-1841, R.C.M. 1947, is amended to read as follows:

"**84-1841. Judicial review and appeals.** Any *final written* determination *by* the *director of the department under this chapter or chapter 63* may be *appealed to the state tax appeal board which may, upon the record of a hearing, affirm, modify, or reverse the decision of the department. Any party aggrieved by the decision of the board may petition for judicial review by* the district court of Lewis and Clark *County*, and an appeal

HeinOnline -- 1977 Vol. I 496 1977

may be taken from the judgment of *the* district court to the supreme court."

Section 6. Section 84-4923.1, R.C.M. 1947, is amended to read as follows:

"**84-4923.1. Review by court.** *(1)* The determination of the state *tax appeal board* may be reviewed in the district court for Lewis and Clark *County* or the county in which the taxpayer resides or has his principal office or place of business by a complaint filed by the taxpayer *or* the department of revenue within 6 months after the receipt of notice of the decision of the state *tax appeal board. Proceedings for review shall be otherwise as specified under the Montana Administrative Procedure Act.*

(2) The remedies provided by this chapter for the collection of the tax shall be stayed and no assessment, distraint, or proceedings in court for collection of the taxes *may* be made, begun, or prosecuted until 90 days after such court action is finally determined. From any determination of such court, an appeal to the supreme court may be taken by either party."

Section 7. Section 84-5606.24, R.C.M. 1947, is amended to read as follows:

"**84-5606.24. Hearing or rehearing before state tax appeal board.** Any person aggrieved by any action of the department or its duly authorized agents, under the provisions of this act, may apply to the state tax appeal board, in writing, for a hearing or rehearing thereon within 30 days after such action of the department or its authorized agents. The board shall promptly consider such application, set same for hearing and notify the applicant of the time and place fixed for such hearing or rehearing, which may be at its office or in the county of the applicant. After such hearing or rehearing, the board may make any further or other order in the premises as it may deem proper and lawful and shall furnish a copy thereof to the applicant. The department, on its own initiative, may order a *contested case* hearing on any matter concerned with *licensing (as defined in 82-4202) in connection with* the administration of this act, upon at least 10 days' notice in writing to the person or persons to be investigated."

Section 8. Section 84-5606.25, R.C.M. 1947, is amended to read as follows:

"**84-5606.25. Appeal to district court.** Any person aggrieved by any action or decision of the *state tax appeal board or a licensing decision of the department* made under the provisions of this act may appeal therefrom to the district court *in accordance with the Montana Administrative Procedure Act.*"

Section 9. Section 67-2220, R.C.M. 1947, is amended to read as follows:

"**67-2220. Determination of claims.** *(1)* The department of revenue shall consider any claim filed under this act and *issue a written determination of the claim. An aggrieved claimant may appeal to the state tax appeal board, which shall* hold a hearing and receive evidence concerning *the claim.* If a hearing is held, the *board* shall prepare a finding and a

decision in writing on each claim filed, stating the substance of any evidence heard by the *board* and the reasons for the *board's* decision. The decision shall be a public record.

(2) If the claim is allowed, the state department of revenue shall make payment forthwith. The claim shall be paid without deduction for costs of notices or sale or for service charges."

Section 10. Section 67-2221, R.C.M. 1947, is amended to read as follows:

"**67-2221. Judicial action upon determination.** Any person aggrieved by a decision of the state *tax appeal board* or as to whose claim the *board* has failed to act within 90 days after the filing of the claim, may commence an action in the district court of Lewis and Clark *County* to establish his claim. The proceeding shall be brought within 90 days after the decision of the state *tax appeal board* or within 180 days from the filing of the claim if the *board* fails to act. The action shall be tried de novo without a jury."

Section 11. **Repealer.** Sections 84-440, 84-602, 84-609, and 84-710, R.C.M. 1947, are repealed.

Approved March 29, 1977.

CHAPTER NO. 156

AN ACT TO CORRECT GRAMMAR AND INTERNAL REFERENCES, AND DELETE REDUNDANT MATTER IN THE COAL SEVERANCE TAX, OIL AND GAS SEVERANCE TAX, METAL MINES LICENSE TAX, AND RESOURCE INDEMNITY TRUST TAX LAWS, IN AID OF RECODIFICATION; AMENDING SECTIONS 84-1313, 84-1319, 84-1320, 84-2003, 84-2004, 84-2008.1, 84-2010, 84-2202, 84-2206, 84-2209.1, AND 84-7012, R.C.M. 1947; REPEALING 84-2011, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1313, R.C.M. 1947, is amended to read as follows:

"**84-1313. Definitions.** As used in this chapter *the following definitions apply:*

(1) "Contract sales price" means either the price of coal extracted and prepared for shipment f.o.b. mine, excluding that amount charged by the seller to pay taxes paid on production, or a price imputed by the department under 84-1318.

(2) "Energy conversion process" includes any process by which coal in the solid state is transformed into slurry, gas, electric energy, or any other form of energy.

(3) "Produced" means severed from the earth.

HeinOnline -- 1977 Vol. I 498 1977

(4) "Strip mining" or "surface mining" is defined in 50-1036.

(5) "Underground mining" means a coal mining method utilizing shafts and tunnels *and as further defined in 50-1036(20).*

(6) "Ton" means 2,000 pounds.

(7) "Department" means the department of revenue.

(8) "Taxes paid on production" *includes* any tax paid to the federal, state, or local governments upon the quantity of coal produced as a function of either the volume or the value of production and *does* not include any tax upon the value of mining equipment, machinery, or buildings and lands, any tax upon a person's net income derived in whole or in part from the sale of coal, or any license fee."

Section 2. Section 84-1319, R.C.M. 1947, is amended to read as follows:

"**84-1319. Disposal of severance taxes.** *Severance* taxes collected under the provisions of this chapter are allocated as follows:

(1) *to* the county for such purposes as the governing body of that county may determine from which coal was mined for each calendar year prior to January 1, 1980, *3* cents *a* ton or 4% of the severance tax paid on the coal mined in that county, whichever is higher, and for each calendar year following December 31, 1979, *3* cents *a* ton or 3 ½% of the severance tax paid on the coal mined in that county, whichever is higher;

(2) 2 ½% of total collections *a* year until December 31, 1979, and thereafter 4% of total collections *a* year to the earmarked revenue fund to the credit of the alternative energy research development and demonstration account;

(3) *27* ½% of total collections *a* year until July 1, 1979, and thereafter 35% to the earmarked revenue fund to the credit of the local impact and education trust fund account;

(4) *for* each of the 4 fiscal years following *July 1, 1975,* 10% of total collections *a* year to the earmarked revenue fund to the credit of the coal area highway improvement account;

(5) 10% of total collections *a* year to the earmarked revenue fund for state equalization aid to public schools of the state;

(6) *for* the period ending December 31, 1979, 1% of total collections *a* year to the earmarked revenue fund to the credit of the county land planning account;

(7) 2 ½% of total collections *a* year to the sinking fund to the credit of the renewable resource development bond account;

(8) 2 ½% of total collections *a* year through June 30, 1979, ½ to the earmarked revenue fund for the purpose of acquisition of sites and areas described in 62-304, subject to legislative appropriations, and ½ to the trust and legacy fund for the purpose of parks acquisition; *after* June 30, 1979, 5% of total collections *a* year to the trust and legacy fund for the

HeinOnline -- 1977 Vol. I 499 1977

purpose of parks acquisition. Income from the fund established in this subsection may be appropriated for the acquisition of sites and areas described in 62-304.

(9) all other revenues from severance taxes collected under the provisions of this chapter to the credit of the general fund of the state."

Section 3. Section 84-1320, R.C.M. 1947, is amended to read as follows:

"**84-1320. Reporting gross proceeds from coal.** Each person engaged in mining coal must, on or before March 31 each year, file with the department *of revenue* a statement of the gross yield from each coal mine owned or worked by such person in the preceding calendar year and the value thereof. The statement shall be in the form prescribed by the department, which may be coordinated with the form used under *84-1315*, and must be verified by an officer of the firm. The statement shall include:

(1) *the* name and address of the owner or lessee or operator of the *mine;*

(2) *the* location of the mine*;*

(3) *the* tons of *coal* extracted, treated, and sold from the mine during the taxable period*;*

(4) *the* gross yield or value in dollars and cents derived from the contract sales price."

Section 4. Section 84-2003, R.C.M. 1947, is amended to read as follows:

"**84-2003. Gross value of metal mine yield — computation.** The total "gross value of product", as used in this act, shall mean the market value of all merchantable metals *or* precious and semiprecious gems and stones extracted or produced each year from any mine or mining property in the state of Montana or recovered from the smelting, milling, reduction, or treatment in any manner of ores extracted from any such mine or mining property or from tailings resulting from the smelting, reduction, or treatment of any such ores. *Whenever* the ores require smelting, reduction, or treatment to ascertain the metal contents of such ores, the gross value of the product thereof shall be determined by taking the market value of all merchantable metals or mineral products extracted or recovered thereby, as shown by the gross smelter returns of such metals or mineral product in dollars and cents without any deductions for costs of smelting, reduction, or treatment or otherwise, based upon the average quotations of the price of such metals or mineral products in the city of New York, as evidenced by some established authority or market report, giving the market reports during the calendar year immediately preceding. Should there be no quotation covering any particular product, the department of revenue shall fix the value of such gross product or such portion thereof in such a manner as may seem equitable."

Section 5. Section 84-2004, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 500 1977

"**84-2004. Rate of tax.** The annual license tax to be paid by such person engaged in or carrying on the business of working or operating any mine or mining property in this state from which gold, silver, copper, lead, or any other metal or metals *or* precious or semiprecious gems or stones are produced shall be an amount computed on the gross value of product which may have been derived by such person from such business, work, or operation within this state during the calendar year immediately preceding, at the following rates:

Gross value of product	*Rate of Tax (percentage of gross value)*
first $100,000	*0.15%*
more than $100,000 and not more than $250,000	*0.575% of the increment*
more than $250,000 and not more than $400,000	*0.86% of the increment*
more than $400,000 and not more than $500,000	*1.15% of the increment*
more than $500,000	*1.438% of the increment*"

Section 6. Section 84-2008.1, R.C.M. 1947, is amended to read as follows:

"**84-2008.1. Procedure for collection of tax.** All tax, penalty, and interest due from any person under this act shall be a lien upon any and all real property of such person *when* the department of revenue *files* in the office of the county clerk in the county where such real property is situated *a certified copy of its statement of estimated tax computed under 84-2008. This* lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law."

Section 7. Section 84-2010, R.C.M. 1947, is amended to read as follows:

"**84-2010. Hearing on determination of value of gross product or amount of tax.** Every person whose license tax has been determined and assessed by the department of revenue under any of the provisions of this act who *feels* aggrieved by the determination and assessment of the department as to the amount of gross value of product or as to the amount of the license tax may, at any time within *10* days after the *receipt* of *the required* notice *of such determination and assessment*, file with the state tax appeal board a petition for a hearing in which petition must be stated the grounds and reasons therefor and the manner in which the amount of the gross value of product or the amount of the license tax, or both, should be changed or corrected. Upon the filing of such petition, if it appears to the satisfaction of the state tax appeal board therefrom that the department has erred in any manner in ascertaining and determining the amount of the gross value of product or the amount of the license tax, or both, the board shall immediately correct such error or

HeinOnline -- 1977 Vol. I 501 1977

errors; and if such correction *is* in conformity with the request contained in the petition for a hearing, the board shall take no further steps in connection with such petition other than to notify the department of the correct amount of the license tax due from such person after the making of such correction, and notifying such person thereof. If from such examination it does not appear to the satisfaction of the state tax appeal board that the department has erred in any manner, the board shall grant the hearing, fix a day when the board will take up and hear such matter, and give notice to such person of such date of hearing as the board *considers* reasonable. At the hearing of such *petition*, any taxpayer interested and the department may introduce witnesses and present testimony on any material matters connected with such return and license tax, and after considering such evidence the board shall fix and determine the gross value of product and reassess the amount of the license tax to be paid by such person and give notice thereof to such person and the department of revenue."

Section 8. Section 84-2202, R.C.M. 1947, is amended to read as follows:

"84-2202. Oil or gas producers' severance tax — amount — exceptions. *(1)* Every person engaging in or carrying on the business of producing petroleum, other mineral or crude oil, or natural gas *within this state* or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum, other mineral or crude oil, or natural gas is extracted or produced sufficient in quantity to justify the marketing of the same must, each year when engaged in or carrying on any such business in this state, pay to the department of revenue, for the exclusive use and benefit of the state of Montana, a severance tax computed at the following rates:

(a) 2.1% of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by 450 barrels;

(b) 2.65% of the total gross value of that portion of all the production of such person from each lease or unit in each calendar quarter in excess of 450 barrels multiplied by the number of producing wells on such lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such petroleum *or* crude or mineral oil. *Nothing* in this act *may* be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well or to work in or about any oil well or prospect or explore for or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such severance tax, nor *may* any work done or the drilling of any well or wells for the purpose of prospecting or exploring for petroleum or other mineral or crude oils or for the purpose of developing same be *considered* to be *the* engaging in or carrying on of any such business. *If* in the doing of any such work, in the drilling of any oil well,

HeinOnline -- 1977 Vol. I 502 1977

or in such prospecting, exploring, or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation *is* produced sufficient in quantity to justify the marketing of the same, such work, drilling, prospecting, exploring, or development work *is considered* to be the engaging in and carrying on of such business within this state within the meaning of this section.

(c) 2.65% of the total gross value of natural gas produced from each lease or unit, but in determining the amount of such tax there shall be excluded from consideration all gas produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such gas or petroleum *or* crude or mineral oil; and there shall also be excluded from consideration all gas recycled or reinjected into the ground.

(2) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the aforesaid interests that are owned by the federal, state, county, or municipal governments shall be exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts."

Section 9. Section 84-2206, R.C.M. 1947, is amended to read as follows:

"**84-2206. Record of product — carriers to furnish data.** Every such person shall keep a record in such form as the department of revenue may require of all petroleum and other mineral or crude oil or natural gas extracted or produced by such person in this state, and such records shall at all times during the business hours of the day be subject to inspection by the department *or* its agents or employees. It shall be the duty of railroad, pipeline, and transportation companies carrying crude or mineral oil or natural gas to furnish to the department, whenever requested so to do, all data relative to the shipment of *such* products that may be required to properly enforce the provisions of this act. The failure of any railroad, pipeline, *or* transportation *company* to comply with the provisions of this section shall make such *company* liable to a penalty of $100 for each day it *fails* to furnish such statement."

Section 10. Section 84-2209.1, R.C.M. 1947, is amended to read as follows:

"**84-2209.1. Procedure for collection of tax.** All tax, penalty, and interest due from any person under this act shall be a lien upon any and

HeinOnline -- 1977 Vol. I 503 1977

all real property of such person *when* the department of revenue *files* in the office of the county clerk in the county where such real property is situated *a certified copy of its statement of estimated tax computed under 84-2209. This* lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law."

Section 11. Section 84-7012, R.C.M. 1947, is amended to read as follows:

"**84-7012. Procedure in case of failure to file statement — penalty — interest — tax lien.** (1) If any person *fails, refuses, or neglects* to make and file a statement and return *it* within the time prescribed, the department shall, immediately after such time has expired, determine, as nearly as may be possible from any returns or reports filed with the state or from any other information which the department may be able to obtain, the total gross value of product of such person from such business during the calendar year immediately preceding the year in which the tax is to be paid, and shall fix the amount of the tax due to the state from such person for such calendar year and shall add to the amount of such tax a penalty of 10% thereof plus interest at the rate of 1% *a* month or fraction thereof computed on the total amount of tax and penalty. Interest shall be computed from the date the tax was due to the date of payment.

(2) The department shall mail to the person required to file an annual statement and pay any tax a letter setting forth the amount of tax, penalty, and interest due. Upon receipt of this letter, the person shall remit to the department the full amount of license tax, penalty, and interest due within 15 days.

(3) The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 84-7005 is provided to the department.

(4) The tax assessed against any person under this act, together with penalties and interest thereon, shall be a lien upon any and all property owned by such person within this state, which lien shall attach on the date the department files in the office of the county clerk in the county where such property is situated *a certified copy of its letter sent under subsection (2). This* lien shall have precedence over any other claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law."

Section 12. **Repealer.** Section 84-2011, R.C.M. 1947, is repealed.

Approved March 29, 1977.

CHAPTER NO. 157

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO FIREMEN'S RETIREMENT AND DEATH AND DISABILITY BENEFITS.

HeinOnline -- 1977 Vol. I 504 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-1910.1 that reads as follows:

11-1910.1. Definitions. Unless the context requires otherwise, the following definitions apply in 11-1910 through 11-1930, 11-1927.1, 11-1927.2, and 11-3524:

(1) "Association" means the fire department relief association provided for in 11-1922.

(2) "Disability and pension fund" or "fund" means the fund provided for in 11-1910.

(3) "Fire department" includes all fire departments, consisiting of paid, part-paid, or volunteer firemen or any combination thereof, recognized by the city or town council of an incorporated city or town of this state.

(4) "Incorporated city or town" includes county seats whether incorporated or not.

Section 2. Section 11-1910, R.C.M. 1947, is amended to read as follows:

"**11-1910. Disability and pension fund.** *(1) A fund to be known as the "disability and pension fund" of the fire department relief association of the city or town* shall be established *and maintained* in *every* city or town where *the* fire department has *formed* or hereafter *forms an* association *under 11-1922.*

(2) The fund *shall be kept separate from other funds and shall* be held by the treasurer of *the* association."

Section 3. Section 11-1911, R.C.M. 1947, is amended to read as follows:

"**11-1911. Contributions to fund.** *(1)* The disability and pension fund shall consist of*:*

(a) all bequests, fees, gifts, emoluments, donations *or money from other sources* given or paid to *the* fund, except as otherwise designated by the donor*;*

(b) a monthly fee which shall be paid into the fund by each paid *or* part-paid member of *the* association amounting to 6% of the member's regular monthly salary*;*

(c) the proceeds of *the* tax levy provided *for in* 11-1912*;*

(d) all moneys received from the state of Montana, *including those provided for in 11-1919;* and

(e) all interest and other income earned from the investment of the fund.

(2) A fireman *is* entitled to a *refund,* in *a* lump sum *and* without inter-

est, of all *his* monthly contributions to *the fund*, within 60 days *after his* permanent separation from service in the fire department, except for separation by reason of retirement, death, or disability which would otherwise qualify *him or his* surviving spouse or *children* to *receive* benefits or *an allowance* from *the* association."

Section 4. Section 11-1912, R.C.M. 1947, is amended to read as follows:

"**11-1912. Special tax levy for fund.** *(1) (a) The purpose of this section is to provide a means by which each disability and pension fund may be maintained at a level equal to 2% of the taxable valuation of all taxable property within the limits of the city or town.*

(b) Whenever the fund contains less than 2% of the taxable valuation of all taxable property within the limits of the city or town, the *governing body of the city or town* shall, at the time of the levy of the annual tax, levy a special tax as *provided in subsection (2). The* special tax shall be collected as other taxes are collected and, when so collected, shall be paid into the disability and pension fund.

(2) (a) Whenever the total amount of *the* fund is less than 2% of the taxable valuation of all taxable property within the limits of the city *or* town, the special tax levy shall be*:*

(i) not less than 1 mill *or* more than 4 mills on each dollar of taxable valuation of all *taxable* property within the limits of *the* city *or* town; and

(ii) an amount sufficient *to* provide a growth per year in *the* fund, considering all sources of income to *the* fund and the payment of obligations out of *the* fund, equal to the sum produced by 1 mill levied on the taxable valuation of all the taxable property in *the* city *or* town.

(b) The special tax levy shall be a fractional part of 1 mill whenever:

(i) the total amount of the fund is less than 2% *but more than 1%* of the taxable valuation of all taxable property within *the* city *or* town*;* and

(ii) the special tax levy of *a fractional part of 1 mill* will *produce sufficient revenue to* cause *the* fund, considering all sources of income *to the fund* and all payments to be made out of *the* fund, to exceed 2% of the taxable valuation of all taxable property within *the* city *or* town.

(c) In cities of the third class, when the fund contains an amount *which is* less than 2% of the taxable valuation of all taxable property *in* the city *or* town, the city council shall levy an annual special tax of not less than 1 mill and not *more than* 4 mills on *each* dollar of taxable valuation of all taxable property within the city *or* town."

Section 5. Section 11-1914, R.C.M. 1947, is amended to read as follows:

"**11-1914. Management of association and investment of fund.** (1) The board of trustees of the association shall audit the accounts of the association at least every 6 months and shall report the condition of them at the next regular meeting of the association.

HeinOnline -- 1977 Vol. I 506 1977

(2) (a) The management of the fire department relief associations in municipalities other than first and second class cities *is* vested in the *boards* of trustees, *except as provided in subsections (2)(b) and (c).*

(b) Subject to the provisions of subsection (2)(c), when so directed by a majority vote of the members of the association, the board of trustees may invest the surplus *money in the fund* or any part *thereof* in time or saving deposits in *a* solvent bank, building and loan association, or savings and loan association operating in the county where the city or town is located, in bonds or other securities of the United States government, *or* in general obligation bonds or warrants of any state, county, or city *that* are recommended by the state auditor and approved by the department of community affairs. At the time of purchase the investments must be stamped in boldface type, substantially as follows: "*property of the.... fire department relief association* and negotiable only upon the order of the board of trustees of such association.

(c) When the average yield on investments of public retirement funds under the board of investments exceeds by 1% in any fiscal year the *average* yield *on investments* of *the fund made pursuant to subsection (2)(b), the surplus money in the fund* shall be remitted to the state treasurer for investment by the board of investments as is provided in *subsection (3)(c)* for associations in first and second class cities. *Every 6 months the* association shall submit a financial statement detailing *its* investments to the department of community affairs, and the department shall advise *the* association of the current yield *on investments* of public retirement funds.

(3) (a) The management of the fire department relief associations in first and second class cities *is* vested in the *boards* of trustees of *the* associations subject to the provisions of *subsections (3)(b) and (c).*

(b) The board of trustees shall submit to the department of community affairs before October 1 in each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the *fund. The valuation shall consider the actuarial soundness of the fund for the 2 preceding fiscal years. The* valuation is to be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American *academy* of *actuaries* or of any other organization *considered* by the municipal audit division to have similar standards. In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state auditor a request for payment of the expenses incurred in securing the actuarial valuation. These expenses may not exceed $6,000 in any fiscal year. *The* state auditor shall make payment to the actuary designated by the request.

(c) The board of trustees shall remit the excess over the greater of the following amounts to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided by 79-311, whenever the moneys in the disability and pension fund exceed:

(i) 1 ½ times the monthly benefit paid in the preceding month; or

(ii) $5,000."

HeinOnline -- 1977 Vol. I 507 1977

Section 6. Section 11-1919, R.C.M. 1947, is amended to read as follows:

"**11-1919. State auditor to pay association out of insurance premium taxes.** (1) At the end of the fiscal year, the state auditor shall issue and deliver *the payment described in this subsection* to the treasurer of every city or town of the first and second class *which has a fire department relief association entitled by law to receive payments. The payment shall be* for the use and benefit of the association. *It shall be paid* out of the premium taxes on insurance risks enumerated in subsection (6) collected by *the state auditor and shall be* equal to 10% of the total annual compensation paid by *the* city or town to its paid or part-paid firemen for services in the previous calendar year. The city clerk of *the* city or town shall certify in writing to the state auditor, on or before April 1 of each year, the amount paid by *the* city or town as compensation for services to paid or part-paid firemen.

(2) *When there is* a disaster resulting in death or injury sufficient to draw *the pensions* of 10% of the active force and the fund, after receiving all moneys *provided for* in 11-1911, 11-1912, and *subsection (1) of this section,* does not show at least the *1-mill* growth referred to in 11-1912, the treasurer of *the* association shall request and the state auditor shall issue and deliver *an additional payment under the same conditions described in subsection (1). The payment shall be in* an amount *sufficient* to *cause* at least the *above-mentioned 1-mill* growth *in the fund.*

(3) *If* a city is not entitled to receive a sum equal to 45/100 *of a mill* of its total assessed valuation under *subsections (1) and (2),* the association of *the* city shall receive its money in the manner provided *in subsections (4) and (5)* for cities of the third class.

(4) At the end of the fiscal year, the state auditor shall issue and deliver *the warrant described in this subsection* to the treasurer of every city or town, except cities *and* towns of the first or second class, *which has a fire department relief association entitled by law to receive payments. The warrant shall be* for the use and benefit of the association. *It shall be* for an amount equal to 45/100 *of a mill* of the total assessed valuation of the city or town *and shall* be paid *out of the* premium taxes *on insurance risks enumerated in subsection (6)* collected by the state auditor.

(5) If the payment provided for in subsection (4) is less than $100, the association shall receive an additional payment from the same tax moneys so that the total amount received is $100.

(6) The risks referred to in *subsections (1) and* (4) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether *by* land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

HeinOnline -- 1977 Vol. I 508 1977

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of any vehicle."

Section 7. Section 11-1922, R.C.M. 1947, is amended to read as follows:

"**11-1922. Formation of fire department relief association — membership, officers.** *(1)* The confirmed members of *a* fire department, *as defined in 11-1910.1, may* form a local association, to be known as the fire department relief association of the city or town of .... (naming the city or town). *When an association is* formed, it shall *be incorporated* under the laws of this state. *No one who is serving as a substitute, who is on probation, or who has not been confirmed as a member of the fire department is eligible for membership in the association.*

(2) An association may only be formed and incorporated if:

(a) its formation is authorized by subsection (1); and

(b) the fire department has fire fighting equipment in serviceable condition which has a value of $750 or more.

(3) When an association is formed the members shall elect officers by a majority vote. *The* officers *shall be a* president, a secretary, a treasurer, and *five* members to serve *on* the board of trustees. After the incorporation of *an* association, the officers shall be elected annually on or before April *15. The members may elect the city or town treasurer ex officio treasurer of the association by a majority vote.*"

Section 8. Section 11-1923, R.C.M. 1947, is amended to read as follows:

"**11-1923. Annual report of the secretary and treasurer, bond of treasurer and protection of moneys.** (1) The secretary and treasurer of *the* association shall annually prepare a detailed report of its receipts and expenditures for the preceding year, showing to whom and for what purposes money has been *expended. They shall* file *the report* with the association and a duplicate *of it* with the state auditor. No money may be paid to the treasurer of the association until the report is filed.

(2) No treasurer of an association may enter upon his duties until he has given the association a sufficient bond, of not less than 50% of the amount of the cash funds and securities of the association, for the faithful performance of his duties according to law. The amount of the bond shall be approved by the association *and* may not exceed $25,000. *The bond*

HeinOnline -- 1977 Vol. I 509 1977

shall be paid for by the association. If the city or town treasurer has been elected ex officio treasurer of the association, his official bond *will* cover the faithful discharge of his duties as *such.*

(3) The cash in the *disability and pension* fund shall have the same protection as to depository securities furnished by banks as the other funds of the city or town.

(a) All of the financial books and accounts of the association are subject at all times to examination by the department of community affairs.

(b) When a complaint *is* made to *the department of community affairs* that *any* money paid to the treasurer of the association has been or is being spent for an unauthorized purpose and, upon examination, *the money* is found to have been spent contrary to the authority given, the department shall so report to the governor, upon whose directions to the state auditor no further warrants may be issued to the association treasurer until the *misspent* money has been returned."

Section 9. Section 11-1924, R.C.M. 1947, is amended to read as follows:

"**11-1924. Transfer of money into fund by city treasurer.** Whenever *a* fire department relief association *has been* formed and the treasurer of *the* association has furnished the bond *required by 11-1923(2), the* city treasurer shall pay to *the* treasurer *of the association* all money *held by* the city treasurer to the credit of *the* disability and pension fund, taking *a proper* receipt *therefor. Thereafter, the* city treasurer shall, as moneys are received by him for the credit of *the* fund or association, turn the same over to the treasurer of *the* association, taking proper receipts therefor."

Section 10. Section 11-1925, R.C.M. 1947, is amended to read as follows:

"**11-1925. Service pension.** *(1)* Each association shall pay, *out of its disability and pension fund, a service pension* to each of its members who *elects* to retire from active service after having completed 20 years or more of active duty and has reached the age of 50 years as a fully paid member of a paid or partly paid and partly volunteer fire department of the city or town *in which the* association *was* formed. *The pension* shall be equal to one-half of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of *the* fire department.

(2) Effective July 1, 1974, *a* member *who completes* 20 years of service *and elects to serve additional years shall receive the pension provided for in subsection (1),* increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the *sum last received by the member* as a monthly compensation, *excluding overtime and payments in lieu of sick leave and annual leave,* for his services as an active member of *the* fire department. *No* member *is* eligible to receive a service pension prior to attaining the age of 50 years.

(3) The monthly *pension* paid to members retiring on or after July 1,

HeinOnline -- 1977 Vol. I 510 1977

1973, *must be at least* one-half the regular monthly salary, excluding overtime and payments in lieu of sick leave and annual leave, *paid* to a confirmed active fireman of that city, as provided each year in the budget of that city. *The* monthly *pension* paid to a member retiring prior to July 1, 1974, *must be at least* $200. In *the* case of volunteer *firemen,* the *pension may not* exceed $75 per month.

(4) A member of a pure volunteer fire department who has served 20 years or more as an active member of *the* fire department *is* entitled to the benefits provided for *in* this act *regardless of his age. A* member of a pure volunteer fire department who has completed 10 years' service as an active member of *the* fire department but who is prevented from completing 20 years' service by dissolution or discontinuance of his volunteer fire department, personal relocation due to transfer or loss of employment, personal disability, or any other factor beyond his reasonable control may nevertheless qualify for *a* partial or reduced pension in *an* amount and to *the* extent determined by the board of trustees of the association, *regardless of his age.*"

Section 11. Section 11-1926, R.C.M. 1947, is amended to read as follows:

"**11-1926. Disability pension.** *(1)* Each association shall pay a disability pension, out of *its* disability and pension fund, to each *of its members* who has become disabled by reason of sickness or injury. *The pension* shall be equal to one-half of the sum last received *by the member* as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for *his* services *to* the fire department of the city or town *in which the* association *was* formed.

(2) Effective July 1, 1974, *a* member *who completes* 20 years of service *and elects to serve additional years shall receive the pension provided for in subsection (1),* increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the *sum last received by the member* as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of *the* fire department.

(3) The monthly *pension* paid to members retiring on or after July 1, 1973, *must be at least* one-half the regular monthly salary paid to a confirmed active fireman of that city, as provided each year in the budget of that city. *The* monthly *pension* paid to a member retiring prior to July 1, 1974, *must be at least* $200. In *the* case of volunteer firemen, *the* disability pension *may not* exceed $75 *a* month."

Section 12. Section 11-1927, R.C.M. 1947, is amended to read as follows:

"**11-1927. Pensions to surviving spouses and children.** *(1)* Each association shall pay, *out of its disability and pension fund, a monthly pension* to the surviving spouse or *children* of a deceased member of *the* association who on the date of *his* death was an active member of the fire department in the city or town *in which the* association *was* formed, *who* had elected to retire from active service *in the* fire department and receive a service pension as provided for by 11-1925, or *who,* prior to

HeinOnline -- 1977 Vol. I 511 1977

death, had suffered a sickness or injury and was receiving or was qualified to receive a disability pension as provided by 11-1926. *The* pension shall be equal to one-half of the *last month's salary received as a* monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, by *the* deceased member for services rendered as an active member of the fire department in the city or town *in which the* association *was* formed.

(2) Effective July 1, 1974, *if the deceased member had* completed 20 years of service *and had elected to serve additional years,* the pension *provided for in subsection (1)* shall be increased at the rate of 1% per year for each additional year of service completed, up to a maximum of 60% of the last month's salary received as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, *by the deceased member* for his services as an active member of *the* fire department.

(3) The monthly *pension* paid to *the* surviving spouse or *children* of an active member who *dies* after July 1, 1973, or an active member who elects to retire after July 1, 1973, *must be at least* one-half the regular monthly salary paid to a confirmed active fireman of that city, as provided each year in the budget of that city. *The* monthly *pension* paid to *the* surviving spouse or *children* of an active member who *died* prior to July 1, 1974, or who elected to retire before July 1, 1974, *must be at least* $200. *In the case of volunteer firemen, the pension may not exceed $75 per month.*

(4) A pension *may* be paid to the surviving spouse only so long as such spouse remains unmarried. *A* surviving spouse *is* not entitled to *a* pension *under this section if* the marriage was *entered into* after the fireman had elected to retire from active service and *had begun to receive* a service pension as provided for by 11-1925 or *if* the marriage was *entered into* after the fireman had qualified *for* and *had begun to receive* a disability pension as provided for by 11-1926. *The* pension provided for *in this section may* not be paid to the *children* of deceased firemen after they have attained the age of 18."

Section 13. Section 11-1927.1, R.C.M. 1947, is amended to read as follows:

"**11-1927.1. Payment of death benefits in absence of spouse or child.** If *a* fireman *dies without* leaving a *surviving spouse* or *child,* the association shall compute the total contributions made to the fund by *the* deceased member, and, if the deceased member *had* designated *a beneficiary* in writing to the association, the association shall issue a warrant for *the amount of the total contributions* payable to that beneficiary. *If* the deceased member *had* not nominated a beneficiary, *the* contributions shall be paid to his estate."

Section 14. Section 11-1927.2, R.C.M. 1947, is amended to read as follows:

"**11-1927.2. Supplement to prior pensions.** (1) In addition to the taxes on premiums required by law to be paid by each insurer doing business in this state *that is* authorized to effect insurance on risks enumerated in 11-1919, there is a tax of 1 ½% on the fire portion of the direct

HeinOnline -- 1977 Vol. I 512 1977

premiums received during the calendar year of 1975 and each succeeding year, with allowance for cancellations and returned premiums. The insurance commissioner shall collect the tax during March of each year and deposit the moneys in *the* earmarked revenue fund. The auditor shall pay claims as provided in subsection (2) of this section. As those persons who are to receive the fund *die*, the tax shall be reduced proportionately, and when no eligible person, as *defined by* subsection (2), survives, the tax terminates and the remaining fund, if any, shall be transferred to the general fund.

(2) Effective January 1, 1976, each association shall pay to the firemen retired before July 1, 1973, or their *surviving spouses* and *children* a monthly *pension* of not less than one-half the regular monthly salary paid to a confirmed active fireman of that city, as provided each year in the budget of that city. In *the* case of volunteer firemen, *the* pension *may not* exceed $75 per month. Distribution of the funds provided for this purpose under subsection (1) shall be made as follows:

(a) At the beginning of each fiscal year the treasurer of *each* association shall request and the state auditor shall issue from the earmarked revenue fund and deliver to the treasurer of *the respective* city or town an amount certified to be equal to the total annual dollar difference between what the retirees or their *surviving spouses* and *children* received from the fund and one-half of the *salary* paid by the respective city or town to a confirmed active fireman for the fiscal year just preceding.

(b) The treasurer of *a* city or town receiving the funds shall immediately disburse them to the treasurer of the respective association.

(c) The treasurer of *the* association shall utilize these funds to *increase* the monthly pension of retirees or their *surviving spouses* and *children* to an amount equal to one-half of the salary that was paid to a confirmed active fireman in *the* city or town for the preceding year."

Section 15. Section 11-1928, R.C.M. 1947, is amended to read as follows:

"**11-1928. Use of disability and pension fund.** *(1) The* fund *may* not be used for any purpose other than *investment, as provided in 11-1914, and* the payment of the following:

(a) a service pension to a member who, by reason of service, has become entitled to a service pension;

(b) a pension to a member who has become permanently maimed or disabled;

(c) a benefit or allowance to a member who has suffered a permanent disabling injury;

(d) a benefit or allowance to a member who has contracted a permanent disabling sickness;

(e) a benefit, not exceeding $750, to defray the funeral expenses of a member;

(f) benefits to the surviving spouse, *child,* or *children* of a deceased member as provided *in this chapter;*

(g) premiums *on* a blanket policy of insurance covering the members of *the* fire department and providing for payment of compensation in case of *the* death *of* or injury to *any* such member;

(h) the return of employee *contributions* as provided *in this chapter.*

(2) All claims shall be paid by warrant duly authorized, drawn by the secretary, and countersigned by the president of the association. *On* presentation *of the warrant,* the treasurer shall pay *it* out of the disability and pension fund.

Section 16. Section 11-1929, R.C.M. 1947, is amended to read as follows:

"11-1929. Protection of benefits from legal process — nonassignability. Any payments made or to be made *under 11-1910 through 11-1930, 11-1910.1, 11-1927.1, 11-1927.2, and 11-3524(2) are* not subject to judgments, garnishment, execution, or other legal process. *A* person entitled to *a* pension *may* not assign the *right, and* the association *and* trustees *may not* recognize any assignment or pay over any sum so assigned."

Section 17. Section 11-1930, R.C.M. 1947, is amended to read as follows:

"11-1930. Management of fund. *Except as otherwise provided in this chapter, the* association and *its* board of trustees have full charge, management, and control of the *disability and pension fund."*

Section 18. Section 11-2007, R.C.M. 1947, is amended to read as follows:

"11-2007. Duties of chief. *(1)* The chief of every fire department must inquire into the cause of every fire occurring in the town *in* which he is chief and keep a record thereof. *He* must aid in the enforcement of all fire ordinances duly enacted, examine buildings in *the* process of erection, report violations of ordinances relating to prevention or extinguishment of fires and, when directed by the proper authorities, institute prosecutions therefor and perform such other duties as may be by proper authority imposed upon him. His compensation, if any, must be fixed and paid by the city or town authorities. He must attend all fires with his badge of office conspicuously displayed. *He* must prevent injury to, take charge of, and preserve all property rescued from fires and return *it* to the owner on the payment of the expenses incurred in saving and keeping *it. The* amount *of the expenses,* when not agreed to, *shall* be fixed by *a* justice of the peace.

(2) He must devise and formulate or cause to be devised and formulated a course or plan of instruction or training program making available to each regular member of his department not less than 30 hours of instruction per year in matters pertaining to fire fighting, and he must supervise the operation of such plan or program."

Section 19. There is a new R.C.M. section numbered 11-2020.1 that reads as follows:

HeinOnline -- 1977 Vol. I 514 1977

11-2020.1. Definitions. Unless the context requires otherwise, the following definitions apply in 11-2020 through 11-2031, 11-2020.2, and 11-2024.1:

(1) "Board of administration" means the board of administration of the public employees' retirement system.

(2) "Division" means the division of workers' compensation of the department of labor and industry.

(3) "Fire company" means a fire company organized in an unincorporated area, town, or village under the laws of the state of Montana.

(4) "Fund" or "volunteer firemen's fund" means the volunteer firemen's compensation earmarked revenue account in the earmarked revenue fund.

Section 20. There is a new R.C.M. section numbered 11-2020.2 that reads as follows:

11-2020.2. Certificate of eligibility. On or before September 1 of each year, the chief or foreman of every volunteer fire company shall prepare and file with the public employees' retirement system a certificate, subscribed and verified under oath, stating whether or not his company qualified under 11-2023(2)(d) during the preceding fiscal year and listing the full name and residence address of each member of his company who satisfactorily completed 30 hours of instruction during the preceding fiscal year, as required by 11-2023(2)(c). The verified certificate shall be maintained in a permanent file by the public employees' retirement system for the purpose of establishing eligibility for participation in the volunteer firemen's pension plan and shall be open for inspection as a public record.

Section 21. Section 11-2022, R.C.M. 1947, is amended to read as follows:

"**11-2022. Disability, death, insurance, and pension benefits.** *(1) Each* member of a fire company *is* entitled to receive compensation for disability incurred while in the performance of his duties as *a* fireman when *the* disability necessitates the services of a physician or surgeon, *whether the member is confined or not. The compensation shall equal* the amount of *the member's* necessary and reasonable medical expenses resulting directly from *the* disability and incurred within 36 months from the date of the injury which caused *the* disability. *The total compensation may* not exceed $25,000.

(2) When an injury incurred in *the* line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the *division* shall order *that* an artificial member be furnished. The expense of furnishing *an artificial member may* not exceed $1,500. The artificial member so furnished shall be *replaced* every 5 years, if necessary.

(3) To aid in defraying *the* funeral expenses of a fireman covered under this act whose death occurs in *the* line of duty, an amount not to exceed the actual necessary and reasonable expenses or $1,500, whichever is less, shall be allowed.

HeinOnline -- 1977 Vol. I 515 1977

(4) To encourage and aid volunteer fire *companies* to maintain group insurance for benefits on account of *the* death *of* or injury incurred by members while in the performance of duties as volunteer firemen, $75 per year for each mobile unit of fire-fighting equipment, not exceeding two units for any *one company*, shall be paid *by the division from the volunteer firemen's fund* to each volunteer fire *company* maintaining such insurance or to the organization or agency maintaining such insurance for *a* volunteer fire *company.*

(5) (a) Each person who *meets* the requirements set forth in 11-2023*(2) or, in the case of a beneficiary, 11-2025(3)* and *who has completed and filed a* claim *as* provided *in* 11-2024*(2) is* entitled to participate in the volunteer firemen's pension plan *and to receive payments* as provided in this *subsection (5).*

(b) The payments shall be computed each year in the following manner:

(i) Whenever at the close of business on the last day of *a* fiscal year there *is* a balance in the volunteer *firemen's fund* in excess of *$1 million,* the *division* shall set aside and pay over to the public employees' retirement system the smaller of *the* amount in excess of *$1 million and* an amount equal to 95% of the increase of *the* balance over the balance at the end of the preceding fiscal year for the payment by *the* public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing *the* amount set aside by the number of claimants qualifying to participate in *the* pension plan at the beginning of such succeeding fiscal year.

(ii) The total pension payable to a qualified claimant under this subsection (5) may not exceed $50 per month, and the amount to be set aside from the volunteer firemen's fund may not exceed the amount necessary to pay the maximum of $50 per month to each claimant qualified as of the beginning of the fiscal year during which the payments are to be made.

(iii) For the purpose of computation and payment of benefits under this subsection (5), if children of a volunteer fireman become eligible for benefits, all the children of the volunteer fireman shall be treated collectively as one claimant.

(c) If *the* amount set aside *is* sufficient to pay each qualified claimant at least $20 per month throughout *the* succeeding fiscal year, *the* pension shall be paid monthly on or before the last day of each month. *If the* amount set aside *is* not sufficient to pay each qualified claimant at least $20 per month, each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before December *15* of *that* year.

(d) The fiscal year for the *purposes* of this act *begins* on July *1* and *ends* on June *30* of each year."

Section 22. Section 11-2023, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 516 1977

"**11-2023. Qualification for compensation.** (1) In order to qualify for *benefits* under *subsections* (1), (2), *and* (3) of 11-2022, *a* fireman must, *at the time the injury or sickness for which benefits are claimed was incurred or, in the case of a claim under 11-2022(3), at the time of death, have been* an enrolled active member of a fire company.

(2) In order to qualify for participation in the volunteer firemen's pension plan under 11-2022*(5)*, a volunteer fireman must meet each of the following requirements:

(a) (i) To qualify for full participation, he must have completed a total of at least 20 years' service as an active volunteer fireman and as an active member of a qualified volunteer fire company.

(ii) If *a fireman is* prevented from completing at least 20 years' service by dissolution or discontinuance of his volunteer fire company, personal relocation due to transfer or loss of employment, personal disability, or *any* other factor beyond his reasonable control, he may qualify for partial participation if he has completed at least 10 years' service. *In* that event, he *is* eligible for only a proportion of the benefits specified in 11-2022*(5)*, determined by multiplying *the* benefits by a fraction, the numerator of which *is* the number of years *of* active service completed and the denominator of which *is* 20.

(iii) The years of active service *are* cumulative and need not be continuous. *The* service need not be acquired with one single fire company but may be a total of separate periods of active service with different fire companies in different fire districts.

(iv) Effective March 1, 1965, the annual period of service for the purpose of this act *is* the fiscal year. *No* fractional part of any year *may* count toward the service requirement, and to receive credit for any particular year, a volunteer fireman must serve with one particular volunteer fire company throughout that entire fiscal year.

(b) He must have attained the age of 55, but he need not be an active volunteer fireman or an active member of any volunteer fire company *when he reaches that* age.

(c) During each of the years for which he claims credit under *subsection (2)(a)*, he must have completed a minimum of 30 hours of instruction in matters pertaining to fire fighting under a program formulated and supervised by the chief *or foreman* of his volunteer fire company.

(d) Effective July 1, 1965, no volunteer fireman may receive credit for any year of membership in a volunteer fire company unless, throughout the year:

(i) the company maintained fire-fighting equipment in serviceable condition of a value of $2,500 or more; and

(ii) the company or the fire district served by it was rated in class 5, 6, 7, 8, 9, or 10 by the board of fire underwriters for the purpose of fire insurance premium rates.

(e) He must have ceased to be an active member of any volunteer fire

HeinOnline -- 1977 Vol. I 517 1977

company, and, if he applies for and receives pension benefits hereunder, he *will* not thereafter be eligible to become an active member of any volunteer fire company.

(3) (a) A volunteer fireman who *was* an active member of a volunteer fire company *on March 1, 1965,* shall receive credit *for his service under subsection (2)(a)* to the extent of 1 year's credit for each 2 years' service completed by him prior to July 1, 1965, as *an* active member of any volunteer fire company or companies. *Credit* for *such* prior service *shall be given whether or not* the volunteer fire company or companies with which *the* service *was* rendered *satisfied* the requirements of *subsection (2)(d) and whether or not* the individual volunteer fireman satisfied the requirements of *subsection (2)(c) during his prior service. No* more than 10 years' credit *may* be allowed any volunteer fireman *for* such *prior* service.

(b) For the purpose of establishing prior service credit, the chief *or foreman* of each volunteer fire company shall prepare and file with the public employees' retirement system a certificate, subscribed and verified under oath, *listing* the names and residence addresses of each of the members of his volunteer fire company who *qualify* for 1 or more years' credit for prior service and *stating* the number of years of credit to which each *is* entitled.

(c) For the purpose of establishing prior service under this section, the chief *or foreman* or former chief *or foreman* of each volunteer fire company shall on or before September 1, 1975, file with the public employees' retirement system a certificate, subscribed and verified under oath, *listing* the names and residence addresses of each of the members of *his* volunteer fire company who *qualify* for 1 or more years of credit *and stating the number of years of credit* to which each *is* entitled. In addition, the reporting chief shall include in his report a sworn statement as to the reason for the delayed filing. The acceptance of this report will be subject to the approval of the board of administration.

(d) If it is not possible to secure a report from the chief or former chief, an individual may receive credit for service upon proper documentation acceptable to the board of administration."

Section 23. Section 11-2024, R.C.M. 1947, is amended to read as follows:

"**11-2024. Procedure for claiming benefits.** *(1) (a)* A fireman claiming *benefits* under *subsection* (1) *or* (2) of 11-2022 must file his claim with the *division on* a form to be provided therefor. *The claim must be verified by the claimant, the attending physician or surgeon and nurse, if any, and the person in charge of the hospital, if the claimant was confined. The claim must be filed with the division within 1 year from the date of disability.*

(b) The claim *must* contain*:*

(i) the name and address of the claimant*;*

(ii) the date, place, and manner of incurring of disability*;*

(iii) the name and address of *the* attending physician or surgeon and/or nurse, if any*;*

HeinOnline -- 1977 Vol. I 518 1977

(iv) the dates of confinement, if confined, or, if not confined, *the* dates of attendance by *a* physician or surgeon *and the* dates of attendance by *a* nurse;

(v) the affidavit of *the* attending physician or surgeon as to *the* nature of *the* disability, *the* number and dates of *visits,* and *the* charges;

(vi) if confined *in a* hospital, *the* affidavit of *a* person in charge stating *the* nature of *the* disability, *the* dates of confinement, and *the* expenses incurred while so confined;

(vii) the affidavit of *the* chief or secretary of *the* fire company stating that *the* fire company was duly organized under the laws of Montana in an unincorporated town or village, that *the* claimant was, at the date of disability, an active enrolled member of *the* company, and that the disability was incurred in *the* line of duty;

(viii) the affidavit of the nurse stating the nature of *the* disability, *the* dates of attendance, and *the* charges for services.

(2) (a) Anyone claiming eligibility under the volunteer firemen's pension plan must file his claim with the public employees' retirement system upon a form to be provided therefor by *that* system. *The claim must be filed on or before May 1 of the calendar year in which the claimant seeks to qualify for participation in the pension plan.*

(b) The claim *must* contain:

(i) the name, address, and date of birth of the claimant and of the volunteer fireman, if *he is not* the claimant;

(ii) the fiscal year *during* which eligibility *will* commence; *and*

(iii) the years during which service as a volunteer fireman was rendered and the names of the volunteer fire companies with which *the* service was rendered.

(c) The public employees' retirement system may require such proof of age and service as it may *consider* proper, but *it must accept a certificate* filed under *11-2020.2 or* 11-2023 *(3)* as prima facie proof of such service.

(d) If *the* claim *is* properly filed and *the* claimant *is* found by the public employees' retirement system *to be* properly qualified to participate in *the* volunteer firemen's pension plan, the name of the claimant shall be added to the list of qualified persons and the claimant *will* then be entitled to participate in *the* volunteer firemen's pension plan as of the fiscal year beginning July *1 next* following the filing of *the* claim."

Section 24. There is a new R.C.M. section numbered 11-2024.1 that reads as follows:

11-2024.1. Procedure for claiming death benefit. Anyone claiming the benefit provided for in 11-2022(3) must file his claim with the division upon a form to be provided therefor by the division, in accordance with such rules as the division may make.

Section 25. Section 11-2025, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 519 1977

"**11-2025. Payment of benefits.** *(1) When* a claim under *subsections* (1), (2), *or* (3) of 11-2022 *is received* by the *division and* is found to be in compliance with 11-2024*(1) or, in the case of a claim under 11-2022(3), with 11-2024.1,* the *division* must order the allowance thereof and pay *it* by warrants drawn upon the volunteer firemen's fund to the order of the attending physician or surgeon, attending nurse, and hospital *or the provider of funeral services, as applicable.*

(2) All payments under the volunteer firemen's pension plan *must* be approved by the public employees' retirement system and paid by warrants drawn upon the earmarked revenue fund, payable to the order of the individual qualified volunteer fireman *or the beneficiary as provided in subsection (3).*

(3) The full or partial participation pension shall be paid or continue to be paid to the surviving spouse, if any, until such spouse's death or remarriage or, if the deceased volunteer fireman left no surviving spouse but left a child or children under the age of 18, to the guardian or other person having custody of the children until the youngest child reaches the age of 18. The pension shall be paid in each of the following circumstances:

(a) the death of *a* volunteer fireman who has not reached the age of 55 but who has otherwise qualified for full participation;

(b) the death after February 27, 1971, of *a* volunteer fireman who has not reached the age of 55 but who has otherwise qualified for partial participation;

(c) the death of *a* volunteer fireman after qualifying for full participation but before receiving payments totaling at least $2,000; or

(d) the death of *a* volunteer fireman after February 27, 1971, and after he has qualified for partial participation but before he has received payments totaling *the* proportion of $2,000 determined under the formula *prescribed* in 11-2023(2) *(a)(ii).*

(4) Payments under subsection (3) shall terminate, in the case of a full participation pension, when a total of $2,000 *has* been paid upon *the* pension, including any payments made to the volunteer fireman before his death, or, in the case of a partial participation pension, when a total of *the* proportion of $2,000 determined under the formula *prescribed* in 11-2023(2) *(a)(ii) has* been paid upon *the* pension, including any payments made to the volunteer fireman before his death.

(5) If *a* deceased volunteer fireman *leaves* neither *a* surviving spouse nor *a* child under the age of 18, his pension shall terminate at the end of the month prior to the month in which his death occurs."

Section 26. Section 11-2026, R.C.M. 1947, is amended to read as follows:

"**11-2026. Administration of act.** (1) Except as provided *in subsection (2),* the *division* shall administer the Volunteer Firemen's Compensation Act, and all payments made under *11-2022(4) and* 11-2025*(1)* shall be made by warrants drawn by the *division.*

HeinOnline -- 1977 Vol. I 520 1977

(2) The board of administration of the public employees' retirement system shall administer the volunteer firemen's pension plan, and all payments made under 11-2025*(2) and (3)* shall be made by warrants drawn by the public employees' retirement system. Annually, on or before *the 15th day* after the close of *the* fiscal year, the *division* shall notify the board of administration in writing of the balance remaining in the volunteer firemen's fund as of the end of *the* fiscal year."

Section 27. Section 11-2027, R.C.M. 1947, is amended to read as follows:

"**11-2027. Rules to be made by division and board of administration — office supplies.** *(1)* The *division and the board of administration* shall make such rules as *each considers* necessary and advisable in its administration of the Volunteer Firemen's Compensation Act, not inconsistent with the provisions *thereof.*

(2) Necessary expenses of the *division and the public employees' retirement system* for office supplies, stationery, and forms in connection with *the* administration of the Volunteer Firemen's Compensation Act *are* a charge against the fund. *The public employees' retirement system shall draw from the fund* through warrants executed by the *division* upon *the* request of the public employees' retirement system, at such intervals as the board of administration *considers* proper."

Section 28. Section 11-2029, R.C.M. 1947, is amended to read as follows:

"**11-2029. Reports of division and public employees' retirement system.** (1) The *division* shall, at the time specified in 92-842 for making *the* report therein *required,* make a report to the governor covering the operations and proceedings for the preceding fiscal year relative to its administration *of* the Volunteer Firemen's Compensation Act, with such suggestions or recommendations as it may *consider* of value for public information.

(2) The public employees' retirement system shall, not later than November *1* of each year, make a report to the governor covering the operations and proceedings for the prior fiscal year relative to its administration *of* the volunteer firemen's pension plan, with such suggestions or recommendations as it may *consider* of value for public information.

(3) Copies of all such reports shall be made available by the *division* or the public employees' retirement system to the chief or other representative of any volunteer fire company or companies which *may* at any time request *them.*"

Section 29. Section 11-2030, R.C.M. 1947, is amended to read as follows:

"**11-2030. Fire insurance premium tax to be paid into fund.** The state auditor and ex officio commissioner of insurance shall annually deposit in the *volunteer firemen's fund a* sum equivalent to 5% of *the* premium taxes collected from insurers authorized to effect insurance against risks enumerated in 11-1919, *computed* after the amounts pro-

HeinOnline -- 1977 Vol. I 521 1977

vided for by 11-1919 have first *been* deducted. *The* moneys shall be used for the payment of claims and administrative costs as provided in *11-2022(4),* 11-2025, 11-2026, *and 11-2027.*"

Section 30. Section 11-2031, R.C.M. 1947, is amended to read as follows:

"**11-2031. Penalty for false statements or claims.** *A* person required to make a statement or affidavit *by 11-2020 through 11-2031, 11-2020.1, 11-2020.2, and 11-2024.1* who willfully *falsifies* such statement or affidavit and *a* person who *files* a false claim *under 11-2020 through 11-2031, 11-2020.1, 11-2020.2, and 11-2024.1 is* guilty of a misdemeanor and, upon conviction thereof, shall be *punished by* a fine not exceeding $500 or imprisonment not exceeding *6* months, or both."

Section 31. Section 11-3524, R.C.M. 1947, is amended to read as follows:

"**11-3524. Retention of firemen's rights when local government consolidated.** *(1) A fireman* employed by *a* fire department established as required by law in *a* city or town of the county prior to the election and qualification of a commission under this act or other acts of consolidation or disincorporation *has* the same job tenure rights as though no election and qualification had taken place.

(2) A fireman who has vested rights in *a* disability *and* pension fund *maintains* prior vested rights *in the fund* upon *its* transfer to a consolidated county municipality. *A* disability *and* pension fund, established as required by law in *a* city or town of the county prior to the election and qualification of a commission under this act or other acts of consolidation or disincorporation, shall be continued as one such fund for the fire department of the municipality, subject, however, to the prior vested rights of firemen employed by any fire department, established as required by law in *a* city or town of the county prior to the election and qualification of a commission under this act or other acts of consolidation or disincorporation. The board of trustees of *the* disability *and* pension fund shall continue as *provided* in 11-1913. Except as provided in this section, the disability *and* pension fund shall be continued and administered in the manner prescribed by law for such funds."

Approved March 29, 1977.

CHAPTER NO. 158

AN ACT TO REPEAL CONFLICTING STATUTES PERTAINING TO INCOME TAX DEDUCTIONS FOR POLITICAL CONTRIBUTIONS; REPEALING SECTIONS 84-4906.1 AND 84-4906.2, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 84-4906.1 and 84-4906.2, R.C.M. 1947, are repealed.

HeinOnline -- 1977 Vol. I 522 1977

Section 2. **Effective date.** This act is effective on its passage and approval and applies to taxable years beginning on and after January 1, 1975.

Approved March 29, 1977.

CHAPTER NO. 159

AN ACT AMENDING SECTION 84-4914, R.C.M., 1947, BY INCREASING THE GROSS INCOME LIMITATIONS ESTABLISHING LIABILITY FOR FILING TAX RETURNS; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4914, R.C.M. 1947, is amended to read as follows:

"**84-4914. Returns and payment of tax — penalty and interest — refunds — credits.** (1) Every single individual and every married individual not filing a joint return with his or her spouse and having a gross income for the taxable year of more than *$720*, and married individuals not filing separate returns and having a combined gross income for the taxable year of more than *$1,445*, shall be liable for a return to be filed on such forms and according to such rules and regulations as the department of revenue may prescribe. The gross income amounts referred to in the preceding sentence shall be increased by *$650* for each additional personal exemption allowance the taxpayer is entitled to claim for himself and his spouse under 84-4910(c) and (d). A nonresident shall be required to file a return if his gross income for the taxable year derived from sources within Montana exceeds the amount of the exemption deduction he is entitled to claim for himself and his spouse under the provisions of 84-4910(b), (c) and (d), as prorated according to paragraph (i) of said section.

(2) In accordance with instructions set forth by the department, every taxpayer who is married and living with husband or wife and is required to file a return may, at his or her option, file a joint return with husband or wife even though one of the spouses has neither gross income nor deductions. If a joint return is made, the tax shall be computed on the aggregate taxable income and the liability with respect to the tax shall be joint and several. If a joint return has been filed for a taxable year, the spouses may not file separate returns after the time for filing the return of either has expired, unless the department so consents.

(3) If any such taxpayer is unable to make his own return, the return shall be made by a duly authorized agent or by a guardian or other person charged with the care of the person or property of such taxpayer.

(4) All taxpayers, including, but not limited to those subject to the provisions of 84-4939 and 84-4943, shall compute the amount of income tax payable and shall at the time of filing the return required by this

HeinOnline -- 1977 Vol. I 523 1977

act, pay to the department any balance of income tax remaining unpaid after crediting the amount withheld as provided by 84-4943, and/or any payment made by reason of an estimated tax return provided for in 84-4939; provided however, the tax so computed is greater by $1 than the amount withheld and/or paid by estimated return as provided in this act.

If the amount of tax withheld and/or payment of estimated tax exceeds by more than $1 the amount of income tax as computed, the taxpayer shall be entitled to a refund of the excess.

(5) As soon as practicable after the return is filed, the department shall examine and verify the tax.

(6) If the amount of tax as verified is greater than the amount theretofore paid, the excess shall be paid by the taxpayer to the department within 30 days after notice of the amount of the tax as computed with interest added at the rate of 9% per annum or fraction thereof on the additional tax. In such case there shall be no penalty because of such understatement, provided the deficiency is paid within 30 days after the first notice of the amount is mailed to the taxpayer.

If payment is not made within 30 days or if the understatement is due to negligence on the part of the taxpayer, but without fraud, there shall be added to the amount of the deficiency 5% thereof, provided, however, that no deficiency penalty shall be less than $2. Interest will be computed at the rate of 9% per annum or fraction thereof on the additional assessment. Except as otherwise expressly provided in this subdivision, the interest shall in all cases be computed from the date the return and tax was originally due as distinguished from the due date as it may have been extended to the date of payment.

If the time for filing a return is extended, the taxpayer shall pay in addition, interest thereon at the rate of 9% per annum from the time when the return was originally required to be filed to the time of payment."

Section 2. **Effective date.** This act is effective on its passage and approval and shall apply to returns for tax years ending on or after December 31, 1976.

Approved March 29, 1977.

CHAPTER NO. 160

AN ACT TO CHANGE THE METHOD OF COMPUTING THE OIL PRODUCERS' SEVERANCE TAX; AMENDING SECTION 84-2202, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-2202, R.C.M. 1947, is amended to read as follows:

"84-2202. Oil or gas producers' severance tax — amount —

HeinOnline -- 1977 Vol. I 524 1977

exceptions. *(1)* Every person engaging in or carrying on the business of producing, within this state, petroleum, other mineral or crude oil, or natural gas or engaging in or carrying on the business of owning, controlling, managing, leasing, or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil or natural gas is extracted or produced, sufficient in quantity to justify the marketing of the same, must, each year when engaged in or carrying on any such business in this state, pay to the department of revenue, for the exclusive use and benefit of the state of Montana, a severance tax computed at the following rates:

(a) 2.1% of the *first $6,000 of the* total gross value of all the petroleum and other mineral or crude oil produced by such person from each lease or *each lease within a unitized property* in the calendar quarter;

(b) 2.65% of the total gross value of that portion of all the production of such person from each lease or *each lease within a unitized property* in each calendar quarter in excess of *the first $6,000 of the total gross value*; but in determining the amount of such tax there shall be excluded from consideration all petroleum or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such petroleum *or* crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well or to work in or about any oil well, or prospect or explore for or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such severance tax, nor *may* any work done or the drilling of any well or wells for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, in the drilling of any oil well, or in such prospecting, exploring, or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring, or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section;

(c) 2.65% of the total gross value of natural gas produced from each lease or unit, but in determining the amount of such tax there shall be excluded from consideration all gas produced and used by such person during such year in connection with his operations in prospecting for, developing, and producing such gas, petroleum *or* crude or mineral oil, and there shall also be excluded from consideration all gas recycled or reinjected into the ground.

(2) For purposes of computing the tax in subsections (1)(a) and (1)(b) above, lease count includes all leases contributing to the unitized area within a unit or all tracts within a unit participating in production.

(3) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other

owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments, and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the aforesaid interests that are owned by the federal, state, county, or municipal governments shall be exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts."

Approved March 29, 1977.

CHAPTER NO. 161

AN ACT TO MAINTAIN SNOWMOBILE NOISE STANDARDS AT THE LEVELS PRESCRIBED TO TAKE EFFECT JUNE 30, 1975; AMENDING SECTION 53-1020, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1020, R.C.M. 1947, is amended to read as follows:

"**53-1020. Other unlawful operation.** No person while operating a snowmobile, shall use the same:

(1) For the purpose of driving, rallying or harassing any of the game animals, game birds, or fur-bearing animals of the state, or any livestock, provided, however, that an owner of livestock is not prohibited from managing or driving his own livestock by the use of snowmobiles and may direct other persons to so manage or drive his livestock; provided further that the department of fish and game, including its duly authorized employees, is not prohibited from managing or driving game animals, game birds or fur-bearing animals by the use of snowmobiles.

(2) To discharge a firearm from or upon a snowmobile.

(3) Regulation of snowmobile noise. (a) Except as provided in this section, every snowmobile shall be equipped at all times with noise-suppression devices, including an exhaust muffler, in good working order and in constant operation. No snowmobile shall be modified by any person in any manner that shall amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(b) No new snowmobile manufactured prior to June 30, 1975, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more

HeinOnline -- 1977 Vol. I 526 1977

than eighty-two (82) dbA measured at fifty (50) feet. Every person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of eighty-two (82) dbA measured at fifty (50) feet.

(c) No new snowmobile manufactured after June 30, 1975, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than seventy-eight (78) dbA measured at fifty (50) feet. Every person who owns or operates a snowmobile manufactured after June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of seventy-eight (78) dbA measured at fifty (50) feet.

(d) The fish and game commission shall have the authority to adopt and revise sound level limitations for all snowmobiles manufactured after June 30, *1975.* However, a sound level limitation adopted or revised by the commission shall not be higher than a decibel standard of *78* dbA measured at 50 feet. The adoption or revision of sound level limitation by the commission shall be effective beginning June 30 of the succeeding calendar year and any sound level limitation formally adopted or revised shall remain in effect for a minimum period of two (2) years. Every person who owns or operates a snowmobile manufactured after June 30, *1975,* shall maintain his machine in compliance with the sound level limitation which is applicable to new snowmobiles manufactured during the period that a sound level limitation adopted by the commission is in effect.

(e) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of this act shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(f) In certifying that a new snowmobile can comply with the noise limitation requirements of this act, a manufacturer shall make such a certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The fish and game commission, in enforcing the provisions of this act, shall make measurements of snowmobile noise in accordance with applicable practices outlined in the "procedure for sound level measurements of snowmobiles" used by the international snowmobile industry association (January, 1969), as amended, or with such other standards for measurement of sound level as the commission may adopt.

(g) This section does not apply to organized races or similar competitive events held on

(i) private lands, with the permission of the owner, lessee, or custodian of the land, or

(ii) public lands, with the consent of the public agency having the authority to grant such consent, provided that total sound produced by such an event shall not exceed 50 dbA at any point 50 feet or more outside the area under the control of the sponsoring entity.

HeinOnline -- 1977 Vol. I 527 1977

(4) Upon a railroad right of way or railroad track, provided, however, it shall not be unlawful for officers or employees of any railroad operating over said tracks to operate snowmobiles thereon."

Approved March 29, 1977.

CHAPTER NO. 162

AN ACT TO AMEND SECTION 69-4420, R.C.M. 1947, RELATING TO THE PROCEDURE FOR ISSUANCE OF SUBSTITUTE BIRTH CERTIFICATES BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4420, R.C.M. 1947, is amended to read as follows:

"**69-4420. Substitute birth certificate — procedure for issuance.** The procedure for issuing a substitute birth certificate for a person born in Montana and adopted is *as follows*:

(1) Before the *16th* day of the month following the order of adoption, the clerk of the district court shall forward a certified copy of the final order of adoption to the department; *or the department may accept a certified copy of a final order of adoption from a court of competent jurisdiction of a foreign state of the United States or a tribal court of competent jurisdiction.*

(2) The department shall prepare a substitute certificate containing:

(a) *the* new name of the adopted person;

(b) *the* true date and place of birth and sex of the adopted person;

(c) *statistical* facts concerning the adoptive parents in place of the natural parents;

(d) *the* words "department of health and environmental sciences" substituted for the words "attendant's own signature"; and

(e) *dates* of recording as shown on the original birth certificate."

Approved March 29, 1977.

CHAPTER NO. 163

AN ACT TO TRANSFER THE ADMINISTRATION OF THE BOARD OF HOUSING FROM THE DEPARTMENT OF COMMUNITY AFFAIRS TO THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 35-503 AND 35-526; AND REPEALING SECTION 82A-907, R.C.M. 1947.

HeinOnline -- 1977 Vol. I 528 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 35-503, R.C.M. 1947, is amended to read as follows:

"**35-503. Definitions.** As used in this act, unless the context requires otherwise:

(1) "Board" means the board of housing created in *82A-224.*

(2) "Bond" means any bonds, notes, debentures, interim certificates, or other evidences of financial indebtedness issued by the board pursuant to this act.

(3) "Capital reserve account" means the capital reserve account provided for in 35-523.

(4) "Department" means the department of *administration* provided for in Title 82A, chapter *2.*

(5) "Federally insured mortgage" means a mortgage loan for land development or residential housing insured or guaranteed by the United States or a governmental agency or instrumentality thereof, or a commitment by the United States or a governmental agency or instrumentalities thereof to insure such a mortgage.

(6) "Federally insured security" means an evidence of indebtedness insured or guaranteed as to repayment of principal and interest by the United States or an instrumentality thereof.

(7) "Governmental agency" means any department, division, public corporation, public agency, political subdivision, or other public instrumentality of the state, the federal government, any other state or public agency, or any two or more thereof.

(8) "Housing development" means any work or undertaking financed, in whole or in part, under this act for the primary purpose of acquiring, constructing or rehabilitating dwelling accommodations for persons or families of lower income in need of housing. An undertaking may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable in connection therewith, including but not limited to streets, sewers, utilities, parks, site preparation, landscaping, and other nonhousing facilities as the board determines to be necessary, convenient, or desirable.

(9) "Housing development costs" means the sum total of all costs incurred in a housing development approved by the board as reasonable and necessary, including, but not limited to:

(a) cost of land acquisition and any buildings thereon, including payments for options, deposits, or contracts to purchase properties on the proposed housing development site or payments for the purchase of properties;

(b) cost of site preparation, demolition and clearing;

(c) architectural, engineering, legal, accounting, corporation, and other fees paid or payable in connection with the planning, execution and financing of the housing development and the finding of an eligible mortgagee or mortagees for the housing development;

HeinOnline -- 1977 Vol. I 529 1977

(d) cost of necessary studies, surveys, plans, and permits;

(e) insurance, interest, financing, tax and assessment costs and other operating and carrying costs during construction;

(f) cost of construction, rehabilitation, reconstruction, fixtures, furnishings, equipment, machinery, apparatus and similar facilities related to the real property;

(g) cost of land improvements including landscaping and offsite improvements, whether or not the costs have been paid in cash or in a form other than cash;

(h) necessary expenses in connection with initial occupancy of the housing development;

(i) a reasonable profit and risk fee in addition to job overhead to the general contractor and if applicable, a limited profit housing sponsor;

(j) an allowance established by the board for working capital and contingency reserves, and reserves for any anticipated operating deficits during construction and initial occupancy;

(k) costs of other items, including tenant relocation, as the board determines to be reasonable and necessary for the housing development, less any and all net rents and other net revenues received from the operation of the real and personal property on the development site during the construction.

(10) "Housing sponsor" means individuals, joint ventures, partnerships, limited partnerships, trusts, firms, associations, corporations, governmental agencies, limited-profit housing sponsor, nonprofit corporation, or other legal entities or any combination thereof, that are:

(a) approved by the board;

(b) qualified either to own, construct, acquire, rehabilitate, operate, manage, or maintain a housing development;

(c) subject to the rules of the board and other terms and conditions set forth in this act.

(11) "Lending institution" means any public or private entity or governmental agency, approved by the board, maintaining an office in this state and authorized by law to make or participate in making residential mortgages in the state.

(12) "Limited-profit housing sponsor" means a corporation, trust, partnership, association, other entity, or an individual restricted as to distribution of income and regulated as to rents, charges, rate of return, and methods of operation as the board determines necessary to carry out this act.

(13) "Mortgage" means a mortgage deed, deed of trust, or other instrument which shall constitute a valid lien on real property in fee simple or on a leasehold under a lease having a remaining term at the time the mortgage is acquired, which does not expire for at least that number of

HeinOnline -- 1977 Vol. I 530 1977

years beyond the maturity date of the obligation secured by the mortgage established by the board as necessary to protect its interest as mortgagee.

(14) "Mortgage loan" means an interest bearing obligation secured by a mortgage on land and improvements in the state.

(15) "Nonprofit housing sponsor" means a housing cooperative formed under Title 14, chapter 2, or a nonprofit corporation formed under Title 15, chapter 23, restricted as to distribution of income and regulated as to rents, charges, rate of return and methods of operation as the board determines necessary, and whose articles of incorporation provide, in addition that:

(a) the organization has been organized exclusively to provide housing developments for persons and families of lower income;

(b) all the income and earnings of the organization shall be used exclusively for housing development purposes and no part of the net income or net earnings of the organization shall inure to the benefit or profit of any private individual, firm, corporation, partnership, or association;

(c) the organization is in no manner controlled or under the direction or acting in the substantial interest of any private individual, firm, partnership, or association seeking to derive profit or gain therefrom, or seeking to eliminate or minimize losses in any transactions therewith, except that the limitations shall apply to members of a cooperative only to the extent provided by rules of the board;

(d) the operations of the organization may be supervised by the board and the organization will enter into agreements with the board to regulate planning, development, and management of any housing development undertaken by the organization and the disposition of the property or other interests of the organization.

(16) "Persons and families of lower income" means persons and families, with insufficient personal or family income who require assistance under this act, as determined by the board, taking into consideration:

(a) the amount of the total personal and family income available for housing needs;

(b) the size of the family;

(c) the eligibility of persons and families under federal housing assistance of any type based on lower income or a functional or physical disability;

(d) the ability of persons and families to compete successfully in the normal housing market and to pay the amount at which private enterprise is providing decent, safe, and sanitary housing;

(e) the availability and cost of housing in particular areas; and

(f) needs of particular persons or families due to age or physical handicaps.

(17) "Rehabilitation" means the repair, reconstruction, or improvement of an existing structure to provide decent, safe and sanitary housing or

HeinOnline -- 1977 Vol. I 531 1977

to conform housing with state or local health, building, fire prevention, and safety codes as determined by the board."

Section 2. There is a new R.C.M. section numbered 82A-224 that reads as follows:

82A-224. Board of housing. (1) There is a board of housing.

(2) The board consists of seven members appointed by the governor as provided in 82A-112. The members shall be informed and experienced in housing, economics, or finance.

(3) The board shall elect a chairman and other necessary officers.

(4) The board is designated a quasi-judicial board for purposes of 82A-112.

(5) The board is allocated to the department of administration for administrative purposes only as provided in 82A-108.

(6) The department shall provide all necessary staff and services to the board and shall assess the board for reasonable costs.

(7) A member of the board shall not be deemed to have a conflict of interest under the provisions of 59-501 merely because the member is a stockholder, officer, or employee of a lending institution who may participate in the board's programs.

Section 3. Section 35-526, R.C.M. 1947, is amended to read as follows:

"35-526. Powers of the department of community affairs. The department may:

(1) survey and investigate housing needs throughout the state and publish the results, and make recommendations to the governor and the legislature as to legislation and other measures necessary, desirable, or advisable to alleviate housing problems;

(2) maintain and disseminate information on available governmental housing assistance programs, eligibility and development requirements, and other similar information; and

(3) promote research and development in housing planning design, production, conservation, rehabilitation, and other matters relating to, or affecting the provision of decent, safe and sanitary housing in a suitable living environment."

Section 4. **Repealer.** Section 82A-907, R.C.M. 1947, is repealed.

Approved March 29, 1977.

CHAPTER NO. 164

AN ACT TO AMEND SECTION 84-1314, R.C.M. 1947, TO CHANGE THE COAL SEVERANCE TAX EXEMPTION FROM 5,000 TONS A QUARTER TO 20,000 TONS A YEAR.

HeinOnline -- 1977 Vol. I 532 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1314, R.C.M. 1947, is amended to read as follows:

"**84-1314. Severance tax — rates imposed — exemptions.** A severance tax is imposed on each ton of coal produced in the state, in accordance with the following schedule:

Heating quality (Btu per pound of coal):	Surface Mining	Underground Mining
Under 7,000	12 cents or 20% of value	5 cents or 3% of value
7,000-8,000	22 cents or 30% of value	8 cents or 4% of value
8,000-9,000	34 cents or 30% of value	10 cents or 4% of value
Over 9,000	40 cents or 30% of value	12 cents or 4% of value

The formula which yields the greater amount of tax in a particular case shall be used at each point on this schedule. "Value" means the contract sales price. A person is not liable for any severance tax upon *20,000* tons of *the* coal he produces in a *calendar year.*"

Approved March 29, 1977.

CHAPTER NO. 165

AN ACT TO AMEND SECTION 87-109, R.C.M. 1947, TO PROVIDE AN ELECTION OF THE METHOD OF PAYING THE EMPLOYMENT SECURITY DIVISION BY GOVERNMENTAL ENTITIES TO BE EFFECTIVE JANUARY 1, 1977, AND TO PROVIDE FOR AN INCREASE IN THE TAXABLE WAGE BASE TO $6,000, EFFECTIVE JANUARY 1, 1978.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-109, R.C.M. 1947, is amended to read as follows:

"**87-109. Contributions.** (a) Payment. (1) Contributions shall accrue and become payable by each employer for each calendar year in which he is subject to this act, with respect to wages, as defined in section 87-149(c), paid for employment (as defined in this act) occurring during such calendar year. Such contributions shall become due and be paid by each employer to the division for the fund in accordance with such regulations as the division may prescribe and shall not be deducted, in whole or in part, from the wages of individuals in his employ.

(2) In the payment of any contributions, a fractional part of a cent

HeinOnline -- 1977 Vol. I 533 1977

shall be disregarded unless it amounts to one-half (½) cent or more, in which case it shall be increased to one (1) cent.

(b) Rate of contribution.

(1) Each employer shall pay contributions at the rate of three and one-tenth per centum (3.1%) of wages, as defined in section 87-149(c) paid by him with respect to such employment, except as provided in subsection (c) of this section.

Nonprofit organizations defined in section 501(c)(3) of the federal internal revenue code and which are exempt from tax under section 501(a) of such code may elect to make payments in lieu of contributions.

A group of nonprofit organizations may elect with the approval of the division to act as a group in fulfilling the requirements of this subsection or of this act.

The state and its political subdivisions, effective January 1, 1977, for the rate year as defined in subsection (b)(4) of this section, may elect to make payments in lieu of contributions or pay under a special contributions plan established for governmental entities only.

(2) *Eligible employers electing* to make payments in lieu of contributions shall pay into the fund an amount equivalent to the full amount of regular benefits plus one-half (½) of the amount of extended benefits paid to individuals based on wages paid by such employing unit. *After December 31, 1978, governmental entities shall pay the full amount of extended benefits.* If benefits paid an individual are based on wages paid by both such employer and one (1) or more other employers, the amount payable by such employer to the fund shall bear the same ratio to total benefits paid to the individual as the base period wages paid to the individual by such employer bear to the total amount of base period wages paid to the individual by all his base period employers. If the base period wages of an individual include wages from more than one (1) such employer, the amount to be paid into the fund with respect to the benefits paid to such individual shall be prorated among the liable employers in proportion to the wages paid to such individual by each such employer during the base period. The amount of payment required from such employers shall be ascertained by the division quarterly and shall become due and payable by such employer quarterly as directed in this act. Penalty and interest for delinquency shall be assessed such employers as specified in section 87-135.

(A) A nonprofit organization which elects to make payments in lieu of contributions into the unemployment compensation fund as provided in this subsection is not liable to make such payments with respect to the benefits paid to any individual whose base period wages include wages for previously uncovered services as defined in 87-148(j)(7)(A)(3) to the extent that the unemployment compensation fund is reimbursed for such benefits pursuant to section 121 of Public Law 94-566.

(3) Any nonprofit organizations as defined in subsection (b) (1) of this section *and governmental entities* electing to become liable for payments in lieu of contributions must file with the division a written notice of its

HeinOnline -- 1977 Vol. I 534 1977

election not later than thirty (30) days immediately following the date of the determination of subjectivity to this act. This election shall be for a period of not less than two (2) years.

(A) Any nonprofit organization *or governmental entity* may terminate its election to make payments in lieu of contributions after two (2) years from the effective date of such election by filing a written notice with the division not later than thirty (30) days prior to the beginning of the taxable year for which such termination is effective.

(B) Any nonprofit organization defined in subsection (b)(1) of this section *or governmental entity* which has been paying contributions for at least two (2) taxable years may change to payments in lieu of contributions by filing with the division a written notice to that effect within thirty (30) days before the beginning of the taxable year for which the change is effective.

(C) If the nonprofit organization *or governmental entity* is delinquent in making payments in lieu of contributions, the division may terminate the election to make payments in lieu of contributions as of the beginning of the next taxable year, and such termination shall be effective for that and the next taxable year.

(4) Payments in lieu of contributions by the state and its political subdivisions shall be an amount equivalent to the amount of benefits paid to individuals based on wages paid by the state and its political subdivisions. The method of determining benefits attributable shall be the same as that set forth in subsection (b) (2) of this section.

(A) Employing units covered under this act after December 31, 1974, shall make payments equal to four-tenths percent (.4%) of total wages paid employees for services in employment during the calendar quarter.

(B) The rates shall be adjusted *annually as follows: Each governmental entity shall be assigned a rate based upon (1) its benefit cost experience, to be arrived at by dividing the total sum of benefits charged to the employer's account for all past periods which are completed transactions by December 31 by total wages from date of subjectivity of the employing unit through December 31, and (2) the benefit cost for all past years of governmental entities electing to pay contributions compared with total payrolls reported for all past years by these governmental entities used as a median. The rates shall be so fixed using the median that they will, when applied to the total annual payroll for subject governmental entities, yield total paid contributions equaling approximately the total benefit costs.*

(C) *New governmental entities electing to pay contributions shall be assigned the median rate for the year in which they become subject.*

(D) At no time may the minimum rate be less than .1% or the maximum be greater than 1.5%, rates to be graduated at one-tenth intervals.

(E) The computed rate shall be effective July 1 of each year.

(c) Experience rating.

The division shall for each calendar year, classify employers in accordance with their actual contributions and unemployment experience and shall determine for each employer the experience *rate* which shall apply to him throughout the calendar year. The division shall apply such form of classification or experience rating system which is best calculated to rate individually and most equitably the employment for each employer and to encourage the stabilization of employment.

In making such classification, the division shall take account, each of the following factors relating to the unemployment hazard shown by each employer on the basis of (1) *number of years the employer has paid contributions*; (2) *average quarterly percentage declines in total payrolls for the last 3 fiscal years ending June 30*; and (3) average *annual net* percentage declines in total payrolls for the last 3 *fiscal* years *ending June 30, the* computation date.

Wages shall be adjusted in the determination of the annual and quarterly decrease percentages of any employer's payroll in whose establishment there was in any year in the qualifying period of such employer, a stoppage of work due to a strike which caused a decrease in such employer's payroll of such magnitude that his actual quarterly and annual payroll caused by such a decrease or decreases when used with other annual and quarterly payroll decreases, if any, in his qualifying period would cause an increase in such employer's contribution rate. An employer's adjusted quarterly payroll for that quarter in which such stoppage of work existed shall be determined by multiplying each such payroll or adjusted payroll for the quarter immediately preceding the quarter in which such stoppage of work existed by the average quarterly variation ratio. The average quarterly variation ratio shall be computed by

(1) dividing the payroll, or if adjusted, the adjusted payroll, for that quarter in each of the prior years of an employer's qualifying period which corresponds to the respective quarter in which a stoppage of work due to a strike existed, by the payroll or adjusted payroll for the respective quarter immediately preceding such corresponding quarter, and

(2) totaling the ratio thus obtained and dividing by the number of such ratios.

EMPLOYER CLASSIFICATIONS:

Employers, for the second calendar quarter of the calendar year 1975 and thereafter, shall be grouped into fourteen (14) classes, to be designated as classes I through XIV, respectively, in accordance with their experience factor.

Each employer shall be in the class listed below on the same horizontal line on which his experience factor appears, and each qualified employer shall pay the contribution rate assigned to his class pursuant to the provisions of reserve to total wages.

Employer's Experience Factor	Class
30-29	I
28-27	II
26-25	III

HeinOnline -- 1977 Vol. I 536 1977

24-23	IV
22-21	V
20-19	VI
18-17	VII
16-15	VIII
14-13	IX
12-11	X
10-9	XI
8-7	XII
6-*0*	XIII
Age	XIV

RESERVE TO TOTAL WAGES — CLASS RATES:

Class rates shall be assigned based upon the percent of average trust fund balance of the twelve (12) month period prior to the computation date to total wages in covered employment for the same period.

CLASS RATES

Reserve Percent of Total Wage	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7
At least 2.50%	.5	.7	.9	1.1	1.3	*1.5*	1.7
2.25 to 2.49%	.7	.9	1.1	1.3	1.5	1.7	1.9
2.00 to 2.24%	.9	1.1	1.3	1.5	1.7	1.9	2.1
1.75 to 1.99%	1.1	1.3	1.5	1.7	1.9	2.1	2.3
1.50 to 1.74%	1.3	1.5	1.7	1.9	2.1	2.3	2.5
1.25 to 1.49%	1.5	1.7	1.9	2.1	2.3	2.5	2.7
1.00 to 1.24%	*1.7*	*1.9*	*2.1*	*2.3*	*2.5*	*2.7*	*2.9*
Less than 1.00%	3.1	3.1	3.1	3.1	3.1	3.1	3.1

Reserve Percent of Total Wage	Class 8	Class 9	Class 10	Class 11	Class 12	Class 13	Class 14
At least 2.50%	1.9	2.1	2.3	2.5	2.7	2.9	3.1
2.25 to 2.49%	2.1	2.3	2.5	2.7	2.9	3.1	3.1
2.00 to 2.24%	2.3	2.5	2.7	2.9	3.1	3.1	3.1
1.75 to 1.99%	2.5	2.7	2.9	3.1	3.1	3.1	3.1
1.50 to 1.74%	2.7	2.9	3.1	3.1	3.1	3.1	3.1
1.25 to 1.49%	2.9	3.1	3.1	3.1	3.1	3.1	3.1
1.00 to 1.24%	*3.1*	*3.1*	*3.1*	*3.1*	*3.1*	*3.1*	*3.1*
Less than 1.00%	3.1	3.1	3.1	3.1	3.1	3.1	3.1

The division shall determine the experience *rate* applicable to each employer for any calendar year subject to the following limitations:

(1) Each employer's rate shall be three and one-tenth per centum (3.1%) unless and until there have been three (3) years prior to the computation date throughout which the employer has paid contributions at the maximum tax rate set by law for each of such years and has reported and paid contributions during each of the three (3) calendar years immediately preceding the computation date and with respect to such three (3) calendar years has filed all contribution reports prescribed by the division and paid all contributions due with respect to the three (3) calendar years before March 31 of the rate year. Upon payment of past-

HeinOnline -- 1977 Vol. I 537 1977

due contributions the division shall, for the current year, compute a rate for the next succeeding quarter following the payment.

(2) *At no time may the minimum classified contributions rate be less than .5% or the maximum be greater than 3.1%, rates to be graduated at two-tenth intervals, as shown on the class rate schedule.*

(3) The division shall by regulation adopt such procedures as may be necessary for the substitution, merging or acquisition of an employer account by an employing unit, and the transfer of such employer account, rights, contributions, payroll experience and ratings to the successor employing unit or units.

(4) The division shall by regulation provide for the proper notification of employers of the classification and rate of contribution applicable to their accounts. Such notification shall be final for all purposes unless and until such employer files a written request with the division for a redetermination or hearing thereon within thirty (30) days after receipt of such notice.

(5) "Annual total payroll" means the total of the four (4) quarters of total payrolls of an employer preceding the computation date as fixed herein.

(d) Payment of contributions shall apply only to wages paid up to and including $4,200 by an employer to an employee with respect to employment during the calendar years 1972, 1973, 1974 and the first calendar quarter of year 1975. For the second calendar quarter of the calendar year 1975 and thereafter the taxable wage base shall be established for each year based upon the reserve per cent of total wages or the amount of taxable wage base specified in the federal unemployment tax act, whichever is higher. *Effective January 1, 1978, and thereafter the Federal Unemployment Tax Act provides that contributions shall be paid on wages up to and including $6,000 per employee.*

Reserve Percent of Total Wages	Taxable Wage Base
2.50% and above	$4,200.00
2.25 to 2.49%	4,400.00
2.00 to 2.24%	4,600.00
Less than 2.00%	4,800.00

(e) Contribution appeals.

Any person aggrieved by any decision, determination, or redetermination of the division involving contribution liability, contribution rate, application for refund or the charging of benefit payments to employers making payment in lieu of contributions is entitled to a review by the division or its authorized representative, hereinafter referred to as a deputy. The decision of the deputy shall be deemed to be the decision of the division. The division or the deputy conducting the review may refer the matter to an appeal referee, may decide the application for review on the basis of such facts and information as may be obtained or may hear argument to secure further facts. After such review, notice of the decision shall be given to the employing unit. Such decision made pur-

HeinOnline -- 1977 Vol. I 538 1977

suant to such review shall be deemed to be the final decision of the division unless the employing unit or any other such interested party, within five (5) calendar days after delivery of such notification or within seven (7) calendar days after such notification was mailed to his last known address, files an appeal from this decision. Such appeal will be referred to an appeal referee who shall make his decisions with respect thereto in accordance with the procedure prescribed in section 87-107(c)."

Approved March 29, 1977.

CHAPTER NO. 166

AN ACT TO PROVIDE THAT UNLAWFUL DETAINER ACTIONS FILED IN JUSTICE COURT BE TRIED WITHIN 10 DAYS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 93-9712.1 that reads as follows:

93-9712.1. Continuance, when bond required. Actions filed in justice court under this chapter shall be tried within 10 days after the appearance or answer date stated in the summons, unless the defendant applying for a continuance shall give an undertaking to the adverse party, with good and sufficient security to be approved by the court, conditioned for the payment of all damages and rent that may accrue if judgment be rendered against the defendant. The plaintiff and defendant may stipulate to a continuance of the trial beyond the limit of this section without the necessity of an undertaking.

Approved March 29, 1977.

CHAPTER NO. 167

AN ACT TO MAKE THE OBSCURING OF THE IDENTITY OF A FIREARM A CRIME; AMENDING SECTION 94-6-311, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-6-311, R.C.M. 1947, is amended to read as follows:

"94-6-311. Obscuring the identity of a machine. (1) A person commits the offense of obscuring the identity of a machine if he:

(a) removes, defaces, covers, alters, destroys or otherwise obscures the manufacturer's serial number or any other distinguishing identification number or mark upon any machine, vehicle, electrical device, *or firearm,* with the purpose to conceal, misrepresent or transfer any such machine, vehicle, electrical device, *or firearm*; or

HeinOnline -- 1977 Vol. I 539 1977

(b) possesses with the purpose to conceal, misrepresent or transfer any machine, vehicle, device, *or firearm* knowing that *the* serial number or other identification number or mark has been removed or otherwise obscured. *The fact of possession or transfer of any such machine, vehicle, electrical device, or firearm creates a presumption that the person knew the serial number or other identification number or mark had been removed or otherwise obscured.*

(2) A person convicted of obscuring the identity of a machine shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both."

Approved March 29, 1977.

CHAPTER NO. 168

AN ACT TO CLARIFY PROVISIONS RELATING TO GRANTS-IN-AID TO COUNTIES FOR GENERAL RELIEF; REQUIRING A COUNTY WHICH RECEIVES A GRANT-IN-AID TO RETURN ANY MONEYS REMAINING IN ITS GENERAL RELIEF ACCOUNTS AT THE CLOSE OF THE FISCAL YEAR; AMENDING SECTION 71-311, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-311, R.C.M. 1947, is amended to read as follows:

"**71-311. Grants from state funds to counties.** *A county may apply to the state department for an emergency grant-in-aid and the grant shall be made to the county upon the following conditions:*

(1) The board of county commissioners or a duly elected or appointed executive officer of the county shall make written application to the state department for emergency assistance and shall show by written report and sworn affidavit of the county clerk and recorder and chairman of the board of county commissioners or other duly elected or appointed executive officer of the county the following:

(a) that the county will not be able to meet its obligations under law to provide assistance to the needy of the county or meet its proportionate share of any welfare activity carried on jointly with the state department;

(b) that all lawful sources of revenue and other income to the county poor fund will be exhausted;

(c) that all expenditures from the county poor fund have been lawfully made; and

(d) any other information required by the state department.

(2) Within 10 days of receipt of the application and affidavit, the state department shall determine whether the county poor fund will be depleted and shall give notice to the county of the state department's intention to deny or allow the grant-in-aid.

HeinOnline -- 1977 Vol. I 540 1977

(3) Within 10 days of receiving notice from the state department that a grant-in-aid will be made to the county, the board of county commissioners or other duly elected or appointed executive officer of the county shall adopt an emergency budget. There is no requirement of notice and hearing for that emergency budget. The emergency budget shall state the amount required to meet the obligation of the county and shall allocate that whole amount among the various classes of expenditures for which the grant was made.

(4) Upon receipt and approval of the county emergency budget, the state department shall issue a warrant to the county treasurer of the county for the total amount stated in the approved emergency budget.

(5) The grant-in-aid received by the county shall be placed in an emergency fund account to be kept separate and distinct from the poor fund account. All expenditures from the emergency fund account shall be made by a separate series of warrants or checks marked as emergency warrants or checks.

(6) The grants-in-aid from the state department may be used only for welfare activities lawfully conducted by the county, including but not limited to medical aid, hospitalization, and institutional care. No part of a grant-in-aid may be used, directly or indirectly, to pay for the erection or improvement of any county building or for furniture, fixtures, appliances, or equipment for a county building.

(7) In the event the county poor fund is replenished by other lawful sources of revenue, the county shall issue warrants to meet its obligations from the county poor fund until such time as that fund is again so depleted that warrants can no longer lawfully be drawn on that account. Upon depletion of the county poor fund, the county may again make disbursements from the emergency fund account as provided in subsection (5). At the close of the county fiscal year, the county shall return to the state department any amounts remaining in the county poor fund and the emergency fund account, but the remaining amount to be returned may not exceed the total amount of the emergency grant-in-aid for that fiscal year.

(8) Any amount which is unlawfully disbursed or transferred from the emergency fund account or used for a purpose other than that specified in the grant-in-aid shall be returned by the county to the state department."

Section 2. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 1977.

Section 3. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid application.

Approved March 29, 1977.

HeinOnline -- 1977 Vol. I 541 1977

CHAPTER NO. 169

AN ACT TO PERMIT PERSONS WHO WILL HAVE REACHED 12 YEARS OF AGE PRIOR TO SEPTEMBER 15 OF THE HUNTING SEASON TO APPLY FOR AND OBTAIN PERMITS FOR THAT SEASON; AMENDING SECTION 26-202.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-202.1, R.C.M. 1947, is amended to read as follows:

"**26-202.1. Licenses — fees — classifications of licenses — fees and powers under licenses.** (1) Class A License—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of $5 shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 license—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is 12 years of age or older, may, upon payment of a fee of $4 receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) No hunting licenses shall be issued to any resident person under the age of 18 years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may co-operate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. A holder of any one of the following: a Class A-3, A-4, A-5, B-2, B-5, B-6, B-7, B-8, or B-10 license, may upon payment of an additional sum of $6 to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill the game animals authorized by the licenses held with bow and arrow and to possess these carcasses during special seasons, and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who *will be* 12 years of age or older *prior to September 15 of the season for which the license is issued*, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, $6; for the license year beginning May

HeinOnline -- 1977 Vol. I 542 1977

1, 1976, and $7 for each license year thereafter; Class A-4, Deer B Tag, $12; Class A-5 Elk Tag, $8; Class A-6, Black or Brown Bear Tag, $6; which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) Class B License—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of $20 to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Except as herein provided, any person not a resident as defined in section 26-202.3, but who is 12 years of age or older, upon payment of the sum of $30 to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

No hunting licenses shall be issued to any nonresident person under the age of 18 years unless he presents to the person authorized to issue such license a certificate of competency as provided in section 26-202.1(2)(a) or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(7) Class B-2 License—Nonresident Combination License. Within the limitations of this section or any commission rule, any person not a resident as defined in section 26-202.3, but who *will be* 12 years of age or older *prior to September 15 of the season for which the license is issued*, upon the payment of $50 may apply to the fish and game office, Helena, Montana for a Class B-2 license, and nonresident conservation license as prescribed in section 26-230, which shall authorize the holder to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as authorized by the rules and regulations of the commission, and to purchase additional and special licenses and tags as provided by law or commission regulation.

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of $10 to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of 6 days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who *will be* 12 years of age or older *prior to the season for which the license is issued* and a holder of a nonresident conservation license, upon the payment of the sum of $50 shall be entitled to a Class B-5 license which shall authorize the

HeinOnline -- 1977 Vol. I 543 1977

holder to pursue, hunt, shoot, and kill one deer in the area or areas designated in the license, as determined by the commission, and to possess the carcass of same.

(10) Class B-6 License—Nonresident Antelope License. Any person not a resident as defined in section 26-202.3, but who *will be* 12 years of age or older *prior to September 15 of the season for which the license is issued* and a holder of a Class B-2 nonresident combination license, upon the payment of the sum of $50 shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one antelope in the area designated in the license, as determined by the commission, and to possess the carcass of same.

(11) Class B-7 and B-8 Licenses. Any person not a resident as defined in section 26-202.3, but who *will be* 12 years of age or older *prior to September 15 of the season for which the license is issued*, and is a holder of a B-2 nonresident combination license, may upon payment of the proper fee or fees and subject to the limitations prescribed by law and commission regulation be entitled to apply to the Fish and Game Office, Helena, Montana, to purchase one each of the following licenses: Class B-7, Deer A Tag, $50; Class B-8, Deer B Tag, $50; and will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulations of the commission.

(12) B-10 nonresident big game combination license. Any person not a resident as defined in section 26-202.3, R.C.M. 1947, but who *will be* 12 years of age or older *prior to September 15 of the season for which the license is issued* may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and commission regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license for $225 which shall entitle the holder to all the privileges of a B-2 nonresident combination license, a deer A tag, and elk tag and a black bear license. This license includes the nonresident conservation license as prescribed in section 26-230, R.C.M. 1947.

(13) Special licenses. *(a)* Any applicant who is 12 years of age or older and is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident combination license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident $25, nonresident $125;

Mountain Goat, resident $15, nonresident $75;

Mountain Sheep, resident $25, nonresident $125;

Antelope, resident $5;

Grizzly Bear, resident $25, nonresident $125;

Black or brown bear, nonresident $50.

In the event a holder of a valid special grizzly bear license kills a grizzly

HeinOnline -- 1977 Vol. I 544 1977

bear, he must purchase a trophy license for a fee of $25 within 10 days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid resident applications for licenses exceeds the number of licenses which the fish and game commission desires to issue in any hunting district, then the number of licenses issued to nonresident license holders in that hunting district shall not exceed 10% of the total issued.

(b) A person who will be 12 years of age or older prior to September 15 of the season for which the license is issued may apply for a special antelope license.

(14) Class C License—Trapper's License. Any resident as defined in section 26-202.3, upon making application and paying the sum of $10 to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(15) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of $1 shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(16) Exception. (a) A resident under the definition of section 26-202.3, who is 62 years or older shall be entitled to fish and hunt game birds with a conservation license issued by the state fish and game commission for a fee of $1. The form of such license shall be prescribed by the fish and game commission.

(b) Any veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, and residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) Disabled persons are entitled to fish without a license, if they are residents of Montana not residing in an institution and are certified as disabled by a licensed medical doctor, licensed to practice medicine in Montana.

Disability is defined as a physical or mental condition that prevents a person from doing any substantial gainful work that is expected to last for the rest of their life.

HeinOnline -- 1977 Vol. I 545 1977

Such disabled persons shall carry a permit on a form prescribed by the commission.

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than 6 months.

(e) Residents, as defined by section 26-202.3, under the age of 15 years may purchase Class A-1, A-3, and A-5 licenses at $2 per license.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6, B-7, B-8, or B-10 licenses to be issued in each of the hunting districts designated by it. Any license sold may be restricted to a specific hunting area and may specify the species, age, and sex to be taken in order to insure the proper management and propagation of game animals in these areas, provided, however, that no number limit shall be placed on B-7, B-8 and B-10 license by area except in major hunter concentration areas as determined by tne commission. Not more than 17,000 nonresident big game combination licenses (B-10) may be sold in any one license year.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(h) Special elk permits. In the event the number of valid applications for special elk permits for a hunting district exceeds the quota set by the commission for the district, these permits shall be awarded by a drawing. Persons making valid application who did not receive a special elk permit during the season immediately preceding the drawing shall receive first preference in this drawing for first, second, and third choice hunting districts. The commission may promulgate the rules necessary to implement this subsection.

(17) Only one license of any one class, except Class B-3 and B-4 licenses, shall be issued to any one person, provided, however, that the commission may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of $1.

(18) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who *will be* 12 years of age or older *prior to September 15 of the season for which the license is issued,* upon payment of the sum of $35 shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, A-6 and resident conservation licenses as prescribed in section 26-230. The commission shall furnish each holder of a sportsman's license an appropriate decal.

HeinOnline -- 1977 Vol. I 546 1977

(19) Class D-1 License—Nonresident Mountain Lion License. Any person not a resident as defined in section 26-202.3, but who is 12 years of age or older and a holder of a nonresident Class B-2 combination license, upon payment of the sum of $25 to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(20) Class D-2 License—Resident Mountain Lion License. Any person who is a resident as defined in section 26-202.3, and who is 12 years of age or older, upon payment of the sum of $5 to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-2 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(21) Special elk or deer licenses. (a) Any person who is the holder of a valid resident elk license or a Class B-10 nonresident big game combination license may apply for a special elk license upon payment of a fee of $1.

(b) Any person who is the holder of a valid resident deer license or any nonresident who holds a Class B-2 license and a valid deer tag may apply for a special deer license upon payment of a fee of $1.

(c) The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection."

Approved March 29, 1977.

CHAPTER NO. 170

AN ACT TO REQUIRE NAMES AND ADDRESSES OF INJURED PARTIES AND A STATEMENT OF INJURY IN A COMPLAINT FOR INJUNCTION FILED BY A CITIZENS GROUP OR OTHER PUBLIC INTEREST ASSOCIATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 93-4204.1 that reads as follows:

93-4204.1. Names, addresses, and statement of injury required in certain actions. Whenever an action for injunctive relief is initiated by a citizens group or other public interest association and it appears by the complaint that there is an injury to a property or civil right of individual members of the association, which injury is distinguishable from an injury to the public generally, the names and addresses of injured members and a statement of the injury shall be provided in the complaint. An injunction may not be granted unless such information is provided in the complaint.

Approved March 29, 1977.

HeinOnline -- 1977 Vol. I 547 1977

CHAPTER NO. 171

AN ACT TO AMEND SECTION 75-6008, R.C.M. 1947, RELATING TO THE TERM OF TEACHER CERTIFICATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6008, R.C.M. 1947, is amended to read as follows:

"**75-6008. Term of teacher certificates.** Any teacher certificate issued by the superintendent of public instruction shall bear the dates of issue and validity and shall be valid for a term of 5 school fiscal years, except that class 5 provisional certificates shall be valid for *the number of years, up to a maximum of 5 years, provided by the policies of the board of public education.* The period of validity for any certificate shall begin on the first day of July immediately preceding the date of issue. Teacher certificates shall be renewed for similar periods of time on the basis of the board of education policies for teacher certification renewal."

Approved March 29, 1977.

CHAPTER NO. 172

AN ACT REQUIRING THAT INFORMATION CONCERNING THE COMPETENCY AND CONDUCT OF LICENSED PHYSICIANS BE REPORTED TO THE STATE BOARD OF MEDICAL EXAMINERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 66-1053 that reads as follows:

66-1053. Report to board of incompetence or unprofessional conduct. (1) Notwithstanding any provision of state law dealing with confidentiality, each licensed physician, professional standards review organization, and the Montana medical association or any component society thereof shall and any other person may report to the state board of medical examiners any information such physician, organization, association, society, or person has which appears to show that a physician is:

(a) medically incompetent;

(b) mentally or physically unable to safely engage in the practice of medicine; or

(c) guilty of unprofessional conduct.

(2) This section applies to professional standards review organizations only to the extent that such organizations are not prohibited from disclosing such information under federal law.

HeinOnline -- 1977 Vol. I 548 1977

Section 2. There is a new R.C.M. section numbered 66-1054 that reads as follows:

66-1054. Insurer to report to board. Any insurer that issues or underwrites professional liability insurance in this state to any physician licensed to practice medicine shall report any claim against the insured for alleged professional negligence to the state board of medical examiners within 30 days after receiving notice of the claim from the insured or any other person. The report required by this section shall include the name of the insured, the name of the person making the claim, and the reason or reasons for which the claim is made.

Section 3. There is a new R.C.M. section numbered 66-1055 that reads as follows:

66-1055. Hospital to report to board. Each hospital or health care facility which prohibits or limits the privilege of a physician to practice medicine within that facility shall report such action to the state board of medical examiners within 30 days after the action is taken if the action is based in whole or in part upon the commission of one or more of the offenses or the existence of one or more of the conditions set forth in 66-1037 or 66-1038(1). The report shall include the reason or reasons for the prohibition or limitation.

Section 4. There is a new R.C.M. section numbered 66-1056 that reads as follows:

66-1056. Immunity of persons providing information. A person, organization, association, society, or health care facility which in good faith provides information to the state board of medical examiners as required by 66-1053, 66-1054, or 66-1055 is not subject to suit for civil damages as a result thereof.

Section 5. There is a new R.C.M. section numbered 66-1057 that reads as follows:

66-1057. Suspension of license or privilege for noncompliance. The willful failure of any person, organization, association, society, or health care facility to comply with 66-1053, 66-1054, or 66-1055 is grounds for suspension of any license or privilege granted by the state of Montana. Upon such failure, the agency granting the license or privilege may, in its discretion, suspend the license or privilege for a period not to exceed 1 month.

Approved March 29, 1977.

CHAPTER NO. 173

AN ACT CLARIFYING AND REVISING THE PROVISION DEALING WITH ADOPTION OF THE STATE BUILDING CODE, FIXING DATES BY WHICH ENERGY CONSERVATION RULES MUST BE DRAFTED, HEARD, ADOPTED, PUBLISHED, AND IMPLEMENTED; AMENDING SECTION 69-2111, R.C.M. 1947.

HeinOnline -- 1977 Vol. I 549 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-2111, R.C.M. 1947, is amended to read as follows:

"**69-2111. Adoption of rules by department.** (1) The department shall adopt rules relating to the construction of, the installation of equipment in, and standards for materials to be used in *all buildings or classes of* buildings, including provisions dealing with safety, sanitation, and conservation of energy. *The department may adopt by reference nationally recognized building codes in whole or in part, but this does not prevent the department from adopting rules more stringent than those contained in such codes.* The rules, when adopted as provided in this chapter, constitute the "state building code" and shall be acceptable for the buildings to which it is applicable. *The department may amend or repeal such rules.*

(2) The department may hold hearings relating to the administration of this act in accordance with the Montana Administrative Procedure Act.

(3) Except as provided in subsection (4) of this section, no rule and no amendment or repeal of the state building code shall take effect until after a public hearing by the department.

(4) If a hearing has been held by the department of justice with respect to its duties contained in Title 82, chapter 12, the board of plumbers, the department of health and environmental sciences, board of warm air heating, ventilation, and air conditioning, or state electrical board, on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code.

(5) If a rule relating to building or equipment standards is proposed by the department of justice with respect to its duties contained in Title 82, chapter 12, board of plumbers, department of health and environmental sciences, board of warm air heating, ventilation, and air conditioning, or state electrical board which conflicts with the state building code, the department shall modify the proposed rule or the state building code to resolve the conflict after consultation with the state agencies affected."

Section 2. There is a new section that reads as follows:

Energy conservation rules — when to be drafted, heard, published, and implemented. (1) The department shall draft the rules required by 69-2110 and 69-2111 relating to energy conservation by September 30, 1977.

(2) Hearings on such rules shall be held in December of 1977 with notice as provided in the Montana Administrative Procedure Act.

(3) Such rules shall be adopted and published by February 28, 1978, and implementation shall be initiated immediately upon publication.

Approved March 29, 1977.

HeinOnline -- 1977 Vol. I 550 1977

CHAPTER NO. 174

AN ACT AMENDING SECTION 48-328, R.C.M. 1947, TO GRANT NAME CHANGE TO ALL WOMEN ON REQUEST AFTER MARRIAGE IS DISSOLVED OR DECLARED INVALID.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 48-328, R.C.M. 1947, is amended to read as follows:

"**48-328. Decree.** (1) A decree of dissolution of marriage or of legal separation is final when entered, subject to the right of appeal. An appeal from the decree of dissolution that does not challenge the finding that the marriage is irretrievably broken does not delay the finality of that provision of the decree which dissolves the marriage beyond the time for appealing from that provision, and either of the parties may remarry pending appeal.

(2) No earlier than six (6) months after entry of a decree of legal separation, the court on motion of either party shall convert the decree to a decree of dissolution of marriage.

(3) The clerk of court shall give notice of the entry of a decree of dissolution or legal separation:

(a) if the marriage is registered in this state, to the clerk of the district court of the county where the marriage is registered who shall enter the fact of dissolution or separation in the book in which the marriage license and certificate are recorded; or

(b) if the marriage is registered in another jurisdiction, to the appropriate official of that jurisdiction, with the request that he enter the fact of dissolution in the appropriate record.

(4) Upon request by a wife whose marriage is dissolved or declared invalid, the court shall order her maiden name or a former name restored."

Approved March 29, 1977.

CHAPTER NO. 175

AN ACT TO DEFINE THE OFFENSE OF AIDING THE AVOIDANCE OF TELECOMMUNICATIONS CHARGES; AMENDING SECTION 94-6-304.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-6-304.1, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 551 1977

"**94-6-304.1. Obtaining communication services with intent to defraud.** In a prosecution under 94-6-304 for theft of telephone, telegraph, or cable television services, the element of deception is established by proof that the defendant obtained such services by any of the following means:

(1) by use of a code, prearranged scheme, or other similar stratagem or device whereby said person, in effect, sends or receives information; or

(2) by installing, rearranging, or tampering with any facilities or equipment, whether physically, inductively, acoustically, electronically; or

(3) by any other trick, stratagem, impersonation, false pretense, false representation, false statement, contrivance, device, or means; or

(4) by making, assembling, or possessing any instrument, apparatus, equipment or device, or the plans or instructions for the making or assembling of any instrument, apparatus, equipment or device which is designed, adapted or otherwise intended to be used to avoid the lawful charge, in whole or in part, for any telecommunications service by concealing the existence or place of origin or destination of any telecommunications."

Section 2. There is a new R.C.M. section numbered 94-6-304.2 that reads as follows:

94-6-304.2. Aiding the avoidance of telecommunications charges. (1) A person commits the offense of aiding the avoidance of telecommunications charges when he:

(a) publishes the number or code of an existing, canceled, revoked, expired, or nonexistent credit card or the numbering or coding which is employed in the issuance of credit cards with the purpose that it will be used to avoid the payment of lawful telecommunications charges; or

(b) publishes, advertises, sells, gives, or otherwise transfers to another plans or instructions for the making or assembling of any apparatus, instrument, equipment, or device described in 94-6-304.1(4) with the purpose that such will be used or with the knowledge or reason to believe that such will be used to avoid the payment of lawful telecommunication charges.

(2) A person convicted of the offense of aiding the avoidance of telecommunications charges shall be fined not to exceed $500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

(3) For the purposes of this section, the term "publish" means to communicate information to any one or more persons, either orally; in person; by telephone, radio, or television; or in a writing of any kind, including but not limited to a letter, memorandum, circular, handbill, newspaper or magazine article, or book.

Approved March 29, 1977.

HeinOnline -- 1977 Vol. I 552 1977

CHAPTER NO. 176

AN ACT AMENDING SECTIONS 66-603, 66-607, 66-608, AND 82A-1602.6, R.C.M. 1947; TO REMOVE THE SECRETARY OF AND DESIGNEE OF THE BOARD OF MEDICAL EXAMINERS FROM THE BOARD OF PODIATRY EXAMINERS; CREATING A SEPARATE EARMARKED REVENUE FUND FOR THE REVENUE AND EXPENSES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-603, R.C.M. 1947, is amended to read as follows:

"**66-603. Examinations — schools — fees — nonresident practitioners — national podiatry board examinations.** Examinations shall be held at places and times the board directs. Persons who wish to begin the practice of podiatry in this state, shall make application on a form authorized by the state board of *podiatry* examiners and furnished by the department, for a license to practice podiatry. The license may be granted to applicants after they have furnished satisfactory proof of good moral character, of having attained high school graduation or its equivalent, of having at least 4 years or equivalent time in quarter or semester hours of instruction in an accredited college of podiatry recognized as being in good standing by the board, and successfully passed the examination. A license without written examination may be granted to podiatrists of other states maintaining equal statutory requirements for the practice of podiatry and extending the same reciprocal privilege to this state if they have had a valid license and practiced for at least 2 preceding years in that state prior to filing for reciprocal privilege, and by payment of $50 to the department. A license may be granted, at the discretion of the board and upon payment of $50 to the department, if the applicant has successfully completed the national podiatry board examination and after a personal interview by the board."

Section 2. Section 66-607, R.C.M. 1947, is amended to read as follows:

"**66-607. Deposit of moneys collected.** Fees and licenses shall be collected by the department and deposited in the earmarked revenue fund for the use of the state board of *podiatry* examiners, subject to 82A-1603(6)."

Section 3. Section 66-608, R.C.M. 1947, is amended to read as follows:

"**66-608. Compensation of board — expenses.** Each member of the board shall receive for his services $5 per diem and travel expenses, as provided for in 59-538, 59-539, and 59-801. Other contingent expenses, necessarily incurred, shall be paid by the state department in the same manner as other expenses of the state board of *podiatry* examiners."

Section 4. Section 82A-1602.6, R.C.M. 1947, is amended to read as follows:

"**82A-1602.6. Board of podiatry examiners — appointment — qualifications — term.** (1) There is a board of podiatry examiners.

(2) The board consists of *three* members, *all of whom* are licensed

HeinOnline -- 1977 Vol. I 553 1977

podiatrists appointed by the governor to *3-year* terms, selected from a list of six podiatrists submitted by the Montana association of podiatrists. The members shall be residents of this state who have engaged in the active practice of podiatry in this state for at least 2 years and are of high integrity and ability. The governor shall fill a vacancy on the board from the same list of podiatrists."

Section 5. **Effective date.** This act is effective on April 1, 1978.

Approved March 29, 1977.

CHAPTER NO. 177

AN ACT AMENDING SECTION 3-208, R.C.M. 1947, RELATING TO CHARGES OF PUBLIC WAREHOUSEMEN FOR HANDLING, CLEANING, AND STORAGE OF GRAIN, TO PLACE APPLICABLE REGULATORY AND RATEMAKING AUTHORITY IN THE DEPARTMENT OF AGRICULTURE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-208, R.C.M. 1947, is amended to read as follows:

"**3-208. Charges of public warehousemen.** (1) Public warehousemen subject to this chapter, for the handling, cleaning, and storage of grain, *may charge maximum rates as are adopted and published by the department.*

(2) The department shall, on its own initiative, regularly review the rates established and, in addition, shall conduct such review within 30 days following receipt of a written request by any group representing at least 50 persons subject to the rules or rates.

(3) The schedule of *regulations and rates* for cleaning, *handling, and storage* shall be posted in a conspicuous place where grain is unloaded for cleaning, *handling, or storage.*

(4) Failure on the part of a public warehouseman to comply with this chapter renders the licenses of the warehouseman subject to revocation by the department."

Section 2. **Effective date.** This act is effective upon passage and approval.

Approved March 29, 1977.

CHAPTER NO. 178

AN ACT TO REVISE THE RATE OF PRIVILEGE AND LICENSE TAX ASSESSED TO OIL AND GAS OPERATORS AND PRODUCERS FOR SUPPORT OF THE BOARD OF OIL AND GAS CONSERVATION; AMENDING SECTION 60-145, R.C.M. 1947.

HeinOnline -- 1977 Vol. I 554 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-145, R.C.M. 1947, is amended to read as follows:

"60-145. Privilege and license tax — quarterly statements — penalties — drilling permit fees — oil and gas conservation moneys. (1) For the purpose of providing funds for defraying the expenses of the operation and enforcement of this chapter and expenses of the board, the operators and producers of oil and gas shall pay an assessment not to exceed *2/10 of 1% of the market value of each barrel of crude petroleum originally produced, saved and marketed, or stored within the state or exported from the state, and the same rate on the market value of each 10,000 cubic feet of natural gas produced, saved and marketed, or stored within the state or exported therefrom.*

(2) The board shall by order, without prior notice, or hearing, fix the amount of the assessments and may, from time to time, without prior notice or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require; however, the assessments fixed by the board may not exceed the limits prescribed in this section. The amounts of the assessments shall be a percentage factor (not to exceed 100%) of the rates set forth in *subsection (1)* above, and the same percentage factor shall be applied by the board in fixing the amount of the assessment on each barrel of crude production and each 10,000 cubic feet of natural gas mentioned in those subsections. The producers of the crude petroleum and natural gas shall pay the assessments on each barrel of crude petroleum and each 10,000 cubic feet of natural gas produced for themselves, as well as for others, including royalty holders, and the producers shall be reimbursed for the payments made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others under 84-6208.

(3) For the purposes of this section, a "lease" means that particularly described tract of land contained in a contract in writing whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one lessee which in whole or in part cover or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one particular unit agreement shall be considered as one lease relative to payments to be made under this section.

(4) In addition to the above-mentioned privilege and license tax, a person, before commencing the drilling of an oil or gas well or stratigraphic test well or core hole, shall secure from the board a drilling permit and shall pay to the board therefor the following amounts: for each well whose estimated depth is 3,500 feet or less, $25; from 3,501 feet to 7,000 feet, $75; 7,000 feet and deeper, $150.

(5) Each producer of crude petroleum in the state shall, not later than the last day of each of the calendar months of February, May, August

HeinOnline -- 1977 Vol. I 555 1977

and November, of each calendar year, render a true statement to the state treasurer of the state, and a duplicate thereof to the board, duly signed and sworn to, of all crude petroleum produced and marketed by him in this state during the preceding quarter, and containing such other information as the board may require, and shall accompany the statement with the payment to the state treasurer of the assessment provided for in subsection (1) of this section, for the period covered by the statement. Each producer of natural gas in the state shall render like statements to the state treasurer of all natural gas produced and marketed by him in this state, and shall make payment of the assessment provided for in subsection (1) of this section, at such times and for such periods as may be prescribed by rule of the board. Any producer carrying on business at more than one place or location in this state may include all those places of business in one statement. The assessment imposed herein shall be due at the time the oil or natural gas is marketed. Oil or natural gas shall be deemed marketed when it is removed from the property from which it was produced.

(6) An assessment not paid within the time specified is delinquent, and a penalty of 25% thereof shall be added thereto and the whole thereof shall bear interest at the rate of 1% per month from the date of delinquency until paid. Upon request of the board the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

(7) All money collected under this chapter shall be deposited in the earmarked revenue fund by the state treasurer of the state, and shall be used for the purpose of paying all expenses of the board and for no other purpose; all these moneys shall be used by the board subject to the approval of the department of administration and biennial appropriations by the legislature."

Approved March 29, 1977.

CHAPTER NO. 179

AN ACT AMENDING SECTION 70-806, R.C.M. 1947, PROVIDING FOR THE FILING OF A 1-YEAR NOTICE OF INTENTION TO FILE AN APPLICATION FOR A CERTIFICATE UNDER THE MAJOR FACILITY SITING ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-806, R.C.M. 1947, is amended to read as follows:

"70-806. Application for certification — filing and contents — filing fees — notice of completion of facility — further fees — refund — proof of service on municipalities — amendment of application or certification — notice of filing. (1) (a) An applicant for a certificate shall file with the department a verified application, in such form as the board by rule or the department by order prescribes, containing the following information:

(i) a description of the location and of the facility to be built thereon;

(ii) a summary of any studies which have been made of the environmental impact of the facility;

(iii) a statement explaining the need for the facility;

(iv) a description of any reasonable alternate location or locations for the proposed facility, a description of the comparative merits and detriments of each location submitted, and a statement of the reasons why the primary proposed location is best suited for the facility; and

(v) such other information as the applicant considers relevant or as the board by rule or the department by order requires. A copy or copies of the studies referred to in clause (ii) above shall be filed with the department, if ordered, and shall be available for public inspection.

(b) An application may consist of an application for two (2) or more facilities in combination which are physically and directly attached to each other and are operationally a single operating entity.

(2) (a) A filing fee shall be deposited in the earmarked revenue fund for the use of the department in administering this chapter. The applicant shall pay to the department a filing fee with the application, based upon the estimated cost of the facility according to the declining scale which follows: two percent (2%) of any estimated cost up to one million dollars ($1,000,000); plus one percent (1%) of any estimated cost over a million dollars and up to twenty million dollars ($20,000,000); plus one-half of one percent (0.5%) of any estimated cost over twenty million dollars ($20,000,000); and up to one hundred million dollars ($100,000,000); plus one-quarter of one percent (0.25%) of any amount of estimated cost over one hundred million ($100,000,000) and up to three hundred million dollars ($300,000,000); plus one-eighth of one percent (.125%) of any amount of estimated cost over three hundred million dollars ($300,000,000). The revenues derived from the filing fee shall be used by the department in compiling the information required for rendering a decision on a certificate and for carrying out its other responsibilities under this chapter with respect to the facility covered by the certificate for a period not to exceed five (5) years after the certificate is issued for facilities defined in 70-803 (3)(b) and (c) or not to exceed ten (10) years after the certificate is issued for facilities defined in 70-803 (3)(a), (d), and (e). If an application consists of a combination of two (2) or more facilities, the filing fee shall be based on the total estimated cost of the combined facilities.

(b) The applicant is entitled to an accounting of moneys expended and to a refund of that portion of the filing fee not expended by the department in carrying out its responsibilities under this chapter.

(c) The department may contract with a potential applicant under this chapter, in advance of the filing of a formal application, for the development of information or provision of services required hereunder. Payments made to the department under such a contract shall be credited against the fee payable hereunder.

HeinOnline -- 1977 Vol. I 557 1977

(3) An application shall be accompanied by proof of service of a copy of the application on the chief executive officer of each municipality and the head of each government agency, charged with the duty of protecting the environment or of planning land use, in the area in which any portion of the facility is to be located, both as primarily and as alternatively proposed. The copy of the application shall be accompanied by a notice specifying the date on or about which the application is to be filed.

(4) An application shall also be accompanied by proof that public notice thereof was given to persons, residing in the municipalities entitled to receive notice under subsection (3) of this section, by the publication of a summary of the application, and the date on or about which it is to be filed, in those newspapers as will serve substantially to inform those persons of the application.

(5) Inadvertent failure of service on, or notice to, any of the municipalities, government agencies or persons identified in subsections (3) and (4) of this section may be cured pursuant to orders of the department designed to afford them adequate notice to enable their effective participation in the proceeding. In addition, the department may, after filing, require the applicant to serve notice of the application or copies thereof or both upon such other persons, and file proof thereof, as the department may deem appropriate.

(6) An application for an amendment of an application or a certificate shall be in such form and contain such information as the board by rule or the department by order prescribes. Notice of such an application shall be given as set forth in subsections (3) and (4) of this section. If an amendment to an original application would result in a substantial change of the original application, such an amendment shall be considered as a new application and a new filing fee shall be required.

(7) A potential applicant for a certificate may file a notice of intent to file an application for a certificate for a facility defined in 70-803(3) at least 12 months prior to the actual filing of an application. The notice of intent shall specify the type and size of facility to be applied for, its preferred location, a description of reasonable alternative locations, and such information as the board by rule or department by order requires. An applicant complying with this subsection is entitled to a 5% reduction of the filing fee required under subsection (2)(a)."

Approved March 29, 1977.

CHAPTER NO. 180

AN ACT TO PROVIDE NOTICE TO THE SUPERINTENDENT OF PUBLIC INSTRUCTION OF THE YEAR ENDING FUND BALANCES IN THE COUNTY SCHOOL FUNDS; AMENDING SECTION 75-6805, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6805, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 558 1977

"**75-6805. Duties of county treasurer.** The county treasurer of each county shall:

(1) receive and hold all school moneys subject to apportionment, and keep a separate accounting of their apportionments to the several districts which are entitled to a portion of such moneys according to the apportionments ordered by the county superintendent. A separate accounting shall be maintained for each county fund supported by a county-wide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs,

(b) the basic special tax for high schools in support of the high school foundation programs,

(c) the county tax in support of the county's high school transportation obligation,

(d) the county tax in support of the high school obligations to the retirement systems of the state of Montana,

(e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs,

(f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs,

(g) the county tax for a post-secondary vocational-technical center when levied by the board of county commissioners, and

(h) any other county tax for schools which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent *and the superintendent of public instruction* of the amount of county school moneys on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school moneys subject to apportionment, and apportion such county and other school moneys to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included on the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included on the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school moneys and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law, or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied;

HeinOnline -- 1977 Vol. I 559 1977

(7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such revenues, no later than the fifteenth day of December of each year and every three (3) months thereafter until the end of the school fiscal year;

(8) register district warrants drawn on a budgeted fund in accordance with section 16-2604, R.C.M., 1947, when there are insufficient moneys available in such budgeted fund to make payment of such warrant. Redemption of registered warrants shall be made in accordance with sections 16-2605, 16-2602, and 16-2607, R.C.M., 1947;

(9) invest the moneys of any district as directed by the trustees of the district; and

(10) give to the trustees of each district, at least quarterly, an itemized report for each fund maintained by the district showing the paid warrants, outstanding warrants, registered warrants, amount and types of revenue received, and the cash balance."

Approved March 29, 1977.

CHAPTER NO. 181

AN ACT TO REQUIRE THE INSTALLATION OF SPEEDOMETERS ON LOCOMOTIVES; AMENDING SECTION 72-652, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 72-652, R.C.M. 1947, is amended to read as follows:

"**72-652. Headlights and speedometers for locomotives.** *(1) A* person, corporation, or company operating *a* railroad or railway in this state *must* equip all locomotive engines used in the transportation of trains over *the* railroad or railway with*:*

(a) electric headlights of *at least 1,500* candle power, measured without the aid of a reflector*; and*

(b) a speedometer that is maintained in good working order at all times and that is located in the lead or controlling unit.

(2) A locomotive used exclusively in yard service is not required to be equipped with a speedometer.

(3) If the speedometer fails en route it will be deemed as being in good working order until it reaches the next terminal where it will be exchanged with an engine with a working speedometer if one is available."

Approved March 29, 1977.

HeinOnline -- 1977 Vol. I 560 1977

CHAPTER NO. 182

AN ACT TO DEFINE THE BASIS OF ASSESSMENT OF BUSINESS INVENTORIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-422.1 that reads as follows:

84-422.1. Assessment of business inventories. For property tax purposes, business inventories shall be assessed at the cost or present value, whichever is lower, to the person subject to the inventory tax.

Approved March 29, 1977.

CHAPTER NO. 183

AN ACT AMENDING SECTIONS 53-157 AND 53-161, R.C.M. 1947, TO ALLOW FOR A CHANGE IN THE REGISTRATION PERIOD OF VEHICLES SUBJECT TO ANNIVERSARY DATE REGISTRATION AND TO PROVIDE FOR THE PRORATION OF TAXES AND FEES WHEN A REGISTRATION PERIOD IS CHANGED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-157, R.C.M. 1947, is amended to read as follows:

"**53-157. Reregistration on anniversary date — registrar to make rules.** A vehicle that has once been registered for any of the above-designated periods shall thereafter be reregistered for a like period on or before the anniversary date of the initial registration, *unless that period be changed as provided in this section.* The anniversary date for reregistration shall be the 25th day of the month for the designated registration period. The registrar of motor vehicles shall adopt rules for the implementation and administration of this act and for the identification of the registration on the vehicles. The registrar shall provide for simultaneous registration of multiple vehicles which have common ownership. *The rules shall provide for a change of the registration period to coincide with the date an owner desires to register his vehicles.*"

Section 2. Section 53-161, R.C.M. 1947, is amended to read as follows:

"**53-161. Proration of taxes and fees.** *In the event a vehicle's registration period is changed under 53-157,* all taxes and other fees due thereon shall be prorated *and paid* from *the last day of the old period* until the first day of the *new* period in which the vehicle shall be registered. *Thereafter taxes and other fees must be paid from the first day of the new period for a minimum period of 1 year. When the change is to a later registration period, taxes and fees shall be prorated and paid based on the same tax year as the original registration period.* Thereafter, during the appropriate anniversary registration period, each vehicle shall again register or reregister and thereon shall pay all taxes and fees due thereon for a twelve (12) month period."

Approved March 29, 1977.

HeinOnline -- 1977 Vol. I 561 1977

CHAPTER NO. 184

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CRIMINAL PROCEDURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 95-101, R.C.M. 1947, is amended to read as follows:

"**95-101. Application.** *This title* shall govern the procedure in *all* the courts of Montana in all criminal proceedings except where provision for a different procedure is specifically provided by law."

Section 2. There is a new R.C.M. section numbered 95-302.1 that reads as follows:

95-302.1. Jurisdiction of justices' courts. The justices' courts have criminal jurisdiction as authorized by 93-410 and 95-302.

Section 3. Section 95-501, R.C.M. 1947, is amended to read as follows:

"**95-501. Mental disease or defect excluding responsibility.** *(1)* A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he is unable either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

(2) As used in this chapter, the *term* "mental disease or defect" does not include an abnormality manifested only by *repeated* criminal or *other* antisocial conduct."

Section 4. Section 95-507, R.C.M. 1947, is amended to read as follows:

"**95-507. Determination of irresponsibility on basis of report — examination by psychiatrist chosen by state or defendant — psychiatric testimony upon trial.** (1) If the report filed under 95-505 finds that the defendant at the time of the criminal conduct charged suffered from a mental disease or defect which rendered him unable to appreciate the criminality of his conduct or to conform his conduct to the requirements of law and the court, after a hearing if a hearing is requested by the attorney prosecuting or the defendant, is satisfied that the mental disease or defect was sufficient to exclude responsibility, the court on motion of the defendant shall enter judgment of acquittal on the ground of mental disease or defect excluding responsibility.

(2) *If* either the defendant or the state wishes the defendant to be examined by a qualified psychiatrist or other expert selected by the one proposing the examination, the examiner shall be permitted to have reasonable access to the defendant for the purpose of the examination.

(3) Upon the trial, any psychiatrist who reported under 95-505 may be called as a witness by the prosecution or by the defense. If the issue

HeinOnline -- 1977 Vol. I 562 1977

is being tried before a jury, the jury *may* not be informed that the psychiatrist was designated by the court or by the superintendent of Warm Springs state hospital. Both the prosecution and the defense may summon any other qualified psychiatrist or other expert to testify, but no one who has not examined the defendant is competent to testify to an expert opinion with respect to the mental condition or responsibility of the defendant, as distinguished from the validity of the procedure followed by or the general scientific propositions stated by another witness.

(4) When a psychiatrist or other expert who has examined the defendant testifies concerning *the defendant's* mental condition, he may make a statement as to the nature of his examination, his diagnosis of the mental condition of the defendant at the time of the commission of the offense charged, and his opinion as to the ability of the defendant to appreciate the criminality of his conduct, to conform his conduct to the requirements of law, or to have a particular state of mind which is an element of the offense charged. *The expert* may make any explanation reasonably serving to clarify his diagnosis and opinion and may be cross-examined as to any matter bearing on his competency or credibility or the validity of his diagnosis or opinion."

Section 5. Section 95-509, R.C.M. 1947, is amended to read as follows:

"**95-509. Admissibility of statements made during examination or treatment.** A statement made *for the purposes of* psychiatric examination or treatment *provided for in this chapter by a person subjected to* such examination or treatment *is* not admissible in evidence against him in any criminal proceeding on any issue other than that of his mental condition. *It is* admissible *on the* issue *of his mental condition*, whether or not it would otherwise *be considered* a privileged communication, unless *it* constitutes an admission of guilt of the crime charged."

Section 6. Section 95-603, R.C.M. 1947, is amended to read as follows:

"**95-603. Issuance and service of arrest warrant upon complaint.** *(1)* A complaint, as the basis of an arrest warrant, shall be in writing.

(2) When a complaint is presented to a court charging a person with the commission of an offense, the court shall examine upon oath the complainant and may also examine any witnesses.

(3) If it appears from the contents of the complaint and the examination of the complainant and other witnesses, if any, that there is probable cause to believe that the person against whom the complaint was made has committed an offense, a warrant shall be issued by the court for the arrest of the person complained against. *The court, in its* discretion, *may issue* a summons instead of a warrant. *Upon the request of the county attorney, the court* shall issue *a summons instead of a warrant.* More than one warrant or summons may issue on the same complaint.

(4) A warrant of arrest shall:

(a) be in writing in the name of the state of Montana or in the name of a municipality if a violation of a municipal ordinance is charged;

(b) set forth the nature of the offense;

HeinOnline -- 1977 Vol. I 563 1977

(c) command that the person against whom the complaint was made be arrested and brought before the court issuing the warrant or, if *the judge* is absent or unable to act, before the nearest or most accessible court in the same county *or the adjoining county.* If an arrest is made in a county other than the one in which the warrant was issued the arrested person shall be taken without unnecessary delay before the nearest and most accessible judge in the county where the arrest was made *or the adjoining county.*

(d) specify the name of the person to be arrested or, if his name is unknown, designate *the* person by any name or description by which he can be identified with reasonable certainty;

(e) state the date when issued and the municipality or county where issued; and

(f) be signed by the judge of the court with the title of his office.

(5) The warrant of arrest may specify the amount of bail.

(6) The warrant shall be directed to all peace officers in the state. It shall be executed by a peace officer and may be executed in any county of the state. However, warrants issued for the violation of city ordinances cannot be executed outside the city limits, except as otherwise provided by 11-927 and 11-960."

Section 7. Section 95-704, R.C.M. 1947, is amended to read as follows:

"**95-704. Grounds for search warrant.** Any judge may issue a search warrant upon the written application of any person, made under oath or affirmation before *the judge,* which:

(1) states that an offense has been committed;

(2) states facts sufficient to show probable cause for issuance of the warrant;

(3) particularly describes the place or things to be searched; and

(4) particularly describes the things to be seized."

Section 8. Section 95-719, R.C.M. 1947, is amended to read as follows:

"**95-719. Stop and frisk.** (1) A peace officer may stop any person he observes in circumstances that give *him* reasonable cause to suspect that the person has committed, is committing, or is about to commit an offense involving the use or attempted use of force against *a* person or theft, damage, or destruction of property if the stop is reasonably necessary to obtain or verify an account of the person's presence or conduct or to determine whether to arrest the person.

(2) A peace officer may stop any person he finds near the scene of an offense that *he* has reasonable cause to suspect has just been committed if:

(a) *he* has reasonable cause to suspect that the person has knowledge of material aid to the investigation of the offense; or

HeinOnline -- 1977 Vol. I 564 1977

(b) the stop is reasonably necessary to obtain or verify the person's identity or an account of the offense.

(3) A peace officer may stop any person in connection with an offense that *he* has probable cause to believe has been committed if:

(a) the offense is a felony involving the use or the attempted use of force against a person or theft, damage, or destruction of property;

(b) *he* has reasonable cause to suspect the person committed the felony; and

(c) *(i)* the stop is reasonably necessary to obtain or verify *the person's* identity to determine whether to arrest the person for the felony; or

(ii) the peace officer has reasonable cause to suspect that the person was present at the scene of the offense and the stop is reasonably necessary to obtain or verify the person's identity.

(4) A peace officer who has lawfully stopped a person under this section may:

(a) frisk *the* person and take other reasonably necessary steps for protection if *he* has reasonable cause to suspect that the person is armed and presently dangerous to *him* or another person present; and

(b) take possession of any object that *he* discovers during the course of the frisk if *he* has probable cause to believe the object is a deadly weapon.

(5) A peace officer who has lawfully stopped a person under this section may demand of the person his name and his present or last address.

(6) A peace officer who has lawfully stopped a person under this section shall inform the person, as promptly as possible under the circumstances and in any case before questioning the person, that he is a peace officer, that the stop is not an arrest but rather a temporary detention for an investigation, and that upon completion of the investigation the person will be released unless he is arrested.

(7) After the authorized purpose of the stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the peace officer shall allow the person to go unless he has arrested the person."

Section 9. Section 95-1005, R.C.M. 1947, is amended to read as follows:

"**95-1005. Remuneration of appointed counsel.** *(1)* Whenever in a criminal proceeding an attorney represents or defends any person by order of the court on the ground that the person is financially unable to employ counsel, *the* attorney shall be paid for his services such sum as a district court or justice of the state supreme court certifies to be a reasonable compensation therefor and shall be reimbursed for reasonable costs incurred in the criminal proceeding.

(2) The expense of implementing subsection (1) is chargeable to the county in which the proceeding arose, except that:

HeinOnline -- 1977 Vol. I 565 1977

(a) in proceedings solely involving the violation of a city ordinance or state statute prosecuted in a municipal *or* city court, *the expense is* chargeable to the city or town in which the proceeding arose; and

(b) *when there has been an arrest* by agents of the department of fish and game *or* agents of the department of justice, the *expense* must be borne by the state agency causing the arrest."

Section 10. Section 95-1104, R.C.M. 1947, is amended to read as follows:

"**95-1104. Bail set in warrant — acceptance by peace officer.** A peace officer may accept cash bail in behalf of a judge *whenever* the warrant of arrest specifies the amount of bail. *Whenever a* peace officer accepts bail, he shall give a signed receipt to the offender setting forth the bail received. The peace officer shall then deliver the bail to the justice of the peace or *city* judge before whom the offender is to appear, and the justice of the peace or *city* judge shall give a receipt to the *peace* officer for the bail delivered."

Section 11. Section 95-1118, R.C.M. 1947, is amended to read as follows:

"**95-1118. Form of conditions of bail.** *(1)* If a person is admitted to bail before conviction, the conditions of bail shall be:

(a) that he will appear to answer in the court having jurisdiction on a day certain and thereafter as ordered by the court until discharged on final order of the court and *will* not depart *from* this state without leave; and

(b) any other conditions *that* the court may reasonably prescribe to assure his appearance when required.

(2) If the defendant is admitted to bail after conviction, the conditions of bail shall be that:

(a) *he* will duly prosecute his appeal;

(b) *he* will appear at such time and place as the court may direct;

(c) *he* will not depart *from* this state without leave of the court; and

(d) *if* the judgment is affirmed or the cause reversed and remanded for a new trial, he will forthwith surrender to the officer from whose custody he was bailed."

Section 12. Section 95-1119, R.C.M. 1947, is amended to read as follows:

"**95-1119. Bail on a new trial.** If the judgment of conviction is reversed and the cause remanded for a new trial, the trial court may order that the bail stand pending such trial *or* substitute, reduce, or increase bail."

Section 13. Section 95-1121, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 566 1977

"**95-1121. Guaranteed arrest bond certificates.** *(1) A* domestic or foreign surety company which has qualified to transact surety business in this state may in any year become surety in an amount not *exceeding* $100 with respect to any *guaranteed* arrest bond certificates issued in such year by an automobile club or association or by an insurance company authorized to write automobile liability insurance within this state, by filing with the commissioner of insurance an undertaking thus to become surety.

(2) The undertaking shall be in *a* form to be prescribed by the commissioner and shall state the following:

(a) the name and address of the automobile clubs, automobile *associations*, or insurance companies *which issued* the guaranteed arrest bond certificates *with respect to* which the surety company undertakes to be surety*; and*

(b) the unqualified obligation of the surety company to pay the fine or forfeiture in an amount not *exceeding* $100 of any person who, after posting a guaranteed arrest bond certificate with respect to which the surety company has undertaken to be surety, fails to make the appearance to guarantee which the guaranteed arrest bond certificate was posted.

(3) The term "guaranteed arrest bond certificate" means any printed card or other certificate *which:*

(a) is issued by an automobile club *or* association or insurance company to any of its members or insureds*; and*

(b) is signed by *the* member or insured and contains a printed statement that *the* automobile club, *automobile* association, or insurance company and a surety company or an insurance company authorized to transact both automobile liability insurance and surety business in the state of Montana*:*

(i) guarantee the appearance of the person whose signature appears on the card or certificate*;* and

(ii) will, in the event of *the* failure of *the* person to appear in court at the time of trial, pay any fine or forfeiture imposed on *the* person in an amount not *exceeding* $100."

Section 14. Section 95-1122, R.C.M. 1947, is amended to read as follows:

"**95-1122. Motor vehicle violations — certificates accepted in lieu of cash.** *A* guaranteed arrest bond certificate with respect to which a surety company has become surety or a guaranteed arrest bond certificate issued by an insurance company authorized to transact both automobile liability insurance and surety business within this state as provided in 95-1121 shall, when posted by the person whose signature appears thereon, be accepted in lieu of cash bail in an amount not *exceeding* $100 as a bail bond to guarantee the appearance of *the* person in any court, including municipal courts, in this state at such time as may be required by th[illegible]urt when *the* person *was* arrested for violation of *a* motor vehicle

HeinOnline -- 1977 Vol. I 567 1977

law of this state or ordinance of a municipality in this state (except for the offense of driving while intoxicated or for any felony) committed prior to the date of expiration shown on the guaranteed arrest bond certificate. A guaranteed arrest bond certificate posted as a bail bond in a court in this state is subject to the same forfeiture and enforcement provisions as bail bonds posted in criminal cases, and a guaranteed arrest bond certificate posted as a bail bond in a municipal court in this state is subject to the forfeiture and enforcement provisions of the chapter or ordinance of the particular municipality pertaining to bail bonds posted."

Section 15. Section 95-1406, R.C.M. 1947, is amended to read as follows:

"**95-1406. Advice and assistance to grand jury — who may be present — stenographer, transcript of testimony.** *(1)* The grand jury may at all times ask the advice of the court or the judge thereof, the attorney general, or the county attorney. Unless such advice is asked, the judge of the court shall not be present during the sessions of the grand jury.

(2) The county attorney or the attorney general may at all times appear before the grand jury for the purpose of giving information or advice relative to any matter cognizable by the grand jury and may interrogate witnesses before the grand jury whenever he thinks it necessary. When a charge against or involving the county attorney, deputy county attorney, or anyone employed by or connected with the office of the county attorney is being investigated by the grand jury, the county attorney, deputy county attorney, or all or any one or more of them shall not be allowed to be present in an official capacity before the grand jury when the charge is being investigated. They or he shall only be present while a witness and after appearing as a witness shall leave the place where the grand jury is holding session.

(3) When requested to do so by the grand jury of any county, the attorney general or county attorney may employ special counsel and investigators, who shall investigate and present the evidence acquired in such investigation to the grand jury.

(4) The grand jury or county attorney may require by subpoena the attendance of any person before the grand jury as interpreter. While his services are necessary, the interpreter may be present at the examination of witnesses before the grand jury. The compensation for the services of the interpreter constitutes a charge against the county and shall be fixed by the grand jury in an amount to be approved by the court. It shall be paid out of the county treasury on a warrant of the county auditor upon an order of the judge of the district court.

(5) (a) The grand jury may appoint a stenographer to take in shorthand the testimony of witnesses, or the testimony may be taken by a recording device, but the record so made shall include the testimony of all witnesses on that particular investigation. The shorthand notes or the recordings and transcript of the same, if any, shall be delivered to and retained by the clerk of the district court.

(b) The stenographer and any typist who transcribes the

HeinOnline -- 1977 Vol. I 568 1977

stenographer's notes or recordings shall be sworn by the foreman not to disclose any testimony or the names of any witnesses except when so ordered by the court.

(c) The stenographic reporter shall certify and file with the clerk of the district court an original transcription of his shorthand notes and a copy thereof and as many additional copies as there are defendants. The reporter shall complete *the* certification and filing within 10 days after the indictment has been found unless the court for good cause makes an order extending the time. The clerk of the district court shall deliver the original of the transcript filed with him to the county attorney immediately upon his receipt thereof, retain one copy for use only by judges in proceedings relating to the indictment, and deliver a copy of *the* transcript to each defendant or his attorney."

Section 16. Section 95-1407, R.C.M. 1947, is amended to read as follows:

"**95-1407. Subpoena of witnesses.** A subpoena requiring the attendance of a witness before the grand jury may be signed and issued by the county attorney, by the *foreman of the* grand jury, or by the judge of the district court. *The subpoena may be directed to* witnesses in the state in support of the prosecution, those witnesses whose testimony, in *the* opinion *of the issuer,* is material in an investigation before the grand jury, and such other witnesses as the grand jury may direct."

Section 17. Section 95-1408, R.C.M. 1947, is amended to read as follows:

"**95-1408. Reception of evidence.** *(1)* In the investigation of a charge, the grand jury shall receive no other evidence than that given by witnesses produced and sworn before *it or* furnished by legal documentary evidence or the deposition of a witness in the cases mentioned in 95-1802.

(2) The grand jury is not required to hear evidence for the defendant, but it shall weigh all the evidence submitted to it. *If* it has reason to believe other evidence within its reach will explain away the charge, it shall order the evidence to be produced and for that purpose may require the county attorney to issue process for witnesses.

(3) The grand jury shall find an indictment when all the evidence before it taken together, if unexplained or uncontradicted, would in its judgment warrant a conviction by a trial jury."

Section 18. Section 95-1502, R.C.M. 1947, is amended to read as follows:

"**95-1502. Commencement of prosecutions.** *(1)* All prosecutions of offenses triable in the district courts shall be by indictment or information.

(2) All other prosecutions of offenses may be by complaint."

Section 19. Section 95-1504, R.C.M. 1947, is amended to read as follows:

"**95-1504. Joinder and discharge of offenses and defendants.** *(1)*

HeinOnline -- 1977 Vol. I 569 1977

An indictment, information, *or* complaint may charge two or more different offenses connected together in their commission, different statements of the same offense, or two or more different offenses of the same class under separate counts. *If* two or more indictments, informations, *or* complaints are filed in such cases in the same court, the court may order them to be consolidated. Allegations made in one count may be incorporated by reference in another count. The prosecution is not required to elect between the different offenses or counts set forth in the indictment, information, *or* complaint, *and* the defendant may be convicted of any number of the offenses charged. *Each* offense of which the defendant is convicted must be stated in the verdict or the finding of the court.

(2) The court in which the case is triable, in the interests of justice and for good cause shown, may in its discretion order that the different offenses or counts set forth in the indictment, information, *or* complaint be tried separately or divided into two or more groups and each of *the* groups tried separately. An acquittal of one or more counts shall not be *considered* an acquittal of any other count.

(3) Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately, and all of the defendants need not be charged in each count.

(4) If it appears that a defendant or the state is prejudiced by a joinder of related prosecutions or defendants in a single charge or by joinder of separate charges or defendants for trial, the court may order separate trials, grant a severance of defendants, or provide any other relief as justice may require.

(5) When two or more persons are included in the same charge, the court may, at any time before the defendants have gone into their defense, on the application of the county attorney, direct any defendant to be discharged *so* that he may be a witness for the state.

(6) When two or more persons are included in the same indictment or information and the court is of the opinion that in regard to a particular defendant there is not sufficient evidence to put him on his defense, *the court* must order him to be discharged before the evidence is closed that he may be a witness for his codefendant."

Section 20. Section 95-1506, R.C.M. 1947, is amended to read as follows:

"**95-1506. Procedural requirements — persistent felony offenders.** *(1) If* the state seeks *treatment* of the accused as a *persistent felony offender* under *95-1507 or 95-2206.5 or both of those sections,* notice of that fact must be given in writing to the accused or his attorney before the entry of a plea of guilty by the accused or before the case is called for trial upon a plea of not guilty.

(2) The notice must conform to the following provisions:

(a) The notice must specify the prior convictions alleged to have been incurred by the accused.

HeinOnline -- 1977 Vol. I 570 1977

(b) The notice and the charges of prior convictions contained therein shall not be made public *or* in any manner be made known to the jury before the jury's verdict is returned upon the felony charge. *However,* if the defendant *testifies* in his own behalf, he *is* subject to impeachment as provided in 93-1901-11.

(3) If the accused is convicted upon the felony charge, the notice, together with proper proof of timely service, shall be filed with the court before the time fixed for *sentencing.* The court shall then fix a time for hearing with at least 3 days' notice to the accused.

(4) The hearing shall be held before the court alone. If the court finds any of the allegations of prior conviction true, the accused shall be sentenced under the provisions of *95-1507 and 95-2206.5.*"

Section 21. Section 95-1507, R.C.M. 1947, is amended to read as follows:

"**95-1507. Sentencing of persistent felony offender.** (1) A persistent felony offender is an offender who has previously *been* convicted of a felony and *who is presently being sentenced for* a second felony committed on a different occasion than the first. *An offender is considered to have been previously convicted of a felony if:*

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either the previous felony conviction or the *offender's release* on parole or otherwise from prison or other commitment imposed as a result of the previous felony conviction; and

(c) the offender has *not* been pardoned on the *ground* of innocence *and* the conviction *has not* been set aside in *a postconviction* hearing.

(2) A persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years or more than 100 years if he was 21 years of age or older at the time of the commission of the present offense."

Section 22. Section 95-1704, R.C.M. 1947, is amended to read as follows:

"**95-1704. Time of making motion.** The motion *provided for in 95-1701 and 95-1702* shall be made before the plea is entered, but the court for cause may permit it to be made within a reasonable time thereafter."

Section 23. Section 95-1706, R.C.M. 1947, is amended to read as follows:

"**95-1706. Effect of determination.** *(1)* If a motion is determined adversely to the defendant, he shall plead if he has not previously pleaded. A plea previously entered shall stand.

(2) If the court directs the action to be dismissed, the defendant must, if in custody, be discharged therefrom or, if admitted to bail, *have* his

HeinOnline -- 1977 Vol. I 571 1977

bail exonerated or money deposited instead of bail refunded to him. However, if the court grants a motion to dismiss based on a defect in the institution of the prosecution or in the indictment, information, or complaint or *if* it appears at any time before judgment that a mistake has been made in charging the proper offense, *the court* may also order that the defendant be held in custody or that his bail be continued for a specified time pending the filing of a new complaint, indictment, or information."

Section 24. Section 95-1707, R.C.M. 1947, is amended to read as follows:

"**95-1707. Transfer of trial.** If the court determines that *a* motion to dismiss based upon the grounds of lack of jurisdiction or improper place of trial is well founded, it may, instead of *ordering* dismissal, order the cause transferred to a court of competent jurisdiction or to a proper place of trial."

Section 25. Section 95-1711, R.C.M. 1947, is amended to read as follows:

"**95-1711. Effect of multiple charges and former prosecutions.** (1) (a) The term "same transaction" includes conduct consisting of:

(i) a series of acts or omissions *which are* motivated by a purpose to accomplish a criminal objective and *which are* necessary or incidental to the accomplishment of that objective; or

(ii) a series of acts or omissions *which are* motivated by a common purpose or plan and which result in the repeated commission of the same offense or affect the same person or persons or the property thereof.

(b) An offense is an "included offense" when:

(i) it is established by proof of the same or less than all the facts required to establish the commission of the offense charged;

(ii) it consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(iii) it differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest or a lesser kind of culpability suffices to establish its commission.

(2) When the same transaction may establish the commission of more than one offense, a person charged with such conduct may be prosecuted for each such offense. He may not, however, be convicted of more than one offense if:

(a) one offense is included in the other;

(b) one offense consists only of a conspiracy or other form of preparation to commit the other;

(c) inconsistent findings of fact are required to establish the commission of the offenses;

(d) the offenses differ only in that one is defined to prohibit a designated kind of conduct generally and the other to prohibit a specific instance of such conduct; or

HeinOnline -- 1977 Vol. I 572 1977

(e) the offense is defined to prohibit a continuing course of conduct and the defendant's course of conduct was interrupted, unless the law provides that the specific periods of such conduct constitute separate offenses.

(3) *If* the offenses were known to the attorney prosecuting upon sufficient evidence to justify the filing of an information or the issuance of a warrant of arrest and were consummated prior to the original charge and *if* the jurisdiction and venue of the several offenses lie in a single court, a prosecution based upon the same transaction as a former prosecution is barred by such former prosecution under the following circumstances:

(a) The former prosecution resulted in an acquittal. There is an acquittal *whenever* the prosecution *results* in a finding of not guilty by the trier of fact or in a determination that there *is* insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense than the offense charged which is subsequently set aside is an acquittal of the greater inclusive offense that was charged.

(b) The former prosecution was terminated, after a complaint had been filed on a misdemeanor charge *or* after an information had been filed or an indictment found on a felony charge, by a final order of judgment for the defendant which has not been set aside, reversed, or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(c) The former prosecution resulted in a conviction. There *has been* a conviction *whenever* the prosecution resulted in:

(i) a judgment of conviction which has not been reversed or vacated;

(ii) a verdict of guilty which has not been set aside and which is capable of supporting a judgment, so long as failure to enter judgment was for a reason other than a motion of the defendant; or

(iii) a plea of guilty accepted by the court, so long as failure to enter judgment was for a reason other than a motion of the defendant.

(d) The former prosecution was improperly terminated. Except as provided in this subsection *(d)*, there is an improper termination of a prosecution *whenever* the termination is for reasons not amounting to an acquittal and takes place after the first witness is sworn but before verdict. Termination under *either* of the following circumstances is not improper:

(i) *The* defendant consents to the termination or waives his right to object to the termination.

(ii) *The* trial court, in the exercise of its discretion, finds that the termination is necessary because:

(A) it is physically impossible to proceed with the trial in conformity with law;

(B) there is a legal defect in the proceedings which would make any judgment entered upon a verdict reversible as a matter of law;

HeinOnline -- 1977 Vol. I 573 1977

(C) prejudicial conduct in or outside the courtroom makes it impossible to proceed with the trial without manifest injustice to either the defendant or the state;

(D) the jury is unable to agree upon a verdict; or

(E) false statements of a juror on voir dire prevent a fair trial.

(4) When conduct constitutes an offense within the concurrent jurisdiction of this state and of the United States or another state or of two courts of separate, *overlapping, or* concurrent jurisdiction in this state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this state under the following circumstances:

(a) The first prosecution resulted in an acquittal or in a conviction as defined in subsection (3) and the subsequent prosecution is based on an offense arising out of the same transaction.

(b) The former prosecution was terminated, after the complaint *had* been filed on a misdemeanor charge *or* after the information *had been* filed or the indictment found *on a felony charge*, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed, or vacated; and *the* acquittal, final order, or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense *for* which the defendant is subsequently prosecuted.

(5) A prosecution is not a bar within the meaning of subsections (3) and (4) under any *one or more* of the following circumstances:

(a) *The* former prosecution was before a court which lacked jurisdiction over the defendant or the offense.

(b) *The* former prosecution was procured by the defendant without the knowledge of the proper prosecuting officer or with the purpose of avoiding the sentence which might otherwise be imposed.

(c) *The* former prosecution resulted in a judgment of conviction which was held invalid in *a postconviction* hearing."

Section 26. Section 95-1803, R.C.M. 1947, is amended to read as follows:

"**95-1803. Discovery, inspection, and notice.** In all criminal cases originally triable in district court the following rules apply:

(1) For the purpose of notice only and to prevent surprise, the prosecution shall furnish to the defendant and file with the clerk of the court at the time of arraignment a list of the witnesses the prosecution *intends to call.* The prosecution may, any time after arraignment, add to the list the names of any additional witnesses upon a showing of good cause. The list shall include the names and addresses of the witnesses. *This subsection does* not apply to rebuttal witnesses.

(2) (a) On motion of any party within a reasonable time before trial, *each party* shall produce at a reasonable time and place designated by the court all documents, papers, or things which *it* intends to introduce

HeinOnline -- 1977 Vol. I 574 1977

in evidence. *Each* party shall, in the presence of a person designated by the court, be permitted to inspect or copy any such documents, papers, or things. The order shall specify the time, place, and manner of making the inspection and of taking the copies or photographs and may prescribe such terms and conditions as are just. If the evidence relates to scientific tests or experiments, the opposing party shall, if practicable, be permitted to be present during the tests and to inspect the results thereof. Upon a sufficient showing, the court may at any time order that the discovery or inspection be denied, restricted, or deferred or make other appropriate orders.

(b) If, subsequent to compliance with an order issued pursuant to this rule and prior to or during trial, a party discovers additional material previously requested which is subject to discovery or inspection under *this* rule, he shall promptly notify the other party or his attorney or the court of the existence of the additional material. The court shall exclude any evidence not presented for inspection or copying pursuant to this rule unless good cause is shown for failure to comply. In the latter case the opposing party *is* entitled to *a* recess or a *continuance* during which it may inspect or copy the evidence in the manner provided for *in this subsection (2).*

(3) (a) For purpose of notice only and to prevent surprise, the defendant shall furnish to the prosecution and file with the clerk of the court, at the time of entering his plea of not guilty or within 10 days thereafter or at such later time as the court may for good cause permit, a statement of intention to interpose the defense of *mental disease or defect,* self-defense, or alibi.

(b) If the defendant intends to interpose any of these defenses, he shall also furnish to the prosecution and file with the clerk of the court the names and addresses of all witnesses to be called by the defense in support thereof. *Prior to trial the* defendant may, upon motion and showing of good cause, add to the list of witnesses the names of any additional witnesses. After the trial commences, no witnesses may be called by the defendant in support of these defenses unless the name *of the witness* is included on *the* list, except upon good cause shown.

(4) All matters which are privileged upon the trial are privileged against disclosure through any discovery procedure."

Section 27. Section 95-1810, R.C.M. 1947, is amended to read as follows:

"95-1810. Witness from another state summoned to testify in this state. (1) *Whenever* a person in any state which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in this state is a material witness in a prosecution pending in a court of record in this state or in a grand jury investigation which has commenced or is about to commence, a judge of *the* court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. *The* certificate *shall* be presented to a judge of a court of record in the county in which the witness is found.

HeinOnline -- 1977 Vol. I 575 1977

(2) If *the* certificate recommends that the witness be taken into immediate custody and delivered to an officer of this state to assure his attendance in this state, *it is prima facie proof of the desirability of such custody and delivery and the* judge may direct that *the* witness be brought before him *immediately. If* the judge *is* satisfied *as to* the desirability of such custody and delivery, *he* may order that *the* witness be *immediately* taken into custody and delivered to an officer of this state. *The* order *is* sufficient authority *for the* officer to take *the* witness into custody and hold him unless and until he *is* released by bail, recognizance, or order of the judge issuing the certificate.

(3) *Whenever a* witness is summoned to attend and testify in this state, he shall be tendered the sum of 10 *cents* a mile for each mile and $5 for each day that he is required to travel and attend as a witness. *If* the state wherein the witness is found has by statutory enactment required that the summoned witness be paid an amount in excess of the amount *specified in the preceding sentence, the* witness may be tendered *the* amount required by *that* state.

(4) A witness who has appeared in accordance with the provisions of the summons *may* not be required to remain within this state *for* a longer period of time than the period mentioned in the certificate unless otherwise ordered by the court.

(5) If *the* witness fails without good cause to attend and testify as directed in the summons, he shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this state."

Section 28. Section 95-1909, R.C.M. 1947, is amended to read as follows:

"**95-1909. Trial jurors.** *(1)* The clerk of court shall make available to the parties a list of prospective jurors with their addresses when *the names have been* drawn.

(2) (a) The qualifications of jurors and *exemptions from jury duty* are *prescribed* in 93-1301 through 93-1307.

(b) An exemption from service on a jury is not a cause of challenge but the privilege of the person exempted.

(3) The county attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) (a) Each party may challenge jurors for cause, and each challenge must be tried by the court.

(b) A challenge for cause may be taken for all or any of the following reasons or for any other reason which the court determines:

(i) *consanguinity* or relationship *to the defendant or* to the person *who is* alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

HeinOnline -- 1977 Vol. I 576 1977

(ii) *standing* in the relation of guardian and ward, attorney and client, master and servant, landlord and tenant, *or* debtor and creditor *with*, or being a member of the family *or in the employment* of, the defendant or the person *who is* alleged to be injured by the offense charged or on whose complaint the prosecution was instituted;

(iii) *being* a party adverse to the defendant in a civil action or having complained against or been accused by him in a criminal prosecution;

(iv) *having* served on the grand jury which found the indictment or on a coroner's jury which inquired into the death of a person whose death is the subject of the indictment or information;

(v) *having* served on a trial jury which tried another person for the offense charged;

(vi) *having* been *a member* of a jury formerly sworn to try the same charge, *the* verdict *of which* was set aside or which was discharged without verdict after the case was submitted to it;

(vii) *having* served as a juror in a civil action brought against the defendant for the act charged as an offense;

(viii) *if* the offense charged *is* punishable with death, *having* such conscientious opinions as would preclude his finding the defendant guilty, in which case he must neither be permitted nor compelled to serve as a juror;

(ix) *having* a belief that the punishment fixed by law is too severe for the offense charged;

(x) *having* a state of mind in reference to the case or to either of the parties which *would* prevent him from acting with entire impartiality and without prejudice to the substantial rights of either party.

(5) All challenges must be interposed before the jury is sworn, unless the cause of challenge *is* discovered after the jury is sworn and before the introduction of any evidence, *in which case* the court, in its discretion, may allow the challenge to be interposed.

(6) Each defendant shall be allowed eight peremptory challenges in capital cases, six in all other cases tried in the district court before a *12-person* jury. *There* may not be additional challenges for separate counts charged in the indictment or information. If the indictment or information charges a capital offense as well as lesser offenses in separate counts, the maximum number of challenges *is* eight. The state shall be allowed the same number of peremptory challenges as all of the defendants. In a criminal case tried in the district court before a *six-person* jury, the state and all the defendants shall be allowed three peremptory challenges each. *When the parties in a criminal case in the district court agree upon a jury consisting of a number of persons other than 6 or 12, they shall also agree in writing upon the number of peremptory challenges to be allowed.*

(7) After the jury is impaneled and sworn, the court may direct *that* one or more alternate jurors *be selected* in the same manner as principal jurors. *The alternate jurors* shall take the same oath as the principal

HeinOnline -- 1977 Vol. I 577 1977

jurors. Each party shall have one additional peremptory challenge for each alternate juror. Alternate jurors in the order in which they are called shall replace jurors who, prior to the time the jury arrives at its *verdict*, become unable or disqualified to perform their duties. An alternate juror *may* not join the jury in its deliberation unless called upon by the court to replace a member of the jury. His conduct during the period in which the jury is considering its verdict shall be regulated by instructions of the trial court. An alternate juror who does not replace a principal juror shall be discharged after the jury arrives at its verdict.

(8) The jury shall return a general verdict to each offense charged.

(9) When at the close of the state's evidence or at the close of all the evidence the evidence is insufficient to support a finding or verdict of guilty, the court may on its own motion or on the motion of the defendant dismiss the action and discharge the defendant. However, the court may allow the case to be reopened for good cause shown."

Section 29. Section 95-1915, R.C.M. 1947, is amended to read as follows:

"95-1915. Verdict. *(1)* The verdict *must* be unanimous in all criminal actions. *The* verdict shall be signed by the foreman and returned by the jury to the judge in open court.

(2) If there are two or more defendants, the jury, at any time during its deliberations, may return a verdict or verdicts with respect to a defendant or defendants as to whom it has agreed. *If* the jury cannot agree with respect to all, the defendant or defendants as to whom it does not agree may be tried again.

(3) The defendant may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein if the attempt is an offense.

(4) When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not the required concurrence, the jury may be directed to retire for further deliberations or may be discharged."

Section 30. Section 95-2004, R.C.M. 1947, is amended to read as follows:

"95-2004. Trial in justices' and city courts. *(1)* Method of *trial*:

(a) The defendant is entitled to a jury of six qualified persons, but *the parties may agree to a number less that six.*

(b) A trial by jury may be waived by the consent of both parties expressed in open court and entered in the docket.

(c) Questions of law shall be decided by the court and questions of fact by the jury except *that*, when a jury trial is waived, the court shall determine both questions of law and *questions* of fact.

(2) Plea of *guilty*. Before or during trial, a plea of guilty may be accepted when:

HeinOnline -- 1977 Vol. I 578 1977

(a) *the* defendant enters a plea of guilty in open court; and

(b) *the* court has informed the defendant of the consequences of his plea and of the maximum penalty provided by law which may be imposed upon acceptance of such plea.

(3) Presence of *defendant.* The trial may be had in the absence of the defendant but, if his presence is necessary for any purpose, the court may require the personal attendance of the defendant at the trial.

(4) Time to *prepare* for *trial.* After *the* plea the defendant *is* entitled to a reasonable time to prepare for trial."

Section 31. Section 95-2005, R.C.M. 1947, is amended to read as follows:

"**95-2005. Formation of trial jury.** *(1) At the time of preparing the district court jury list, the* county jury commission shall prepare a jury list for each *justice's* and *city* court within the county. Each list shall consist of residents of the appropriate county, city, or town. *The lists* shall be selected in any reasonable manner which *ensures* fairness, and *each* shall include a number of names sufficient to meet the annual jury requirements of the respective court. Additional lists may be prepared if required. The *lists* shall be filed in the office of the clerk of the district court. *The* appropriate list shall be posted in a public place in each county, city, or town, and such list shall comprise the trial jury list for the ensuing year for such county, city, or town.

(2) Trial jurors shall be summoned from the jury list by notifying each *one* orally that he is summoned and of the time and place at which his attendance is required.

(3) The prosecuting attorney and the defendant or his attorney shall conduct the examination of prospective jurors. The court may conduct an additional examination. The court may limit the examination by the defendant, his attorney, or the prosecuting attorney if the court believes such examination to be improper.

(4) Each party may challenge jurors for cause, and each challenge must be tried by the court. The challenge may be for any cause enumerated in 95-1909*(4)(b).* Each defendant shall be allowed three peremptory challenges, and the state shall be allowed the same number of peremptory challenges as all of the defendants."

Section 32. Section 95-2006, R.C.M. 1947, is amended to read as follows:

"**95-2006. Verdict.** *(1)* The verdict of the jury must in all cases be general. It shall be returned by the jury to the judge in open court, who must enter *it* or cause it to be entered in the minutes. The verdict of the jury must be unanimous.

(2) When several defendants are tried together *and* the jury cannot agree upon a verdict as to all, *the jury* may render a verdict as to those in regard to whom *it does* agree. *A* judgment must be entered accordingly *on the verdict,* and the case as to the rest may be tried by another jury.

HeinOnline -- 1977 Vol. I 579 1977

(3) When a verdict is returned, the jury shall be polled at the request of any party or upon the court's own motion. If upon the poll there is not a unanimous concurrence, the jury may be directed to retire for further deliberations or may be discharged.

(4) The jury cannot be discharged after the cause is submitted to them until they have agreed upon and rendered their verdict, unless for good cause the court sooner discharges them."

Section 33. Section 95-2007, R.C.M. 1947, is amended to read as follows:

"**95-2007. Sentence and judgment.** *(1)* If a judgment of acquittal is rendered, the defendant must be immediately discharged.

(2) After a plea or verdict of guilty or after a judgment against the defendant, the court must designate a time for sentencing, which must be within a reasonable time after the *rendering of the* verdict or judgment. The sentence must be entered in the minutes of the court as soon as it is imposed.

(3) If the defendant pleads guilty or is convicted either by the court or by a jury, the court must impose a sentence *as provided in 95-2206, 95-2206.1 through 95-2206.4, and 95-2207.* If alcohol or other drugs are involved, the court may impose such rehabilitative measures as it *considers* advisable under the circumstances.

(4) The determination and imposition of sentence *are* the exclusive duty of the court."

Section 34. Section 95-2009, R.C.M. 1947, is amended to read as follows:

"**95-2009. Appeal.** *(1)* All cases on appeal from justices' or *city* courts must be tried anew in the district court and may be tried before a jury of six *selected as provided in Title 93, chapter 50.*

(2) The defendant may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment.

(3) Within 30 days, the entire record of the *justice's* or *city* court proceedings shall be transferred to the district court or the appeal shall be dismissed. It *is* the duty of the defendant to perfect the appeal."

Section 35. Section 95-2101, R.C.M. 1947, is amended to read as follows:

"**95-2101. New trial.** *(1)* A new trial is a *reexamination* of the issue in the same court before another jury after a verdict or finding has been rendered. *The* granting of a new trial places the parties in the same position as if there had been no trial.

(2) (a) Following a verdict or finding of guilty, the court may grant the defendant a new trial if required in the interest of justice.

(b) The motion for a new trial shall be in writing and *shall specify the grounds therefor. It* shall be filed by the defendant within 30 days

HeinOnline -- 1977 Vol. I 580 1977

following a verdict or finding of guilty. Reasonable notice of the motion shall be served *on* the state.

(c) On hearing the motion for a new trial, if justified by law and the weight of the evidence, the court may:

(i) deny the motion;

(ii) grant a new trial; or

(iii) modify or change the verdict or finding by finding the defendant guilty of a lesser included crime or finding the defendant not guilty."

Section 36. Section 95-2206, R.C.M. 1947, is amended to read as follows:

"95-2206. Sentence. *(1)* Whenever *a* person has been found guilty of *an* offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence for a period not *exceeding* 1 year for any misdemeanor *or* for a period not *exceeding* 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not *exceeding* 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions *considered* necessary for rehabilitation or for the protection of society; *or*

(vi) any combination of the above;

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

(i) jail base release;

(ii) jail time not *exceeding* 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions *considered* necessary for rehabilitation or for the protection of society;

(vi) any combination of the above;

(c) impose a fine as provided by law for the offense;

(d) commit the defendant to a correctional institution with or without *a* fine *as provided* by law for the offense;

HeinOnline -- 1977 Vol. I 581 1977

(e) impose any combination of subsections *(1)(b), (1)(c), and (1)(d).*

(2) If any restrictions or conditions imposed under subsection (1)(a) or (1)(b) are violated, any elapsed time, except jail time, shall not be a credit against the sentence, unless the court orders otherwise.

(3) (a) The district court may also impose any of the following restrictions or conditions on the sentence *provided for in subsection (1)* which it *considers* necessary to obtain the *objectives* of rehabilitation and the protection of society:

(i) prohibit the defendant the right to hold public office;

(ii) prohibit the defendant the right to own or carry a dangerous weapon;

(iii) prohibit freedom of association;

(iv) prohibit freedom of movement;

(v) any other limitation reasonably related to the objectives of rehabilitation *and* the protection of society.

(b) The judge in *a justice's, city, or municipal* court *does* not have the authority to restrict an individual's rights as enumerated in subsection *(3)(a).*

(4) A judge, *magistrate, or justice of the peace* who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under this section or his successor is authorized, during the period of *the* suspended sentence or deferred imposition of sentence, *in his discretion,* to revoke *the* suspension or impose sentence and order *the* person committed. *He* may *also,* in his discretion, order the prisoner placed under the jurisdiction of the board of pardons as provided by law or retain such jurisdiction with *his* court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing."

Section 37. Section 95-2206.1, R.C.M. 1947, is amended to read as follows:

"**95-2206.1. Sentence to death.** *Whenever* a person *has been found guilty of an offense upon a verdict or plea of guilty, the court may, if the* offense *is* punishable by death or imprisonment, sentence the offender to death or imprisonment."

Section 38. Section 95-2206.5, R.C.M. 1947, is amended to read as follows:

"**95-2206.5. Designation of persistent felony offender for purposes of parole eligibility.** (1) *The* sentencing court shall designate *an* offender a persistent felony offender for purposes of eligibility for parole under 95-3214 *if the offender:*

(a) *is defined as a persistent felony offender in 95-1507(1); and*

(b) was 18 years of age *or older* at the time of the commission of the present offense.

HeinOnline -- 1977 Vol. I 582 1977

(2) A judicial determination *that an offender is a* persistent felony offender under this section may be made only when the conviction for the present offense occurs after July 1, 1975."

Section 39. Section 95-2224, R.C.M. 1947, is amended to read as follows:

"**95-2224. Prisoner not agent or involuntary servant.** No prisoner in the community under the provisions of this act *may* be *considered* to be an agent or involuntary servant of the department or of the supervising agency while released from confinement pursuant to the terms of the furlough program. Abuse of *authority over a prisoner is* official misconduct *punishable as provided in* 94-7-401."

Section 40. Section 95-2229, R.C.M. 1947, is amended to read as follows:

"**95-2229. Disposition of traffic fines collected from juveniles.** All fines collected by the district courts from children under 18 years of age for unlawful operation of motor vehicles *as the result of* traffic summonses issued by peace officers of cities *or* counties or by highway patrolmen, together with that portion of the fines which is specified in 75-7903, shall be retained by the county treasurer of the county in which the offense occurred and at the end of each month distributed as follows:

(1) Fines collected as the result of summonses issued by city *peace* officers shall be distributed to the city in which the *peace* officer is employed and credited to the city general fund.

(2) Fines collected as the result of summonses issued by county peace officers shall be retained by the county treasurer and credited to the county road fund.

(3) Fines collected as the result of summonses issued by state highway patrolmen shall be paid to the state treasurer of Montana, *who shall credit them* to the general fund of the state.

(4) That portion of the fines *which is specified* in 75-7903 shall be paid to the state treasurer of Montana, *who shall credit it* to the automobile driver education account in the earmarked revenue fund."

Section 41. Section 95-2403, R.C.M. 1947, is amended to read as follows:

"**95-2403. Scope of appeal by state.** *(1)* Except as *otherwise specifically* authorized, the state may not appeal in a criminal case.

(2) The state may appeal from any court order or judgment the substantive effect of which results in:

(a) dismissing a case;

(b) modifying or changing the verdict as provided in 95-2101*(2)(c)(iii)*;

(c) granting a new trial;

(d) quashing an arrest or search warrant;

HeinOnline -- 1977 Vol. I 583 1977

(e) suppressing evidence;

(f) suppressing a confession or admission; or

(g) granting or denying change of venue."

Section 42. Section 95-2426, R.C.M. 1947, is amended to read as follows:

"**95-2426. Action reviewing court may take.** On appeal the reviewing court may:

(1) *reverse,* affirm, or modify the judgment or order from which the appeal is taken;

(2) *set* aside, affirm, or modify any or all of the proceedings subsequent to or dependent upon the judgment or order from which the appeal is taken;

(3) *reduce* the offense of which the appellant was convicted *to a lesser included offense;*

(4) *reduce* the punishment imposed by the trial court; or

(5) *order* a new trial if justice so requires."

Section 43. Section 95-2601, R.C.M. 1947, is amended to read as follows:

"**95-2601. Circumstances in which validity of sentence may be challenged.** *A* person adjudged guilty of an offense in a court of record who has no adequate remedy of appeal and who claims *that* sentence was imposed in violation of the constitution or the laws of this state or the *constitution* of the United States, that the court was without jurisdiction to impose *the* sentence, or that *the* sentence was in excess of the maximum authorized by law or is otherwise subject to collateral attack upon any ground of alleged error available under *a* writ of habeas corpus, writ of coram nobis, or other *common law* or statutory remedy may *petition* the court which imposed the sentence, the supreme court, or any justice of the supreme court to vacate, set aside, or correct the sentence."

Section 44. Section 95-2604, R.C.M. 1947, is amended to read as follows:

"**95-2604. When petition may be filed.** A *petition* for such relief may be *filed* at any time after conviction."

Section 45. Section 95-2605, R.C.M. 1947, is amended to read as follows:

"**95-2605. Proceedings on the petition.** *(1)* Unless the *petition* and the files and records of the case conclusively show that the *petitioner* is entitled to no relief, the court shall cause notice thereof to be served upon the county attorney in the county in which the conviction took place, grant a prompt hearing thereon, determine the issue, and make findings of fact and conclusions with respect thereto.

(2) The court may receive proof by affidavits, depositions, oral testi-

HeinOnline -- 1977 Vol. I 584 1977

mony, or other evidence. In its discretion the court may order the petitioner brought before the court for the hearing.

(3) If the court finds in favor of the petitioner, it shall enter an appropriate order with respect to the judgment or sentence in the former proceedings and such supplementary orders as to reassignment, retrial, custody, bail, or discharge as may be necessary and proper. If the court finds for the state, the petitioner shall be returned to the custody of the person to whom the writ was directed."

Section 46. Section 95-2606, R.C.M. 1947, is amended to read as follows:

"**95-2606. Record must be kept.** A court which entertains a *petition* pursuant to this chapter must keep a record of the proceedings and enter its findings and conclusions."

Section 47. Section 95-2608, R.C.M. 1947, is amended to read as follows:

"**95-2608. Review.** Either the petitioner or the state may appeal to the supreme court of Montana from an order entered on the *petition.* The appeal *must* be taken within 6 months from the entry of the order."

Section 48. Section 95-2902, R.C.M. 1947, is amended to read as follows:

"**95-2902. Reasonable doubt as to which offense convicts only of least offense.** When it appears *beyond a reasonable doubt* that the defendant has committed *an* offense *but* there is reasonable doubt *as to whether* he is guilty *of a given offense or one or more lesser included offenses,* he *may only* be convicted of the *greatest included offense about which there is no reasonable doubt.*"

Section 49. Section 95-3004, R.C.M. 1947, is amended to read as follows:

"**95-3004. Burden of the state in homicide trial.** *(1)* In a homicide trial, before an extrajudicial confession may be admitted into evidence, the state must introduce independent evidence tending to establish the death and *the fact* that the death was caused by a criminal agency.

(a) In a deliberate homicide, knowledge or purpose may be inferred from the fact that the accused committed a homicide and no circumstances *of* mitigation, excuse, or justification appear."

Section 50. Section 95-3011, R.C.M. 1947, is amended to read as follows:

"**95-3011. Competency of spouses.** Except with the consent of both or in cases of criminal violence by *one upon* the other, abandonment or neglect of children by either party, or abandonment or neglect of *one* by the *other,* neither *spouse* is a competent witness for or against the other in a criminal action or proceeding to which one or both are parties."

Section 51. Section 95-3012, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 585 1977

"95-3012. **Testimony of person legally accountable.** A conviction cannot be had on the testimony of one responsible or legally accountable for the same offense, as defined in 94-2-106, unless *the testimony* is corroborated by other evidence which in itself and without the aid of the testimony of the one responsible or legally accountable for the same offense tends to connect the defendant with the commission of the offense. *The* corroboration is not sufficient *if* it merely shows the commission of the offense or the circumstances thereof."

Section 52. Section 95-3110, R.C.M. 1947, is amended to read as follows:

"95-3110. **Rights of accused persons — habeas corpus.** *(1)* No person arrested upon such warrant *may* be delivered over to the agent whom the executive authority demanding him *has* appointed to receive him unless he *is* first taken *without delay* before a judge of a court of record in this state, who shall inform him of the demand made for his surrender and of the crime with which he is charged and *that* he has the right to demand and procure legal counsel.

(2) If the prisoner or his counsel *states* that he or they desire to test the legality of his arrest, the judge of *the* court of record shall fix a reasonable time to be allowed him within which to apply for a writ of habeas corpus. When *the* writ is applied for, notice thereof and of the time and place of hearing thereon shall be given to the prosecuting officer of the county in which the arrest *was* made and in which the accused is in custody and to the agent of the demanding state."

Section 53. Section 95-3113, R.C.M. 1947, is amended to read as follows:

"95-3113. **Arrest of accused before making of requisition.** *(1) A judge or magistrate of this state shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named therein wherever the person may be found in this state and to bring the person before the same or any other judge, magistrate, or court who or which may be available in or convenient of access to the place where the arrest is made to answer the charge or complaint and affidavit whenever:*

(a) a person within this state *is* charged on the oath of *a* credible person before *the* judge or magistrate with the commission of *a* crime in *another* state and, except in cases arising under 95-3106, with having fled from justice or with having been convicted of a crime in that state and having escaped from confinement or having broken the terms of his bail, probation, or parole; or

(b) a complaint *is* made before *the* judge or magistrate setting forth on the affidavit of *a* credible person in another state that a crime has been committed in *the* other state and that the accused *is believed to be in this state and* has been charged in *the other* state with:

(i) the commission of the crime and, except in cases arising under 95-3106, *having* fled from justice; or

(ii) having been convicted of a crime in that state and having escaped from bail, probation, or parole.

HeinOnline -- 1977 Vol. I 586 1977

(2) A certified copy of the sworn charge or complaint *and* affidavit upon which the warrant is issued shall be attached to the warrant."

Section 54. Section 95-3117, R.C.M. 1947, is amended to read as follows:

"**95-3117. Extension of time of commitment adjournment.** If the accused is not arrested under *the* warrant of the governor by the expiration of the time specified in the warrant, bond, or undertaking, a judge or magistrate may discharge him or may recommit him for a further period of 60 days or a supreme court justice or *district court* judge may again take bail for his appearance and surrender, as provided in 95-3116, *for* a period not to exceed 60 days after the date of *the* new bond or undertaking."

Section 55. Section 95-3120, R.C.M. 1947, is amended to read as follows:

"**95-3120. Guilt or innocence of accused, when inquired into.** The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the governor or in any proceeding after the demand for extradition provided *for in 95-3103 has* been presented to the governor, except as it may be involved in identifying the person held as the person charged with the crime."

Section 56. Section 95-3123, R.C.M. 1947, is amended to read as follows:

"**95-3123. Application for issuance of requisition.** *(1)* When the return to this state of a person charged with *a* crime in this state is required, the prosecuting attorney shall present to the governor his written application for a requisition for the return of the person charged. *The application shall state the name of* the person charged, the crime charged against him, the approximate time, place, and circumstances of its commission, *and* the state in which he is believed to be, including the location of the accused therein at the time the application is made. *It shall certify* that in the opinion of the prosecuting attorney the ends of justice require the arrest and return of the accused to this state for trial and that the proceeding is not *being* instituted to enforce a private claim.

(2) When the return to this state is required of a person who has been convicted of a crime in this state and has escaped from confinement or broken the terms of his bail, probation, or parole, the prosecuting attorney of the county in which the offense was committed, the parole board, or the warden of the institution or sheriff of the county from which the escape was made shall present to the governor a written application for a requisition for the return of *the* person. *The* application shall *state* the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation, or parole, *and* the state in which he is believed to be, including the location of the person therein at the time *the* application is made.

(3) The application shall be verified by affidavit, executed in duplicate, and accompanied by two certified copies of the:

HeinOnline -- 1977 Vol. I 587 1977

(a) indictment returned;

(b) information and affidavit filed;

(c) complaint made to the judge or magistrate stating the offense with which the accused is charged;

(d) judgment of conviction; or

(e) sentence.

(4) The prosecuting officer, parole board, warden, or sheriff may also attach such further affidavits and other documents in duplicate as he considers proper to be submitted with the application.

(5) One copy of the application, with the action of the government indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information and affidavits, judgment of conviction, or sentence shall be filed in the office of the secretary of state to remain of record in that office. The other copies of all papers shall be forwarded with the governor's requisition."

Section 57. Section 95-3125, R.C.M. 1947, is amended to read as follows:

"**95-3125. Restrictions on compensation for assisting return of fugitive.** No compensation, fee, or reward of any kind may be paid to or received by a public officer of this state or other person for a service rendered in procuring from the governor the demand mentioned in 95-3124, for the surrender of the fugitive, or for conveying him to this state or detaining him therein, except as provided in *95-3124 and 95-3124.1.*"

Section 58. Section 95-3129, R.C.M. 1947, is amended to read as follows:

"**95-3129. Nonwaiver by this state.** Nothing contained in this act may be considered a waiver by this state of its right, power, or privilege to try the demanded person for a crime committed within this state or of its right, power, or privilege to regain custody of the person by extradition proceedings or otherwise for the purpose of trial, sentence, or punishment for a crime committed within this state; nor may any proceedings had under this act which result in or fail to result in extradition be considered in any way a waiver by this state of any of its rights, privileges, or jurisdiction."

Section 59. Section 95-3206, R.C.M. 1947, is amended to read as follows:

"**95-3206. Orders, records, report — reviewability, confidentiality.** (1) Decisions of the board shall be by majority vote. The orders of the board are not reviewable except as to compliance with the terms of this act.

(2) The department shall keep a record of the board's acts and decisions available to the public. However, all social records, including the presentence report, the preparole report, and the supervision history

HeinOnline -- 1977 Vol. I 588 1977

obtained in the discharge of official duty by the department, shall be confidential and shall not be disclosed directly or indirectly to anyone other than the members of the board or a judge. The board or a court may in its discretion, when the best *interests* or welfare of a particular defendant or prisoner makes such action desirable or helpful, permit the inspection of the report or any parts thereof by the prisoner or his attorney."

Section 60. Section 95-3214, R.C.M. 1947, is amended to read as follows:

"**95-3214. Parole authority and procedure.** (1) *Subject to the following restrictions, the* board shall release on parole by appropriate order any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community:

(a) *No* convict serving a time sentence *may* be paroled until he has served at least one-quarter of his full term, less *the* good time *allowance* provided *for* in 80-1905, *or 12 ½ years upon his term, whichever is less. No* convict designated a persistent felony offender under 95-2206.5 may be paroled until he has served at least one-third of his full term, less *the* good time *allowance* provided *for* in 80-1905, *or 17 ½ years upon his term, whichever is less.*

(b) No convict serving a life sentence *may* be paroled until he has served 30 years, less the good time *allowance* provided *for* in 80-1905.

(2) A parole shall be ordered only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen.

(3) (a) Within 2 months after his admission and at such intervals thereafter as it determines, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of *any* physical and mental examinations which have been made.

(b) Before ordering the parole of any prisoner the board shall interview him.

(4) (a) Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be subject to the orders of the board.

(b) When an order for parole is issued, it shall recite the conditions thereof.

(5) The board may adopt *any* other rules it considers proper or necessary with respect to the eligibility of prisoners for parole, the conduct of parole hearings, *and* conditions to be imposed upon parolees."

Section 61. Section 95-3215, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 589 1977

"**95-3215. Duration of parole.** A prisoner on parole who has served one-fourth of his term or terms, less *the* good time *allowance*, or a persistent felony offender *on parole* who has served one-third of his term or terms, less *the* good time *allowance*, is considered released on parole until the expiration of the maximum term or terms for which he was sentenced, less *the* good time *allowance* provided *for* in 80-1905."

Section 62. Section 95-3306, R.C.M. 1947, is amended to read as follows:

"**95-3306. Supervision on parole.** (1) The department shall retain custody of all persons placed on parole and shall supervise the persons during their parole period in accord with the conditions set by the board.

(2) The department shall assign personnel to assist persons eligible for parole in preparing a parole plan. Department personnel shall make a report of their efforts and findings to the board prior to its consideration of the case of the eligible person.

(3) A copy of the conditions of his parole shall be signed by the parolee and given to him and to his probation and parole officer, who shall report on his progress under the rules of the board.

(4) The probation and parole officer shall regularly advise and consult with the parolee, assist him in adjusting to community life, *and* inform him of the restoration of his rights on successful completion of sentence.

(5) The probation and parole officer shall keep such records as the board or department may require. All records shall be entered in the master file of the individual."

Section 63. Section 95-3308, R.C.M. 1947, is amended to read as follows:

"**95-3308. Return of parole violator.** (1) *(a)* At any time during release on parole or conditional release, the department may issue a warrant for the arrest of the released prisoner for *violation* of any of the conditions of release or a notice to appear to answer to a charge of violation. *The* notice shall be served personally upon the prisoner. The warrant shall authorize all officers named therein to return *the* prisoner to the actual custody of the penal institution from which he was released or to any other suitable detention facility designated by the department.

(b) Any probation and parole officer may arrest *the* prisoner without a warrant or may deputize any other officer with power to arrest to do so by giving him a written statement setting forth that the prisoner has, in the judgment of *the* probation and parole officer, violated the conditions of his release. *The* written statement delivered with the prisoner by the arresting officer to the official in charge of the institution from which the prisoner was released or other place of detention shall be sufficient warrant for the detention of the parolee or conditional releasee. The probation and parole officer, after making an arrest, shall present to the detaining authorities a similar statement of the circumstances of violation.

HeinOnline -- 1977 Vol. I 590 1977

(c) Pending hearing, as provided *in subsections (2) and (3)*, upon any charge of violation the prisoner may, if circumstances warrant, be incarcerated in *the* institution.

(2) *(a)* After the arrest of *the* prisoner, a hearing shall be held within a reasonable time, unless *the* hearing is waived by the parolee, to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee has committed acts which would constitute a violation of parole conditions. An independent officer, who need not be a judicial officer, must preside over *the* hearing. *The* hearing must be conducted at or reasonably near the place of the alleged parole violation or arrest and as promptly as convenient after arrest. The parolee must be given notice of *the* hearing and must be allowed to appear and speak in his own behalf and introduce relevant information to the hearings officer.

(b) The hearings officer shall make a summary of what transpires at the hearing in terms of the responses *and position* of the parolee and the substance of the documents or evidence given in support of parole revocation. Based on the information given to him, the hearings officer *shall* determine whether there is probable cause to hold the parolee for the final decision of the board of pardons as *provided* in *subsection (3).*

(3) (a) If the hearings officer determines that there is probable cause to believe that the prisoner has violated a condition of his parole, the probation and parole officer shall immediately notify the board and shall submit in writing a report showing in what manner the prisoner has violated the conditions of release. *This* report shall be accompanied by the findings of the hearings officer.

(b) Thereupon, the board shall cause the prisoner to be promptly brought before it for a hearing on the violation charged under such rules as the board may adopt. If the violation is established, the board may continue or revoke the parole or conditional release or enter such other order as it may see fit.

(c) If it *appears* that he has violated the provisions of his release, *the board shall determine* whether the time from the issuing of *the* warrant to the date of his arrest or any part of it *will* be counted as time served under the sentence.

(4) A prisoner for whose return a warrant has been issued shall, after the issuance of the warrant, if it is found that the warrant cannot be served, be considered a fugitive or to have fled from justice."

Section 64. **Repealer.** Sections 16-2615, 16-3403, 95-103 through 95-108, 95-2211, and 95-3233, R.C.M. 1947, are repealed.

Approved March 30, 1977.

CHAPTER NO. 185

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO CREDIT TRANSACTIONS AND RELATIONSHIPS; AMEND-

HeinOnline -- 1977 Vol. I 591 1977

ING 18-318, 18-403, 18-510, 18-515, 29-208, 30-106, 30-208, 30-407, 30-504, 30-505, 47-124, 66-1601, 66-1607, 74-604, 74-606, AND 74-611, R.C.M. 1947; AND REPEALING 29-207, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 18-318, R.C.M. 1947, is amended to read as follows:

"**18-318. Assignment of real property.** *When* an assignment for the benefit of creditors embraces real property, it is subject to the provisions of 73-201 *through* 73-205, as well as to those of this chapter."

Section 2. Section 18-403, R.C.M. 1947, is amended to read as follows:

"**18-403. Exemptions.** *Section 18-402* shall not apply to:

(1) *those* situations involving debt adjusting incurred incidentally in the lawful practice of law in this state;

(2) *banks* and fiduciaries duly authorized and admitted to transact business in this state and performing credit and financial adjusting service in the regular course of their principal business;

(3) *title* insurers and abstract companies, while doing an escrow business;

(4) *judicial* officers or others acting under court orders;

(5) *nonprofit* or charitable corporations or associations engaged in debt adjusting;

(6) *those* situations involving debt adjusting incurred incidentally in connection with the lawful practice *of* a certified public accountant;

(7) *bona* fide trade or mercantile associations in the course of arranging adjustment of debts with business establishments;

(8) *employers* for their employees;

(9) *any* person (other than a collection agency) whose maximum fees or charges for all services in adjusting the debtor's debts are 10% of the amounts as paid by the debtor;

(10) *any* person who, at the request of a debtor, arranges for or makes a loan to the debtor, and who, at the authorization of the debtor, acts as an adjuster of the debtor's debts in the disbursement of the proceeds of the loan without compensation for the services rendered in adjusting the debts."

Section 3. Section 18-510, R.C.M. 1947, is amended to read as follows:

"**18-510. Disclosures to consumers.** (1) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(a) the nature and substance of all information (except medical information) in its files on the consumer at the time of the request; and

(b) the sources of the information.

HeinOnline -- 1977 Vol. I 592 1977

(2) The requirements of subsection (1) respecting the disclosure of sources of information and the recipients of consumer reports furnished prior to *July 1, 1975, do not apply to existing consumer reporting agencies* except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date."

Section 4. Section 18-515, R.C.M. 1947, is amended to read as follows:

"**18-515. Requirements on users of consumer reports.** (1) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within 60 days after *the consumer learned* of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(3) No person may be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (1) and (2)."

Section 5. Section 29-208, R.C.M. 1947, is amended to read as follows:

"**29-208. Certain transfers presumed fraudulent.** Every transfer of personal property, other than a thing in action, and every lien thereon, other than a mortgage, when allowed by law, made by a person having at the time the possession or control of the property, not accompanied by an immediate delivery and followed by an actual and continued change of possession of the things transferred *is conclusively presumed* to be fraudulent and therefore void against:

(1) those who are his creditors while he remains in possession;

(2) the successors in interest of such creditors;

(3) any persons on whom his estate devolves in trust for the benefit of others than himself; and

(4) purchasers or encumbrancers in good faith subsequent to the transfer."

HeinOnline -- 1977 Vol. I 593 1977

Section 6. Section 30-106, R.C.M. 1947, is amended to read as follows:

"**30-106. Acceptance of guaranty.** A mere offer *of* guaranty is not binding until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance."

Section 7. Section 30-208, R.C.M. 1947, is amended to read as follows:

"**30-208. What dealings with debtor exonerate guarantor.** A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor without the consent of the guarantor the original obligation of the principal is altered in any respect or the remedies or rights of the creditor against the principal in respect thereto *are* in *any way* impaired or suspended."

Section 8. Section 30-407, R.C.M. 1947, is amended to read as follows:

"**30-407. Surety discharged by certain acts of the creditor.** A surety is exonerated:

(1) in like manner with a guarantor;

(2) to the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of the surety or inconsistent with his rights or which lessens his security; or

(3) to the extent to which he is prejudiced by an omission of the creditor, *when required by the surety,* to do anything which it is *the creditor's* duty to do."

Section 9. Section 30-504, R.C.M. 1947, is amended to read as follows:

"**30-504. Principal bound to reimburse surety.** If a surety satisfies the principal obligation or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what *the surety* has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by the next section."

Section 10. Section 30-505, R.C.M. 1947, is amended to read as follows:

"**30-505. Surety's right of subrogation — contribution from cosureties.** A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what *the surety* has expended and also to require all his cosureties to contribute thereto, without regard to the order of time in which they became such."

Section 11. Section 47-124, R.C.M. 1947, is amended to read as follows:

"**47-124. Legal interest.** *(1)* Except as otherwise provided by the Uniform Commercial Code, *unless* there is an express contract in writing fixing a different rate or a law or ordinance or resolution of a public body fixing a different rate on its obligations, interest is payable on all moneys at the rate of 6% *a year* after they become due on:

HeinOnline -- 1977 Vol. I 594 1977

(a) any instrument of writing, except a judgment;

(b) an account stated;

(c) moneys lent or due on any settlement of accounts from the date on which the balance is ascertained; and

(d) moneys received *for* the use of another and detained from him.

(2) In the computation of interest for a period of less than 1 year, 365 days constitute a year."

Section 12. Section 66-1601, R.C.M. 1947, is amended to read as follows:

"**66-1601. Interest pawnbrokers may receive.** No person may carry on the business of pawnbroker or junk dealer by receiving goods pawned or in pledge for loans at any rate of interest above *10% a year* without first obtaining a license. *A* pawnbroker or junk dealer *or* his employees or agents *may not charge more than 3% a month* for interest, commission, discount, storage, *and* caring for property pledged."

Section 13. Section 66-1607, R.C.M. 1947, is amended to read as follows:

"**66-1607. Violation as misdemeanor.** *A* violation of any of the provisions of this chapter *is* a misdemeanor."

Section 14. Section 74-604, R.C.M. 1947, is amended to read as follows:

"**74-604. Denial, suspension, or revocation of licenses.** *(1)* Renewal of a license originally granted under 74-603 may be denied or a license may be suspended or revoked by the department on the following grounds:

(a) *material* misstatement of fact in the application for license;

(b) willful failure to comply with any provision of this act relating to retail installment contracts;

(c) defrauding any retail buyer to the buyer's damage;

(d) fraudulent misrepresentation, circumvention, or concealment by the licensee through subterfuge or device of any of the material particulars or the nature thereof required to be stated or furnished to the retail buyer under this act.

(2) If a licensee is a partnership, association, or corporation, it is sufficient cause for the suspension or revocation of a license that any officer, director, or trustee of a licensed association or corporation or any member of a licensed partnership has acted or failed to act so as to provide cause for suspending or revoking a license to that party as an individual. Each licensee is responsible for the acts of his employees while acting as his agent, if the licensee after actual knowledge of the acts retained the benefits, proceeds, profits, or advantage accruing from the acts or otherwise ratified the acts.

(3) *(a)* A license may not be denied, suspended, or revoked except after

HeinOnline -- 1977 Vol. I 595 1977

hearing. The department shall give the licensee at least 10 days' written notice, in the form of an order to show cause, of the time and place of the hearing by *certified* mail addressed to the *licensee's* principal place of business in this state. The notice shall contain the grounds of complaint against the licensee.

(b) An order suspending or revoking a license shall recite the grounds upon which it is based. The order shall be entered upon the records of the department and is not effective until 30 days after written notice has been forwarded by *certified* mail to the licensee at *his* principal place of business.

(c) No revocation, suspension, or surrender of a license impairs or affects the obligation of a lawful retail installment contract acquired previously by the licensee."

Section 15. Section 74-606, R.C.M. 1947, is amended to read as follows:

"**74-606. Powers of department.** *(1)* The department shall adopt rules necessary to carry out the intent and purposes of this act. All rules of general application shall be filed in the office of the department. A copy of every rule shall be mailed to each licensee, postage prepaid, at least 15 days in advance of its effective date. However, the failure of a licensee to receive a copy of the rules does not exempt him from the duty of compliance with those rules lawfully adopted under the provisions of this section.

(2) The department may issue subpoenas to compel the attendance of witnesses and the production of documents, papers, books, records, and other evidence before it in any matter over which it has jurisdiction, control, or supervision pertaining to this act. The department may administer oaths and affirmations to a person whose testimony is required.

(3) If a person refuses to obey a subpoena, or to give testimony or produce evidence as required by it, a judge of the district court of the county in which the licensed premises are located may, upon application and proof of the refusal, issue a subpoena or subpoena duces tecum for the witness to appear before the department to give testimony and produce evidence as *may be* required. The clerk of court shall then issue the subpoena, as directed, under the seal of the court, requiring the person to whom it is directed to appear at the time and place designated in it.

(4) If a person served with a subpoena refuses to obey it or to give testimony or produce evidence as required by it, the department may apply to the judge of the court issuing the subpoena for an *arrest warrant for* that person, as for a contempt. The judge, upon satisfactory proof of the refusal, shall issue an *arrest warrant,* directed to any sheriff, constable, or police officer, for the arrest of that person and, upon his being brought before the judge, proceed to a hearing of the case. The judge may *compel:*

(a) obedience to the subpoena;

(b) the answering of any question;

HeinOnline -- 1977 Vol. I 596 1977

(c) the production of any evidence that may be proper; *or*

(d) the witness to pay the costs of the proceeding.

(5) Failure to comply with the requirements of subsections (4)(a), (b), or (c) is punishable by a fine not exceeding $100 or by imprisonment in the county jail, or both."

Section 16. Section 74-611, R.C.M. 1947, is amended to read as follows:

"**74-611. Penalties.** *(1)* Any person who knowingly *violates a* provision of this act or *engages* in the business of a sales finance company in this state without a license as provided in this act *is* guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

(2) Any person violating 74-607 *through* 74-610, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance delinquency, or collection charge on the contract."

Section 17. **Repealer.** Section 29-207, R.C.M. 1947, is repealed.

Approved April 1, 1977.

CHAPTER NO. 186

AN ACT TO AMEND SECTIONS 82A-112 AND 82A-706.1, R.C.M. 1947, TO DELETE REQUIREMENT THAT ONE MEMBER OF THE HIGHWAY COMMISSION BE AN ATTORNEY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-112, R.C.M. 1947, is amended to read as follows:

"**82A-112. Quasi-judicial boards.** If an agency is designated by law as a quasi-judicial board for the purposes of this section, *the following requirements apply*:

(1) The number of and qualifications of its members are as prescribed by law. *In* addition to those qualifications, *unless otherwise provided by law,* at least one member shall be an attorney licensed to practice law in this state.

(2) (a) The governor shall appoint the members. A majority of the members shall be appointed to serve for terms concurrent with the gubernatorial term and until their successors are appointed and qualified. The remaining members shall be appointed to serve for terms ending on the first day of the third January of the succeeding gubernatorial term and until their successors are appointed and qualified. It is the intent of this subsection that the governor appoint a majority of the members of each quasi-judicial board at the beginning of his term and the remaining members in the middle of his term. As used in this subsection, "majority" means the next whole number greater than half.

HeinOnline -- 1977 Vol. I 597 1977

(b) This subsection does not affect the terms of persons who were members of a continued board on the effective date of the chapter of this title continuing the board; upon the expiration of those terms, members shall be appointed and serve in accordance with this subsection.

(3) The appointment of each member is subject to the confirmation of the senate. However, the governor may appoint a member to assume office before the senate meets at its next regular session to consider the appointment. A member so appointed has all the powers of the office upon assuming that office and is a de jure officer, notwithstanding the fact that the senate has not yet confirmed the appointment. If the senate does not confirm the appointment of a member, the governor shall appoint a new member to serve for the remainder of the term.

(4) A vacancy shall be filled in the same manner as regular appointments, and the member appointed to fill a vacancy shall serve for the unexpired term to which he is appointed.

(5) The governor shall designate the chairman. The chairman may make and second motions and vote.

(6) Members may be removed by the governor only for cause.

(7) Unless he is a full-time salaried officer or employee of this state or of a political subdivision of this state, each member is entitled to be paid $25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for travel expenses, as provided for in 59-538, 59-539, and 59-801, incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of a political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses as provided for in 59-538, 59-539, and 59-801.

(8) A majority of the membership constitutes a quorum to do business. A favorable vote of at least a majority of all members of a board is required to adopt any resolution, motion, or other decision, unless otherwise provided by law."

Section 2. Section 82A-706.1, R.C.M. 1947, is amended to read as follows:

"**82A-706.1. Highway commission.** (1) (a) The highway commission consists of five members. One member shall be a bona fide resident of and appointed from each of these districts, each composed of the counties named:

(i) District 1. Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Ravalli, Granite, Lewis and Clark, Jefferson, Broadwater.

(ii) District 2. Powell, Deer Lodge, Silver Bow, Beaverhead, Madison, Gallatin, Meagher, Wheatland, Park, Sweet Grass.

(iii) District 3. Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, Cascade, Judith Basin.

HeinOnline -- 1977 Vol. I 598 1977

(iv) District 4. Fergus, Petroleum, Garfield, Phillips, Valley, McCone, Prairie, Dawson, Wibaux, Richland, Roosevelt, Daniels, Sheridan.

(v) District 5. Golden Valley, Stillwater, Carbon, Big Horn, Yellowstone, Musselshell, Rosebud, Treasure, Custer, Powder River, Carter, Fallon.

(b) No two members may at the time of appointment or thereafter during their respective terms of office be residents of the same district.

(c) Not more than three members may at the time of appointment or thereafter during their respective terms be members of the same political party.

(d) No elective state official or state officer during the term of office to which he was elected or appointed and no state employee may be a member of the commission.

(2) No resolution, motion, or other decision of the commission may be adopted or passed without the favorable vote of at least three members.

(3) The commission is allocated to the department for administrative purposes only as prescribed in 82A-108.

(4) The commission is designated as a quasi-judicial board for purposes of 82A-112, *however the provision of 82A-112(1) that at least one member of a quasi-judicial board be an attorney does not apply to the commission.*"

Approved April 1, 1977.

CHAPTER NO. 187

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO HEALTH AND SAFETY; AMENDING SECTIONS 27-706, 27-707, 27-722, 27-805, 50-480.7, 54-301, 54-319, 69-1401, 69-1504, 69-1508, 69-1509, 69-1802, 69-1808, 69-1923, 69-1925, 69-2111, 69-2701, 69-2702, 69-4428.1, 69-4504, 69-4508, 69-5201, 69-5207, 69-5502, 69-6701, 69-6704, 69-7102, 69-7103, 69-7105, 69-7107, 69-7108, 69-7110, 82-1201, 82-1202, 82-1215, 82-1226, 82-1229, AND 94-5-615, R.C.M. 1947; AND REPEALING SECTIONS 41-2101 THROUGH 41-2108, 69-1924, AND 82-1232, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-706, R.C.M. 1947, is amended to read as follows:

"**27-706. Detention or embargo of adulterated or misbranded articles — condemnation proceedings — immediate abatement of nuisances.** *(1) If an* agent of the department finds or has probable cause to believe that any food, drug, device, or cosmetic is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of this act, he shall affix to *the* article a tag or other appropriate marking giving notice that *the* article is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to

remove or dispose of *the* article by sale or otherwise until permission for removal or disposal is given by *the* agent or the court. It *is* unlawful for *a* person to remove or dispose of *a* detained or embargoed article by sale or otherwise without permission.

(2) If an article detained or embargoed under subsection *(1) is* found by *the* agent to be adulterated or misbranded, he shall petition the justice of peace, *city* judge, or district court in whose jurisdiction the article is detained or embargoed for *an order* for condemnation of *the* article. *If the* agent *finds* that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is adulterated or misbranded, *the* article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under the supervision of *the* agent, and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of *the* article or his agent. *If* the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after *the* costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that *the* article *will* be so labeled or processed, has been executed, may by order direct that *the* article be delivered to the claimant thereof for *the* labeling or processing under the supervision of an agent of the department. The expense of *the* supervision shall be paid by claimant. *The article* shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this act and that the expenses of *the* supervision have been paid.

(4) Whenever the department or any of its authorized agents find in any room, building, vehicle of transportation, or other structure any meat, sea food, poultry, vegetable, fruit, or other perishable *article* which *is* unsound or *contains* any filthy, decomposed, or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the *article* being hereby declared to be a nuisance, the department or its authorized agent shall *immediately* condemn or destroy the *article* or in any other manner render the *article* unsalable as human food."

Section 2. Section 27-707, R.C.M. 1947, is amended to read as follows:

"**27-707. Proceedings to be instituted and prosecuted without delay — defendant's right to be heard by department.** *Each* state attorney or county attorney to whom the department reports *a* violation of this act *shall* cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before *a* violation of this act is reported to *a state or county* attorney for the institution of a criminal proceeding, the person against whom *the* proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the department or its designated agent, either orally or in writing *and either* in person or by attorney, with regard to *the* contemplated proceeding."

Section 3. Section 27-722, R.C.M. 1947, is amended to read as follows:

"**27-722. Inspections and taking of samples authorized.** *(1)* The department or its authorized agents have free access at all reasonable

HeinOnline -- 1977 Vol. I 600 1977

hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, *or* held for introduction into commerce or to any vehicle being used to transport or hold *the* foods, drugs, devices, *or* cosmetics in commerce for the purpose:

(a) of inspecting *the* factory, warehouse, establishment, or vehicle to determine if any of the provisions of this act are being violated; and

(b) *of securing* samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for *the* sample.

(2) The department *shall* make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this act is being violated."

Section 4. Section 27-805, R.C.M. 1947, is amended to read as follows:

"**27-805. Penalties for violations.** *A* person who violates the provisions of *this* act or the orders *or* rules promulgated by the department under authority *of it* shall, upon conviction, be *fined* for each offense *no more than* $100 or *be imprisoned for any term* not to exceed 30 days."

Section 5. Section 50-480.7, R.C.M. 1947, is amended to read as follows:

"**50-480.7. Order — no violation — abatement.** An operator notified of an order made under *50-480.3* may apply to the division for a hearing or revision of the order. If the division finds that there was no violation, it shall make an order rescinding the order under review. If the division finds that there was a violation but the violation has since been abated, it shall make an order rescinding the order under review. If the division finds that the violation was not totally abated, it shall make an order consistent with its findings."

Section 6. Section 54-301, R.C.M. 1947, is amended to read as follows:

"**54-301. Definitions.** As used in this act *the following definitions apply*:

(1) "Administer" means the direct application of a dangerous drug, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) a practitioner (or by his authorized agent); or

(b) the patient or research subject at the direction and in the presence of the practitioner.

(2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(3) "Board" means the board of pharmacists provided for in 82A-1602.21.

(4) "Bureau" means the bureau of narcotics and dangerous drugs, United States department of justice, or its successor agency.

HeinOnline -- 1977 Vol. I 601 1977

(5) "Dangerous drug" means a drug, substance, or immediate precursor in Schedules I through V hereinafter set forth.

(6) "Counterfeit substance" means a dangerous drug which or the container or labeling of which without authorization bears the trademark, trade name, or other identifying mark, imprint, number, *or* device or any likeness thereof of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the drug.

(7) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a dangerous drug, whether or not there is an agency relationship.

(8) "Department" means the department of professional and occupational licensing provided for in Title 82A, chapter 16.

(9) "Dispense" means to deliver a dangerous drug to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery.

(10) "Dispenser" means a practitioner who dispenses.

(11) "Distribute" means to deliver other than by administering or dispensing a dangerous drug.

(12) "Distributor" means a person who distributes.

(13) "Drug" means:

(a) *a substance* recognized as *a drug* in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary or any supplement to any of them;

(b) *a substance* intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) *a substance* (other than food) intended to affect the structure or any function of the body of man or animals; and

(d) *a substance* intended for use as a component of any article specified in (a), (b), or (c) of this subsection. It does not include *a device* or *its* components, parts, or accessories.

(14) "Immediate precursor" means a substance which the board of pharmacists *finds* and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a dangerous drug, the control of which is necessary to prevent, curtail, or limit manufacture.

(15) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a dangerous drug either directly or indirectly by extraction from substances of natural origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the drug or labeling or relabeling of its container. *The* term does not include

HeinOnline -- 1977 Vol. I 602 1977

the preparation or compounding of a dangerous drug by an individual for his own use or the preparation, compounding, packaging, or labeling of a dangerous drug:

(a) by a practitioner as an incident to his administering or dispensing of a dangerous drug in the course of his professional practice; or

(b) by a practitioner or his authorized agent under his supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.

(16) "Marijuana (marihuana)" means all plant material from the genus cannabis containing tetrahydrocannabinol (THC) or seeds of the genus capable of germination.

(17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(a) opium and opiate and any salt, compound, derivative, or preparation of opium or opiate;

(b) any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the drugs referred to in *17(a) of this section*, but not including the isoquinoline alkaloids of opium;

(c) opium poppy and poppy straw; *or*

(d) coca leaves and any salt, compound, derivative, or preparation of coca leaves and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these drugs, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(18) "Opiate" means any drug having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as a dangerous drug under 54-302, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(19) "Opium poppy" means the plant of the species papaver somniferum l., except its seeds.

(20) "Person" means *an* individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(21) "Poppy straw" means all parts, except the seeds, of the opium poppy after mowing.

(22) "Practitioner" means:

(a) a physician, dentist, veterinarian, scientific investigator, or other person licensed, registered, or otherwise permitted to distribute, dispense,

or conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state; *and*

(b) a pharmacy or other institution licensed, registered, or otherwise permitted to distribute, dispense, *or* conduct research with respect to or to administer a dangerous drug in the course of professional practice or research in this state.

(23) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a substance or drug regulated under the provisions of this act.

(24) "State", when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(25) "Ultimate user" means a person who lawfully possesses a dangerous drug for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(26) The term "prescription" *is* given the meaning it has in 66-1502(13)."

Section 7. Section 54-319, R.C.M. 1947, is amended to read as follows:

"**54-319. Procedure for denial, suspension, revocation, or refusal to renew registration.** (1) Before denying, suspending, or revoking a registration or refusing a renewal of registration, the board shall *serve* upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall require the applicant or registrant to appear before the board at a time and place not less than 30 days after the date of service of the order, but in the case of a denial *of* renewal of registration, the show cause order shall be served not later than 30 days before the expiration of the registration. These proceedings shall be conducted without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration *do* not abate the existing registration, which *remains* in effect pending the outcome of the administrative hearing.

(2) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under *54-318* or *whenever* renewal of registration is refused if it finds that there is an imminent danger to the public health or safety which warrants such action. The suspension *continues* in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction."

Section 8. Section 69-1401, R.C.M. 1947, is amended to read as follows:

"**69-1401. Construction of scaffolds.** All scaffolds erected in this state for use in the erection, repair, alteration, or removal of buildings shall be well and safely supported, *of* sufficient width, and properly

HeinOnline -- 1977 Vol. I 604 1977

secured so as to ensure the safety of persons working *on them* or passing *under them* or by *them* and to prevent *them from* falling or *to prevent* any material that may be used, placed, or deposited *on them from falling.*"

Section 9. Section 69-1504, R.C.M. 1947, is amended to read as follows:

"**69-1504. Inspection of boilers — further requirements in making inspection.** (1) The inspector must satisfy himself that:

(a) the safety valves are of suitable relieving capacity ratings, sufficient in number and area, and properly arranged and are properly adjusted so as *not* to allow *a* greater pressure in *a boiler* than the amount prescribed by the inspection certificate;

(b) there are a sufficient number of gauge cocks properly inserted to indicate the amount of water and suitable gauges that will correctly record the pressure of steam; and

(c) adequate and certain provisions for an ample supply of water to feed the *boiler* at all times and suitable means for blowing out are provided so as to thoroughly remove mud and sediment from all parts of the *boiler* when *it is* under pressure of steam.

(2) A renter, user, or owner of a boiler or *a* person who *tampers* with the safety valve to allow the boiler to carry greater pressure than is allowed by the inspection certificate *is* guilty of a misdemeanor.

(3) If a boiler is constructed with lap horizontal seams on *the* boiler, dome, or drum, a factor of *4 ½* shall be used in determining the safe working pressure allowed on *the* boiler. *If a boiler is* constructed with *butt strap* horizontal seams, a factor of four may be used in determining *the* safe working pressure. If *a* boiler rests on *a* side wall on lugs, is hung by I-beams, or is in any way set up so that the weight of the boiler is pulling against the horizontal seam of rivets, a factor of five must be used *in determining* the safe working pressure. *If* the horizontal lap seams of *a* boiler are exposed to the fire, a factor of five must be used *in determining* the safe working pressure. On *new* stay bolts, *7,500* pounds pressure per square inch *is* allowed. If *the* stay bolts are corroded or defective, the inspector must determine the pressure to be allowed on *them.* On braces made of solid material *8,000* pounds pressure per square inch *is* allowed. On welded braces or braces with only one *crowfoot, 6,000* pounds pressure per square inch *is* allowed. No cast iron *may* be used in the construction or reinforcements of *a* boiler *if* the pressure allowed on *the* boiler is more than *100* pounds per square inch."

Section 10. Section 69-1508, R.C.M. 1947, is amended to read as follows:

"**69-1508. Licenses required — penalty for operating without license.** No person *may* be granted a license to operate steam or water boilers and steam machinery under the provisions of this article who has not met the qualifications for licensing, *been* found to be competent by examination to perform the duties of an engineer, and received a license so to act. *A* person who operates *a* boiler or steam engine without first obtaining a license is guilty of a misdemeanor and, upon conviction, shall

be *fined no* less than *$50 or* more than *$100* or *be imprisoned* in the county jail for *any term not to exceed 60* days, or both."

Section 11. Section 69-1509, R.C.M. 1947, is amended to read as follows:

"**69-1509. Classification and licensing of engineers.** (1) Engineers entrusted with the operation, care, and management of steam or water boilers and steam machinery, as specified in the preceding section, *are* divided into four classes, namely: first-class engineers, second-class engineers, third-class engineers, and low-pressure engineers.

(2) Licenses for the operation of steam or water boilers and steam machinery *are* divided into four classifications in accordance with the following *schedule*:

(a) First-class engineers *are* licensed to operate all classes, pressures, and temperatures of steam and water boilers and *steam-driven* machinery with the exception of traction and hoisting engines.

(b) Second-class engineers *are* licensed to operate steam boilers operating not in excess of 250 pounds per square inch gauge saturated steam pressure, water boilers operating not in excess of 375 pounds per square inch gauge pressure and *450 degrees F* temperature, and *steam-driven* machinery not to exceed 100 horsepower per unit, with the exception of traction and hoisting engines.

(c) Third-class engineers *are* licensed to operate steam boilers operating not in excess of 100 pounds per square inch gauge saturated steam pressure *and* water boilers operating not in excess of 160 pounds per square inch gauge pressure and *350 degrees F* temperature.

(d) Low-pressure engineers *are* licensed to operate steam boilers operating not in excess of 15 pounds per square inch gauge pressure *and* water boilers operating not in excess of 50 pounds per square inch gauge pressure and *250 degrees F* temperature.

(3) Each applicant for an engineer's license *must be physically and mentally capable of performing the required duties and* meet the following minimum requirements for the class of engineer's license for which application is being made:

(a) *An applicant* for *a* low-pressure engineer's license *must* have *at least* 3 months' full-time experience in the operation of a boiler in this classification, successfully pass a written examination prescribed by the division, *have* passed his 18th birthday, and *be* found to be competent to operate a boiler in this classification.

(b) *An applicant* for *a* third-class engineer's license *must* have *at least* 6 months' full-time experience in the operation of a boiler in this classification under an engineer holding a valid third-class or higher license, successfully pass a written examination prescribed by the division, *have* passed his 18th birthday, and *be* found to be competent to operate a boiler in this classification.

(c) *An applicant* for *a* second-class engineer's license *must*:

HeinOnline -- 1977 Vol. I 606 1977

(i) have at least 2 years' full-time experience in the operation of a boiler and *steam-driven* machinery in this classification under an engineer holding a valid second-class or first-class license, successfully pass a written examination prescribed by the division, *have* passed his 18th birthday, and *be* found to be competent to operate a boiler and *steam-driven* machinery in this classification; or

(ii) hold a valid third-class engineer's license and have *at least* 1 year's full-time experience in the operation of a boiler and *steam-driven* machinery in this classification under an engineer holding a valid second-class or first-class license, successfully pass a written examination prescribed by the division, *have* passed his 18th birthday, and *be* found to be competent to operate a boiler and *steam-driven* machinery in this classification.

(d) *An applicant* for *a* first-class engineer's license *must*:

(i) have at least 3 years' full-time experience in the operation of a boiler and *steam-driven* machinery in this classification under an engineer holding a valid first-class license, successfully pass a written examination prescribed by the division, *have* passed his 18th birthday, and *be* found to be competent to operate a boiler and *steam-driven* machinery in this classification;

(ii) hold a valid second-class engineer's license and have *at least* 1 year's full-time experience in the operation of a boiler and *steam-driven* machinery in this classification under an engineer holding a valid first-class license, successfully pass a written examination prescribed by the division, *have* passed his 18th birthday, and *be* found to be competent to operate a boiler and *steam-driven* machinery in this classification; or

(iii) hold a valid third-class engineer's license and have *at least* 2 year's full-time experience in the operation of a boiler and *steam-driven* machinery in this classification under an engineer holding a valid first-class license, successfully passed a written examination prescribed by the division, *have* passed his 18th birthday, and *be* found to be competent to operate a boiler and *steam-driven* machinery in this classification.

(4) Allowable exceptions or variances to the minimum requirements *set out in subsection (3) of this section* are as follows:

(a) An applicant for *an* engineer's license in any classification holding a valid license in that classification from another state *having* licensing requirements equal to or exceeding the minimum requirements *set out in subsection (3) of this section,* successfully *passing* a written examination prescribed by the division, and found to be competent to operate a boiler and *steam-driven* machinery in that classification shall be granted a license in that classification.

(b) Operating experience in a classification *accumulated in the United States military services or the merchant marine service* satisfactory to the division may be accepted in lieu of the operating experience required for licensing of engineers in each of the *license* classifications.

(c) An applicant having training in the operation of steam or water boilers and steam machinery who *has* been certified as having satisfac-

torily completed a prescribed training course from a recognized vocational-technical training school or center or other *division-approved* institution or training program in the classification for which he is applying may, at the discretion of the division, be credited with a maximum of 6 months' experience toward *a* first, second, or third-class engineer's license.

(5) None of the licenses *named* in *subsections (1) and (2) of* this section entitle *its* holder to operate a traction engine. *A person* who *is* entrusted with the care and management of traction engines or boilers on wheels *is* required to pass an examination *testing his* competency to operate *that* class of machinery and procure a *traction* license. *A* traction license *does* not entitle *its* holder to operate any other class of steam machinery. *An applicant* for a traction engineer's license *must* have *at least* 6 months' full-time experience in the operation of steam traction engines, successfully pass a written examination prescribed by the division, *have* passed his 18th birthday, and *be* found to be competent to operate a traction engine. The division, at its discretion, may waive the experience requirement for operators of traction engines which are maintained and operated as a hobby for the restoration and show purposes of antique equipment."

Section 12. Section 69-1802, R.C.M. 1947, is amended to read as follows:

"69-1802. Application of act — definitions. Sections 69-1801 through 69-1810 apply to the occupancies *defined below*:

(1) "Assembly occupancy" means the occupancy or use of a building or structure or any portion thereof by a gathering of persons for civic, political, travel, religious, social, or recreational purposes, including among others;

(a) armories;

(b) assembly halls;

(c) auditoriums;

(d) bowling alleys;

(e) broadcasting studios;

(f) chapels;

(g) churches;

(h) club rooms;

(i) dance halls;

(j) exhibition rooms;

(k) gymnasiums;

(l) lecture halls;

(m) lodge rooms;

(n) motion picture theaters;

(o) museums;

HeinOnline -- 1977 Vol. I 608 1977

(p) night clubs;

(q) opera houses;

(r) passenger stations;

(s) pool rooms;

(t) recreation areas;

(u) restaurants;

(v) skating rinks;

(w) television studios;

(x) theaters; *and*

(y) taverns.

(2) "Business occupancy" means the occupancy or use of a building or structure or any portion thereof for the transaction of business or the rendering or receiving of professional services, including among others:

(a) banks;

(b) barber shops;

(c) beauty parlors;

(d) office buildings;

(e) radio stations;

(f) telephone exchanges; *and*

(g) television stations.

(3) "Educational occupancy" means the occupancy or use of a building or structure or any portion thereof by persons assembled for the purpose of learning or receiving educational instruction, including among others:

(a) academies;

(b) colleges;

(c) libraries;

(d) schools; *and*

(e) universities.

(4) "Industrial occupancy" means the occupancy or use of a building or structure or any portion thereof for assembling, fabricating, finishing, manufacturing, packaging, or processing operations, including among others:

(a) assembly plants;

(b) creameries;

(c) electric substations;

HeinOnline -- 1977 Vol. I 609 1977

(d) factories;

(e) ice plants;

(f) laboratories;

(g) laundries;

(h) manufacturing plants;

(i) mills;

(j) power plants;

(k) processing plants;

(l) pumping stations;

(m) repair garages;

(n) smoke houses; *and*

(o) *workshops.*

(5) "Institutional occupancy" means the occupancy or use of a building or structure or any portion thereof by persons harbored or detained to receive medical, charitable, or other care or treatment or by persons involuntarily detained, including among others:

(a) asylums;

(b) homes for the aged;

(c) hospitals;

(d) houses of correction;

(e) day care facilities;

(f) infirmaries;

(g) jails;

(h) nurseries;

(i) orphanages;

(j) nursing homes;

(k) penal institutions;

(l) reformatories;

(m) sanitariums;

(n) long-term care facilities; *and*

(o) boarding homes.

(6) "Residential occupancy" means the occupancy or use of a building or structure or any portion thereof by persons for whom sleeping accommodations are provided, *and* who are not harbored or detained to receive medical, charitable, or other care or treatment or are not involuntarily

HeinOnline -- 1977 Vol. I 610 1977

detained, including among others *(but not including single-family private houses):*

(a) apartments;

(b) *clubhouses;*

(c) convents;

(d) dormitories;

(e) dwellings;

(f) hotels;

(g) motels;

(h) multifamily houses; *and*

(i) lodging houses."

Section 13. Section 69-1808, R.C.M. 1947, is amended to read as follows:

"69-1808. Inspection by fire chiefs, county sheriffs, or deputy fire marshals — review of plans by fire marshal — permits — notice of inadequate equipment — compliance — enforcement. (1) Within *an* incorporated *municipality,* an educational or institutional occupancy, whether public or private, may not be constructed or *have* alterations made costing $1,500 or more *until* sketches or architectural plans *for the construction or alteration,* whichever are available, are submitted to the state fire marshal and approved by him.

(2) Outside *an* incorporated *municipality,* an assembly, educational, or institutional occupancy may not be constructed or *have* alterations made costing $1,500 or more *until* a permit has been issued for the construction or alteration by the county commissioners. A fee of $10 shall be paid to the county treasurer for each permit. A copy of *the* permit shall be furnished to the county assessor. No permit *may* be issued until sketches or architectural plans *for the construction or alteration,* whichever are available, are submitted to the state fire marshal and approved by him. The fire marshal and county sheriffs are responsible for enforcing the provisions of this subsection.

(3) A building designed for human occupancy owned or controlled by the state may not be constructed *until* plans for the construction have been submitted to the state fire marshal and approved by him.

(4) *The* chief of the fire department of each municipality or district where a fire department is established and the county sheriff or deputy fire marshals where no fire department exists *shall* enter into all buildings and upon all premises within *their* jurisdiction *at least once each 6 months* for the purpose of *examining the* premises for violations of this act. *The* inspection shall include but *is* not limited to testing fire alarms *and* fire extinguishers, examining fire hose, attachments, and other fire apparatus, and examining fire escapes. Copies of *the* inspection shall be filed in the office of the state fire marshal on forms to be provided by him.

HeinOnline -- 1977 Vol. I 611 1977

(5) When *a* building *is* found which *requires* the erection of fire escapes and upon which fire escapes have not been erected according to the provisions of this act or if fire hoses, fire extinguishers, fire alarms, or other fire apparatus is found to be lacking or defective or not in good working condition, the person making *the* inspection or the state fire marshal shall serve a written notice upon the party whose duty it is to erect *the* fire escapes or maintain such fire apparatus. *The* notice shall specify the time within which *the* fire escapes shall be erected or *the* defective conditions remedied, *which may not* be more than 90 days. *The* notice *is* served if delivered to the person to be notified, if left with any adult person at the usual residence or place of business of the person to be notified, or if deposited in the post office directed to the last known address of the person to be notified. *Whenever* buildings are managed and controlled by a board of trustees, board of commissioners, or other governing body, *the notice is served if delivered to the president, secretary, or treasurer of the board of trustees, board of commissioners, or other governing body. The* occupant or lessee of any building who is required to erect fire escapes under the provisions of this act *is* entitled to reimburse himself for the cost and expense of erecting *the* fire escapes out of the rent or lease money of *the* premises, and *the* reimbursement *is not* a breach of any existing lease, contract, or covenant thereof *or* grounds for any action or damage ouster.

(6) The state fire marshal *has* general charge and supervision of the enforcement of this act, and *the officers enumerated in subsection (4) of this section* shall act under *his* general charge and supervision, shall assist *him* in giving effect to this act, and *are* subject to his direction and the rules adopted for the enforcement of this act."

Section 14. Section 69-1923, R.C.M. 1947, is amended to read as follows:

"**69-1923. Storage of explosives in cities.** No person, company, or corporation *may* store, deposit, or keep within *1* mile of the limits of *a* city, town, or village any powder, gunpowder, giant or Hercules powder, or other highly explosive substance in *excess of 100* pounds or *1,000* giant caps, nor *may* explosives be stored, deposited, or kept in any *quantity* whatever within *1* mile of *a* city, town, or village except in a magazine constructed as *provided for in 69-1907. This* section *does not* prevent *a* person, company, or corporation operating a mine within *1* mile of the limits of *a* city, town, or village from storing powder for use in *the* mine in the manner prescribed in 69-1922 and *69-1907. This* section *does* not prevent the keeping of a reasonable amount of gunpowder, not exceeding *50* pounds, in a safe place for sale."

Section 15. Section 69-1925, R.C.M. 1947, is amended to read as follows:

"**69-1925. Transportation vehicle to bear warning signs.** *Each* vehicle in which *explosives are* transported, transferred, or delivered shall bear on each side a sign *having the words "explosives—dangerous" in* conspicuous letters not less than *2* inches in length."

Section 16. Section 69-2111, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 612 1977

"**69-2111. Adoption of rules by department.** (1) The department shall adopt by reference nationally recognized building codes in whole or in part, amend *or* repeal rules relating to the construction of all buildings or classes of buildings or the installation of equipment in those buildings, and may by rule prescribe standards or requirements for materials to be used in buildings, including provisions dealing with safety, sanitation, and conservation of energy. The rules, when adopted as provided in this chapter, constitute the "state building code" and *are* acceptable for the buildings to which *they are* applicable.

(2) The department may hold hearings relating to the administration of this act in accordance with the Montana Administrative Procedure Act.

(3) Except as provided in subsection (4) of this section, no rule, amendment, or repeal of the state building code *may* take effect until after a public hearing by the department.

(4) If a hearing has been held by the *state fire marshal* with respect to *his* duties contained in Title 82, chapter 12, *or by* the board of plumbers, the department of health and environmental sciences, *the* board of warm air heating, ventilation, and air conditioning, or *the* state electrical board on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code.

(5) If a rule relating to building or equipment standards is proposed by the *state fire marshall* with respect to *his* duties contained in Title 82, chapter 12, *or by the* board of plumbers, *the* department of health and environmental sciences, *the* board of warm air heating, ventilation, and air conditioning, or *the* state electrical board which conflicts with the state building code, the department *after consultation with the state agencies affected,* shall modify the proposed rule or the state building code to resolve the conflict."

Section 17. Section 69-2701, R.C.M. 1947, is amended to read as follows:

"**69-2701. Fireworks prohibited and defined for the purposes of this chapter.** *(1)* It *is* unlawful to *possess,* sell, transport, or use any fireworks within the state of Montana except as provided *in this chapter.*

(2) The term "fireworks" *means* any combustible or explosive composition or any substance, combination of substances, or article prepared for the purpose of producing a visible or audible effect by combustion, explosion, deflagration, or detonation and *includes* sky rockets, *roman* candles, *daygo* bombs, blank cartridges, toy cannons, toy canes, or toy guns in which explosives other than toy paper caps are used, the type of balloons which require fire underneath to propel *them,* firecrackers, torpedoes, sparklers or other fireworks of like construction, any fireworks containing any explosive *or* flammable compound, or any tablets or other device containing any explosive substance. *This chapter does not apply* to toy paper caps containing *less* than ¼ of a grain of explosive composition per cap, to the manufacture, storage, sale, or use of signals necessary for the safe

HeinOnline -- 1977 Vol. I 613 1977

operation of railroads or other classes of public or private transportation, to the military or *naval* forces of the United States or this state, to peace officers, *or to* the sale or use of blank cartridges for ceremonial, theatrical, or athletic events.

(3) It *is* lawful for *an* individual, firm, partnership, corporation, or association to possess for sale, sell or offer for sale at retail, or use within the state of Montana the permissible fireworks enumerated *in subsection (4) of this section.*

(4) Permissible fireworks, *excluding sky rockets, roman candles, daygo bombs, firecrackers, and bottle rockets,* include and *are* limited to the following:

(a) helicopter type spinners, *the* total pyrotechnic composition not to exceed 20 grams each in weight;

(b) cylindrical fountains, *the* total pyrotechnic composition not to exceed 25 grams each in weight *and the* inside tube diameter not *to* exceed three-fourths *of an* inch;

(c) cone fountains, *the* total pyrotechnic composition not to exceed 50 grams each in weight;

(d) wheels, the total pyrotechnic composition not to exceed 60 grams in weight for each driver unit (but there may be any number of drivers on any one wheel) *and the* inside bore of driver tubes not *to* be over one-half *of an* inch;

(e) illuminating torches and colored fire in any form, *the* total pyrotechnic composition not to exceed 100 grams each in weight;

(f) sparklers and dipped sticks, *the* total pyrotechnic composition not to exceed 100 grams each in weight (*pyrotechnic* composition containing any chlorate not *to* exceed 5 grams); *and*

(g) whistles without report, *the* total pyrotechnic composition not to exceed 40 grams each in weight.

(5) It *is* unlawful for *an* individual under the age of 18 to possess for sale, sell, or offer for sale within the state of Montana permissive fireworks enumerated *in subsection (4) of this section.*

(6) It *is* unlawful for *a* wholesaler to sell or offer for sale within the state of Montana fireworks except as *enumerated in subsection (4) of this section.* It *is* lawful for *a* wholesaler, however, to transport fireworks within Montana for sale outside of the state.

(7) No person, firm, or corporation *may* offer fireworks of any kind for sale at retail before June *24* and after July *5.*

(8) It *is* unlawful for *an* individual, firm, partnership, or corporation to discharge or cause to be discharged any pyrotechnics within the exterior boundaries of *a* state forest, state park, or state recreation area."

Section 18. Section 69-2702, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 614 1977

"**69-2702. Supervised public display of fireworks.** *The* state fire marshal and the governing body of *a* city, town, or county *may*, under reasonable rules adopted by *them*, grant permits for supervised public displays of fireworks to be held by municipalities, fair associations, amusement parks, and other organizations or groups of individuals. *Each* display shall be handled by a competent operator, *who must* be approved by the state fire marshal or the governing body of the municipality in which the display is to be held, and be located, discharged, or fired as, in the opinion of the chief of the fire department or other officer designated by the governing body of the municipality after proper inspection, not *to* be hazardous to *persons or* property. Application for permits shall be made in writing at least 15 days *prior to* the date of the display. After *the* privilege *has* been granted, sales, possession, use, and distribution of fireworks for *the* display *are* lawful for that purpose only. No permit granted *under this section is* transferable. The term "municipalities" *includes* cities *and* incorporated towns."

Section 19. Section 69-4428.1, R.C.M. 1947, is amended to read as follows:

"**69-4428.1. Disinterment permit.** (1) A body, after burial, may be disinterred for reinterment or transport *after* a permit *is obtained* from the local registrar of the jurisdiction where the body is interred.

(2) Administration of *this section is* in the department of health and environmental sciences, which shall adopt rules accordingly. The rules shall provide that, as a *precondition* to the permit, the applicant make a showing of reasonable cause for the disinterment.

(3) This *section* provides a supplementary procedure for disinterment of a dead body and is not amendatory to or repealing of any other act."

Section 20. Section 69-4504, R.C.M. 1947, is amended to read as follows:

"**69-4504. County boards of health.** There is a county board of health in each county consisting of:

(1) the county commissioners and two members *who are* appointed by the county commissioners and serve at their pleasure; or

(2) five persons who are appointed by the county commissioners and serve at their pleasure. Terms of appointed members shall be staggered and be for 3 years each. *The county* commissioners shall establish the staggered order of terms and all *rules* necessary to establish and maintain the board."

Section 21. Section 69-4508, R.C.M. 1947, is amended to read as follows:

"**69-4508. Financing of local boards of health — appropriations — tax levies.** (1) Local boards are financed by general fund appropriations, special levy appropriations, state and federal funds available, and contributions from school boards and other official and nonofficial agencies.

HeinOnline -- 1977 Vol. I 615 1977

(2) Appropriations are made as follows:

(a) County boards are financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under *Title 16,* chapter 19.

(b) City boards are financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under *Title 11,* chapter 14.

(c) If a city-county board is created, *it is financed by one of the following methods:*

(i) The county commissioners and governing body of *each participating* city may mutually agree upon the division of expenses. The *county's* part of *the* total expenses is financed by an appropriation from the general fund of the county after approval of a budget in the way provided for other county offices and departments under *Title 16,* chapter 19. *Each participating city's* part of *the* total *expenses* is financed by an appropriation from the general fund of the city after approval of a budget in the way provided for other city offices and departments under *Title 11,* chapter 14. All moneys shall be deposited with the county treasurer who shall disburse them as county funds.

(ii) In first and second class counties, the county commissioners and governing body of *each participating* city may mutually agree upon the division of the expenses. The *county's* part of *the* total expenses is financed by a special levy of not more than 5 mills on the taxable valuation of all property outside the incorporated limits of *each participating* city after approval of a budget in the way provided for other county offices and departments under *Title 16,* chapter 19. If the *5-mill* levy is not sufficient to fund the *county's* share, *the* county commissioners may supplement it with an appropriation from the county general fund. Each *participating city's* part of *the* total *expenses* is financed by a special levy of not more than 5 mills on the taxable valuation of all property within the incorporated limits of the city after approval of a budget in the way provided for other city offices and departments under *Title 11,* chapter 14. All moneys shall be deposited with the county treasurer who shall disburse them as county funds. The special levies authorized by this subsection are in addition to all other levies authorized by law.

(d) District boards are financed by appropriations from the general funds of *each county* in the district in proportion to the population in each county. First and second class cities which elect to be included in the district contribute to the county in which they are located in the way provided for city-county boards under subsection (2)(c) of this section. All funds shall be deposited with the county treasurer of one of the counties as agreed upon by the commissioners of the counties in the district. The county treasurer shall disburse the funds as county funds.

(3) School boards and other official and nonofficial agencies may contribute funds to a local board.

(4) If the general fund of a city or county is not sufficient to meet the approved budget, a levy of not more than 1 mill may be made on

HeinOnline -- 1977 Vol. I 616 1977

the taxable valuation of all property in the city or county in addition to all other levies authorized by law. This subsection does not apply when the board has been financed under subsection (2)(c)(ii) of this section."

Section 22. Section 69-5201, R.C.M. 1947, is amended to read as follows:

"**69-5201. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, *the following definitions apply:*

(1) "Hospital" means *a* health care facility licensed by the department to provide, by or under the supervision of licensed physicians, services for medical diagnosis, treatment, and care of injured, disabled, or sick persons. Services provided may or may not include obstetrical care. A health care facility, in order to be licensed as a hospital, must have an organized medical staff, provide *24-hour* nursing care by licensed professional nurses, and be in compliance with the *rules* for licensed hospitals adopted by the department.

(2) "*Hospital-related* facility" means a facility licensed by the department to provide diagnosis, treatment, medical or nursing care, or medically related rehabilitation services. Such facilities include but are not limited to outpatient facilities, public health centers, rehabilitation facilities, long-term care facilities, infirmaries, mental health and mental retardation institutions, *alcoholism* and drug dependency centers, and half-way houses. A health care facility, in order to be licensed as a "*hospital-related* facility", shall be in compliance with the regulations for the specific category of facility adopted by the department.

(3) "Outpatient facility—A" means a physically separate component of a licensed hospital or a medical clinic or other establishment owned or operated by a licensed physician which has an observation bed or beds and provides to patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in the state of Montana. No patient *may* be allowed to remain in an outpatient facility for more than 6 hours.

(4) An "observation bed" is a bed used by a patient recovering from surgery or other treatment.

(5) "Outpatient facility—B" means a facility operated physically apart from a hospital, other than a medical clinic or other establishment owned or operated by a licensed physician, which provides to ambulatory patients not requiring hospitalization the services of persons licensed to practice medicine or dentistry in Montana, but which does not have an observation bed or beds as defined in subsection *(4).*

(6) "Public health *center*" means a publicly owned facility utilized by a local health unit for the provision of public health services, including related public facilities such as laboratories, clinics, and administrative offices operated in connection with *a* public health *center.*

(7) "Rehabilitation facility" means a facility providing community service which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program under competent professional supervision, including medical services and evaluation and psychological, social, and vocational services and evaluation.

HeinOnline -- 1977 Vol. I 617 1977

(8) (a) "Long-term care facility" means a place which provides skilled nursing care to a total of two or more persons or personal care to more than three persons who, by reason of illness or disability, are unable to properly care for themselves and are not related to the owner or administrator by blood or marriage, and *includes the facilities* defined as follows:

(i) "Skilled nursing facilities" are establishments furnishing continuous skilled nursing care and related services 24 hours a day.

(ii) "Intermediate care facilities—A" are establishments furnishing limited skilled nursing care and personal care.

(iii) "Intermediate care facilities—B" are establishments providing only personal care and services to residents.

(iv) "Combination facilities" are establishments providing two or more of the following services: skilled nursing care and intermediate care—A and B.

(b) Hotels, motels, boarding houses, rooming houses, or similar accommodations providing for transients, students, or persons not requiring institutional health care are not considered to be long-term care facilities.

(9) "Infirmary" means a facility located in a university, college, government institution, or industry for the treatment of the sick or injured.

(10) "Infirmary—A" provides outpatient and inpatient care.

(11) "Infirmary—B" provides outpatient care only.

(12) "Person" means *an* individual, firm, partnership, association, corporation, or governmental unit.

(13) "Governmental unit" means the state, a state agency, *a* county, municipality, *or* political subdivision of the state, or an agency of *a* political subdivision.

(14) "Resident" means a person who is in a long-term care facility as a patient or for personal care.

(15) "Health care facility" means a hospital, *hospital-related* facility, or long-term care facility.

(16) "Department" means *the* department of health and environmental sciences *provided for in Title 82A, chapter 6.*

(17) "Construction" means the erection, expansion, remodeling, or alteration of *a* new or existing facility, the capital expenditure for which amounts to $50,000 or more in any *12-month* period or any substantial change in services, any increase or decrease in the number of beds in excess of 10% of the licensed capacity of the facility or in excess of 10 beds, whichever is the lesser, or any purchase of therapeutic or diagnostic equipment (excluding replacement of existing equipment) in any *12-month* period at a cost exceeding 2% of the facility's total operating costs for the most recently completed fiscal year up to a maximum of $100,000 or

HeinOnline -- 1977 Vol. I 618 1977

exceeding $10,000, whichever is larger. All exemptions from this definition must nevertheless be consistent with the state medical facilities plan of the department."

Section 23. Section 69-5207, R.C.M. 1947, is amended to read as follows:

"**69-5207. Denial of application for long-term care facility.** The department may deny an application for *a* long-term care facility license if:

(1) it fails to meet minimum standards prescribed under 69-5213;

(2) the staff is insufficient in number or unqualified by lack of training or experience;

(3) the applicant or any person managing it has been convicted of a felony *and denial of a license on that basis is qualified by 66-4003* or *the applicant* otherwise shows evidence of character traits inimical to the health and safety of residents; *or*

(4) *the applicant* does not have the financial ability to operate *the facility* in accordance with law, rules, or standards adopted by the department."

Section 24. Section 69-5502, R.C.M. 1947, is amended to read as follows:

"**69-5502. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, *the following definitions apply*:

(1) "Public swimming pool" means *an* artificial pool and bathhouses and related appurtenances for swimming, bathing, or wading, including natural hot water pools. The term does not include:

(a) swimming pools located on private property used for swimming or bathing only by the owner, members of his family, or their invited guests; *or*

(b) medicinal hot water baths for individual use.

(2) "Public bathing place" means a body of water *with* bathhouses and related appurtenances operated for the public.

(3) "Person" means a person, firm, partnership, corporation, organization, the state, or any political subdivision of the state."

Section 25. Section 69-6701, R.C.M. 1947, is amended to read as follows:

"**69-6701. Definitions.** (1) "Department" means *the* department of health and environmental sciences *provided for in Title 82A, chapter 6.*

(2) "Standard serological test" means a test for syphilis, rubella immunity, and blood group, including ABO (Landsteiner blood type designation—O, A, B, AB) and RH (Dd) type, approved by the department."

Section 26. Section 69-6704, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 619 1977

"**69-6704. Certificate form.** The certificate form to be provided the physician recording the results of the test made by the laboratory shall be the same form as that provided with respect to *the* premarital standard serological test in 48-135."

Section 27. Section 69-7102, R.C.M. 1947, is amended to read as follows:

"**69-7102. Definitions.** In this act *the following definitions apply:*

(1) "Department" means the department of health and environmental sciences *provided for in Title 82A, chapter 6.*

(2) "Person" includes an individual, partnership, corporation, or association or his legal representative or agent.

(3) "Commerce" means all commerce within this state and subject to the jurisdiction thereof and includes the operation of any business or service establishment.

(4) *(a)* "Hazardous substance" means:

(i) *a* substance or mixture of substances which:

(A) is toxic*;*

(B) is corrosive*;*

(C) is an irritant*;*

(D) is a strong sensitizer*;*

(E) is flammable or combustible*;* or

(F) generates pressure through decomposition, heat, or other means if *the* substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children*;*

(ii) substances which the department by rule finds under 69-7103(1) meet the requirements of *subsection (4)(a)(i) of this section;*

(iii) *a* radioactive substance if, with respect to *the* substance as used in a particular class of article or as packaged, the department determines by rule that the substance is sufficiently hazardous to require labeling in accordance with this act in order to protect the public health*; or*

(iv) *a* toy or other article intended for use by children which *presents an electrical, mechanical, or thermal hazard, as determined by* the department by rule in accordance with 69-7103(5).

(b) The term "hazardous substance" does not apply to pesticides subject to the *federal* Pesticide Environmental Control Act or the Montana *Pesticides* Act, to foods, drugs, and cosmetics subject to the Montana Food, Drug, and Cosmetic Act, *or* to substances intended for use as fuels when stored in containers and used in the heating, cooking, or refrigeration system of a house. *The* term applies, *however,* to *an* article which is not

HeinOnline -- 1977 Vol. I 620 1977

itself a pesticide within the meaning of the *federal* Pesticide Environmental Control Act or the Montana Pesticide Act but which is a hazardous substance within the meaning of *subsection (4)(a)* of this *section* by reason of bearing or containing a pesticide. *The* term *also* applies to pesticides *whenever* human health is directly affected from the use or misuse of pesticides requiring an accident investigation for the purpose of preparing recommendations to federal or state pesticide control agencies.

(c) The term "hazardous substance" does not include source material, special nuclear material, or by-product material as defined in the Atomic Energy Act of 1954, as amended, and rules issued pursuant thereto by the atomic energy commission.

(5) "Toxic" means *a* substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation, or absorption through any body surface.

(6) (a) "Highly toxic" means *a* substance which falls within any of the following categories:

(i) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams at a single dose of 50 milligrams or less per kilogram of body weight when orally administered;

(ii) produces death within 14 days in one-half or more of a group of 10 or more laboratory white rats each weighing between 200 and 300 grams when inhaled continuously for a period of 1 hour or less at an atmosphere concentration of 200 parts per million *or less* by volume of gas or vapor or 2 milligrams per liter *or less* by volume of mist or dust if *that* concentration is likely to be encountered by man when the substance is used in *a* reasonably foreseeable manner; or

(iii) produces death within 14 days in one-half or more of a group of 10 or more rabbits tested in a dosage of 200 milligrams or less per kilogram of body weight when administered by continuous contact with the bare skin for 24 hours or less.

(b) If the department finds that available data on human experience with *a* substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence.

(7) "Corrosive" means *a* substance which in contact with living tissue will cause destruction of tissue by chemical action but does not refer to action on inanimate surfaces.

(8) "Irritant" means *a* substance not corrosive within the meaning of subsection (7) *of this section* which on immediate, prolonged, or repeated contact with normal living tissue will induce a local inflammatory reaction.

(9) "Strong sensitizer" means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity.

HeinOnline -- 1977 Vol. I 621 1977

(10) *(a)* "Extremely flammable" applies to *a* substance which has a flash point at or below *20 degrees F,* as determined by the tagliabue open cup tester.

(b) "Flammable" applies to *a* substance which has a flash point above *20 degrees* to and including *80 degrees F,* as determined by the tagliabue open cup tester.

(c) "Combustible" applies to *a* substance which has a flash point above *80 degrees* to and including *150 degrees F,* as determined by the tagliabue open cup tester.

(d) The flammability or combustibility of solids and the contents of self-pressurized containers shall be determined by methods found by the department to be generally applicable to *the* materials or containers, respectively, and established by rules issued by the department, which rules shall also define the terms "flammable", "combustible", and "extremely flammable" in accord with *the* methods *used.*

(11) "Radioactive substance" means a substance which emits ionizing radiation.

(12) "Label" means a display of written, printed, or graphic matter upon the immediate container *("immediate container" does not include package liners)* of *a* substance or, in the case of an article which is unpackaged or is not packaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto. *A* requirement made by or under authority of this act that *a* word, statement, or other information appear on the label shall not be considered to be complied with unless *the* word, statement, or other information also appears:

(a) on the outside container or wrapper, if any, unless it is easily legible through the outside container or wrapper; and

(b) on all accompanying literature where there are directions for use, written or otherwise.

(13) "Misbranded hazardous substance" means a hazardous substance (including a toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom *the* toy or other article is entrusted) intended or packaged in a form suitable for use by the public or by children which, except as otherwise provided *under 69-7103(2) or (3),* fails to bear a label:

(a) which states conspicuously:

(i) the name and place of business of the manufacturer, packer, distributor, or seller;

(ii) the common or usual name or the chemical name (if there *is not a* common or usual name) of the hazardous substance or each component which contributes substantially to its hazard unless the department by rule permits or requires the use of a recognized generic name;

HeinOnline -- 1977 Vol. I 622 1977

(iii) the signal word "danger" on substances which are extremely flammable, corrosive, or highly toxic;

(iv) the signal word on all other hazardous substances;

(v) an affirmative statement of the principal hazard or hazards, such as:

(A) "flammable";

(B) "combustible";

(C) "vapor harmful";

(D) "causes burns";

(E) "absorbed through skin"; or

(F) similar wording descriptive of the hazard;

(vi) precautionary measures describing the action to be followed or avoided, except when modified by a rule of the department under 69-7103*(2) or (3)*;

(vii) instruction, when necessary or appropriate, for *first aid* treatment;

(viii) "poison" for any hazardous substance which is defined as "highly toxic" by subsection (6) *of this section*; *and*

(ix) instructions for handling and storage *of* packages which require special care in handling or storage *such as*:

(A) "keep out of the reach of children" or its practical equivalent; or

(B) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard; and

(b) on which *a* statement required under *subsection (13)(a) of this section is* located prominently and *is* in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

(14) (a) "Banned hazardous substance" means:

(i) *a* toy or other article intended for use by children which is a hazardous substance or which bears or contains a hazardous substance in such a manner as to be susceptible of access by a child to whom the toy or other article is entrusted; or

(ii) *a* hazardous substance intended or packaged in a form suitable for use by the general public which the department by rule classifies as a banned hazardous substance on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this act for that substance, the degree or nature of the hazard involved in the presence or use of *the* substance by the general public is such that the objective of the protection of the public health and safety can be adequately served only by keeping the substance, when so intended or packaged, out of the channels of commerce.

HeinOnline -- 1977 Vol. I 623 1977

(b) The department by rule shall exempt from *subsection (14)(a)(i) of this section* articles such as chemical sets which, by reason of their functional purpose, require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical, or thermal hazard and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity and may reasonably be expected to read and heed the directions and warnings.

(c) Proceedings for the issuance, amendment, or repeal of rules under *subsections (14)(a)(ii) and (14)(b) of this section* shall be governed by the provisions of *subsections (4) and (5) of 69-7103.*

(15) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electric shock.

(16) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness:

(a) from fracture, fragmentation, or disassembly of the article;

(b) from propulsion of the article (or *a* part or accessory thereof);

(c) from points or other protrusions, surfaces, edges, openings, or closures;

(d) from moving parts;

(e) from lack or insufficiency of controls to reduce or stop motion;

(f) as a result of self-adhering characteristics of the article;

(g) because the article (or *a* part or accessory thereof) may be aspirated or ingested;

(h) because of instability; or

(i) because of any other aspect of the article's design or manufacture.

(17) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances, or surfaces.

(18) "Court" means, in *69-7103(5)*, the district court for the first judicial district and, in 69-7106 and 69-7107, the district court *in* the district *where* the violation occurs."

Section 28. Section 69-7103, R.C.M. 1947, is amended to read as follows:

"69-7103. Declaration of hazardous substance — labeling requirements — court proceedings. (1) When in the judgment of the

department such action will promote the objectives of this act by avoiding or resolving uncertainty as to its application, the department may by rule declare to be a hazardous substance a substance or mixture of substances which the department finds meets the requirements of *subsection (4)(a)(i)* of *69-7102.*

(2) If the department finds that the requirements of *69-7102(13)(a)* are not adequate for the protection of the public health and safety in view of the special hazard presented by a hazardous substance, the department may by rule establish such reasonable variations or additional *labeling* requirements as *are* necessary for the protection of the public health and safety, and a hazardous substance intended or packaged in a form suitable for use by the general public or by children which fails to bear a label in accordance with the rules *is* a misbranded hazardous substance.

(3) If the department finds that because of the size of the package involved or because of the minor hazard presented by the substance contained therein or for other good and sufficient reasons full compliance with the labeling requirements otherwise applicable under this act is impracticable or is not necessary for the adequate protection of the public health and safety, the department shall adopt rules exempting *the* substance from these requirements to the extent of being consistent with adequate protection of the public health and safety.

(4) If the department finds that the hazard of an article subject to this act is such that labeling adequate to protect the public health and safety cannot be devised or the article presents an imminent danger to the public health and safety, the department may declare the article a banned hazardous substance and require its removal from commerce.

(5) (a) A determination by the department that a toy or other article intended for use by children presents an electrical, mechanical, or thermal hazard shall be made by rule in accordance with this act.

(b) If, before or during a proceeding under *subsection (5)(a) of this section,* the department finds that because of an electrical, mechanical, or thermal hazard distribution of a toy or other article involved presents an imminent hazard to the public health and the department gives notice of *the* finding, the toy or other article *is* a banned hazardous substance for purposes of this act until the proceeding has been completed. If not yet initiated when the notice is given, the proceeding shall be initiated as promptly as possible.

(c) (i) In the case of a toy or other article intended for use by children which is determined by the department to present an electrical, mechanical, or thermal hazard, a person who will be adversely affected by *the* determination may, at any time before the *60th* day after the rule making the determination is issued by the department, file a petition with the court for a judicial review of *the* determination. A copy of the petition shall be immediately transmitted by the clerk of the court to the department. The department shall file in the court the record of the proceedings on which the department based its determination.

(ii) If the petitioner applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that *the* additional

HeinOnline -- 1977 Vol. I 625 1977

evidence is material and that there was no opportunity to adduce *the* evidence in the proceeding before the department, the court may order *the* additional evidence (and evidence in rebuttal thereof) to be taken before the department in a hearing or in *another* manner and upon *other* terms and conditions as the court *considers* proper. The department may modify *its* findings as to the facts or make new findings by reason of the additional evidence so taken, and *it* shall file *the* modified or new findings and *its* recommendation, if any, for the modification or setting aside of *its* original determination with the return of *the* additional evidence.

(iii) Upon the filing of the petition under *subsection (5)(c) of this section*, the court has jurisdiction to review the determination of the department. If the court ordered additional evidence to be taken under *subsection (5)(c)(ii) of this section*, the court shall also review the department's determination to determine if, on the basis of the entire record before the court under *subsections (5)(c)(i) and (5)(c)(ii) of this section*, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to *a* determination reviewed under *subsection (5)(c) of this section*, the court may grant appropriate relief pending conclusion of the review proceedings."

Section 29. Section 69-7105, R.C.M. 1947, is amended to read as follows:

"**69-7105. Penalty — exceptions.** (1) *A* person who violates the provisions of 69-7104 is guilty of a misdemeanor and shall be fined *no* more than $500 or *be* imprisoned for *any term not to exceed* 90 days, or both. For offenses committed with intent to defraud or mislead or for second and subsequent offenses, the penalty shall be imprisonment for *any term not to exceed* 1 year or a fine of *no* more than $3,000, or both.

(2) No person is subject to the penalties of subsection (1) of this section:

(a) for having violated 69-7104(3) if the receipt, delivery, or proffered delivery of the hazardous substance was made in good faith unless he refuses to furnish on request of an officer or employee duly designated by the department the name and address of the person from whom he purchased or received *the* hazardous substance and copies of all documents pertaining to the delivery of the hazardous substance to him; or

(b) for having violated 69-7104(1) if he establishes a guarantee or undertaking signed by and containing the name and address of the person residing in the United States from whom he received in good faith the hazardous substance to the effect that the hazardous substance is not a misbranded or banned hazardous substance within the meaning of those terms in *this* act."

Section 30. Section 69-7107, R.C.M. 1947, is amended to read as follows:

"**69-7107. Detainer of misbranded or banned hazardous substance.** (1) *If* a duly authorized agent of the department finds or has probable cause to believe that *a* hazardous substance is misbranded or is a banned hazardous substance within the meaning of this act, he shall affix

HeinOnline -- 1977 Vol. I 626 1977

to *the* article a tag or other appropriate marking giving notice that *the* article is or is suspected of being misbranded or is a banned hazardous substance and has been detained or embargoed and warning all persons not to remove or dispose of *the* article by sale or otherwise until permission for removal or disposal is given by *the* agent or the court. It *is* unlawful for *a* person to remove or dispose of *a* detained or embargoed article by sale or otherwise without permission.

(2) *If* an article detained or embargoed under subsection (1) *is* found by *the* agent to be misbranded or a banned hazardous substance, he shall petition the judge *of* the *city, justice's,* or *district* court in whose jurisdiction the article is detained or embargoed for *an order* of condemnation of *the* article. *If the* agent *finds* that an article so detained or embargoed is not misbranded or a banned hazardous substance, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is misbranded or a banned hazardous substance, *the* article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under supervision of *the* agent, and all court costs and fees and storage and other proper expenses *are to* be taxed against the claimant of *the* article or his agent. *If* the misbranding can be corrected by proper labeling of the article, the court, after entry of the decree and after *the* costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that *the* article *will* be so labeled, has been executed, may by order direct that *the* article be delivered to the claimant thereof for *the* labeling under the supervision of an agent of the department. The expense of *the* supervision shall be paid by the claimant. The article shall be returned to the claimant on the representation to the court by the department that the article is no longer in violation of this act and that the expenses of *the* supervision have been paid."

Section 31. Section 69-7108, R.C.M. 1947, is amended to read as follows:

"**69-7108. Duties of department and county attorney.** It is the duty of the department or the county attorney to whom the department reports *a* violation of this act to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before *a* violation of this act is reported to *a county* attorney for the institution of a criminal proceeding, the person against whom *the* proceeding is contemplated shall be given appropriate notice and an opportunity to present his *views* before the department, either orally or in writing *and either in person* or by attorney, with regard to *the* contemplated proceeding."

Section 32. Section 69-7110, R.C.M. 1947, is amended to read as follows:

"**69-7110. Powers and duties of department's agents.** (1) For enforcement of this act, officers or employees duly designated by the department, upon presenting appropriate credentials to the owner, operator, or agent in charge, are authorized *to*:

(a) enter at reasonable *times a* factory, warehouse, or establishment

HeinOnline -- 1977 Vol. I 627 1977

in which hazardous substances are manufactured, processed, packed, or held for introduction into commerce or are held after such introduction;

(b) enter a vehicle being used to transport or hold hazardous substances in commerce;

(c) inspect at reasonable times, within reasonable limits, and in a reasonable manner a factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, and labeling therein; and

(d) obtain samples of materials or packages *or labeling* thereof.

(2) If the officer or employee obtains a sample, prior to leaving the premises he shall pay or offer to pay the owner, operator, or agent in charge for *the* sample and give a receipt describing the samples obtained.

(3) The department *shall* conduct investigations of reported accidental injuries, illnesses, and deaths resulting from the use or misuse of all hazardous substances, *as defined by 69-7102(4)(a)(i),* intended or suitable for use by the general public. Investigations *shall* evaluate the causative hazardous substance and circumstances of the accident for enforcement of this act. *If* the offending hazardous substance is a pesticide regulated by another agency *under* the *federal* Environmental Pesticide Control Act or the Montana *Pesticides* Act, the investigation *shall* yield recommendations to the appropriate regulating agency for appropriate action."

Section 33. Section 82-1201, R.C.M. 1947, is amended to read as follows:

"**82-1201. Fire marshal bureau.** (1) There is a fire marshal *bureau in the department of justice* which is under the supervision and control of the *attorney general.*

(2) The *chief of the* fire marshal *bureau* shall be appointed by the *attorney general* and shall serve at his pleasure. *The chief of the fire marshal bureau is the state fire marshal.*

(3) A person appointed state fire marshal shall:

(a) have 10 years of progressively responsible experience in fire protection;

(b) *have* a degree in engineering from a recognized institution of higher education and 2 years' experience in fire protection; or

(c) *have* a degree from a recognized institution of higher education in fire protection engineering or fire protection technology."

Section 34. Section 82-1202, R.C.M. 1947, is amended to read as follows:

"**82-1202. Powers and duties of fire marshal.** *(1)* The state fire marshal shall:

(a) make at least one inspection a year of each state institution and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety;

HeinOnline -- 1977 Vol. I 628 1977

(b) make at least one inspection *a* year of each unit of the Montana university system and submit a copy of the report to the *commissioner of higher education* with recommendations in regard to fire prevention, fire protection, and public safety;

(c) inspect public, business, or industrial buildings and require conformance to law *and* rules promulgated under the provisions of this *chapter; and*

(d) do all things necessary and convenient for carrying into effect the fire prevention laws of this state.

(2) The state fire marshal may:

(a) adopt rules *necessary* for safeguarding *life* and property from the hazards of fire and explosion; *and*

(b) if necessary to safeguard life and property under rules promulgated pursuant to this section, maintain an action to enjoin the use of all or a portion of a building or facility or restrain a specific activity until there is compliance with the rules.

(3) Rules shall be adopted as prescribed in the Montana Administrative Procedure Act."

Section 35. Section 82-1215, R.C.M. 1947, is amended to read as follows:

"**82-1215. Duties of marshal and deputies in case of violation of law — false swearing or contemptuous conduct of witnesses.** *(1)* If the state fire marshal or a deputy fire marshal *is* notified by *an* officer or other *person* or *knows* of *a* violation of the laws of this state relating to fires, *he shall immediately and* diligently inquire into the facts of *the* violation. *The state fire marshal or a deputy fire marshal* is authorized to *have a subpoena* issued for *a person* he *has* reason to believe *has* information *or knowledge* concerning *a* violation *of the laws relating to fires. The subpoena shall command the person* to appear before a justice of the peace at the time and place designated in the subpoena to testify concerning *a* violation of *the laws relating to fires. For the* purpose *of having a subpoena issued,* the state fire marshal or deputy fire marshal may file with *a* justice of the peace a written statement signed by *the* state fire marshal or deputy fire marshal, alleging *a* violation of the laws of this state relating to fires *and naming the witness to be subpoenaed. The* justice of the peace shall issue *a* subpoena for the witness named commanding *him* to appear before *the* justice of the peace at the time designated in *the* subpoena to testify concerning *a* violation of *the laws relating to fires. The subpoena* may be served by the sheriff or any *peace officer* of the county or by any other person who is a citizen of the county and shall be served and returned to *the* state fire marshal, deputy fire marshal, or justice of the peace in the same manner that subpoenas are served and returned when issued by justices of the peace. *The* witness shall be sworn to make true answers to all questions *touching the matters under investigation* propounded to him, and *his* testimony shall be reduced to writing and *be* signed by *him.* For the purpose of this act, the state fire marshal or a deputy fire marshal *is authorized* to administer an oath

HeinOnline -- 1977 Vol. I 629 1977

to a person appearing as a witness *in a proceeding investigating a violation of the laws relating to fires.* False swearing in such a proceeding *is* perjury and *shall be* punished as such. *Disobedience* to *a* subpoena, refusal to be sworn as a witness or to sign the testimony given by *a* witness, or refusal to answer *a* proper question propounded to *a witness is* a misdemeanor, and *a* person convicted thereof shall be *fined no* more than *$100* or *be imprisoned* in the county jail for *any term not to exceed 90 days*, or both.

(2) A justice of the peace, when acting under the provisions of this act, *may* adjourn proceedings from time to time and punish *a* witness for contempt *because* of his refusal to be sworn, to answer questions as a witness, or to sign his testimony. *The justice of the peace may compel the* attendance of witnesses by attachment. If the testimony so taken *discloses* the fact that an offense has been committed, the county attorney of the county in which *the* offense was committed shall prosecute the person committing *the* offense in the same manner as in other criminal cases."

Section 36. Section 82-1226, R.C.M. 1947, is amended to read as follows:

"**82-1226. Records of fire marshal.** The state fire marshal shall keep in his office a record of all fires occurring in the state, the origin of *the* fires, and all facts, statistics, and circumstances relating thereto which have been determined by investigations under the provisions of this chapter*; and, except for* the testimony given *during* an investigation, *the* record shall be open at all times to public inspection."

Section 37. Section 82-1229, R.C.M. 1947, is amended to read as follows:

"**82-1229. Annual reports.** The state fire marshal shall make an annual report to the *attorney general* containing a detailed statement of his official action and the transactions of his department, *and the attorney general* shall, in turn, submit *the* report to the governor with such recommendations and comments thereon as he *considers* necessary."

Section 38. Section 94-5-615, R.C.M. 1947, is amended to read as follows:

"**94-5-615. Definitions.** As used in this act *the following definitions apply*:

(1) "Department" means the department of health and environmental sciences *provided for in Title 82A, chapter 6.*

(2) "Facility" means a hospital, health care facility, physician's office, or other place in which an abortion is performed.

(3) *(a)* "Informed consent" means voluntary consent to *an* abortion by the woman upon whom the abortion is to be performed only after full disclosure to her by the physician who is to perform the abortion of such of the following information as is reasonably chargeable to the knowledge of *the* physician in his professional capacity:

(i) the stage of development of the fetus, the method of abortion to be utilized, and the effects of such abortion method upon the fetus;

HeinOnline -- 1977 Vol. I 630 1977

(ii) the physical and psychological effects of abortion; *and*

(iii) available alternatives to abortion, including childbirth and adoption.

(b) Informed consent may be evidenced by a written statement in *a* form prescribed by the department *and* signed by the physician and the woman upon whom the abortion is to be performed in which the physician certifies that he has made the full disclosure provided above and in which the woman upon whom the abortion is to be performed acknowledges that the above disclosures have been made to her and that she voluntarily consents to the abortion.

(4) "Abortion" means the performance of, assistance or participation in the performance of, or submission to an act or operation intended to terminate a pregnancy without live birth.

(5) "Viability" means the ability of a fetus to live outside the mother's womb, albeit with artificial aid."

Section 39. **Repealer.** Sections 41-2101 through 41-2108, 69-1924, and 82-1232, R.C.M. 1947, are repealed.

Approved April 1, 1977.

CHAPTER NO. 188

AN ACT TO PROVIDE FOR APPROVAL OF ATTORNEY FEES IN CONNECTION WITH CLAIMS AGAINST GOVERNMENTAL ENTITIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82-4316.1 that reads as follows:

82-4316.1. Court approval of attorney's fees. (1) When an attorney represents or acts on behalf of a claimant or any other party on a tort claim against the state or a political subdivision thereof, the attorney shall file with the claim a copy of the contract of employment showing specifically the terms of the fee arrangement between the attorney and the claimant.

(2) The district court may regulate the amount of the attorney's fee in any tort claim against the state or a political subdivision thereof. In regulating the amount of the fee, the court shall consider the time the attorney was required to spend on the case, the complexity of the case, and any other relevant matter the court may consider appropriate.

(3) Attorney's fees regulated under this section shall be made a part of the court record and are open to the public.

(4) If an attorney violates a provision of this section, a rule of court adopted under this section, or an order fixing attorney's fees under this

section, he forfeits the right to any fee which he may have collected or been entitled to collect.

Approved April 1, 1977.

CHAPTER NO. 189

AN ACT TO SPECIFICALLY PROVIDE THE STATE, COUNTIES, TOWNS, AND ALL OTHER LOCAL GOVERNMENT ENTITIES AND THE OFFICERS, AGENTS, AND EMPLOYEES OF THOSE ENTITIES IMMUNITY FROM SUIT FOR INJURY TO A PERSON OR PROPERTY IN CERTAIN CASES IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE II, SECTION 18 OF THE CONSTITUTION OF THE STATE OF MONTANA; AMENDING SECTION 82-4310, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4310, R.C.M. 1947, is amended to read as follows:

"**82-4310. Governmental entities liable for torts except as specifically provided by the legislature.** Every governmental entity is subject to liability for its torts and those of its employees acting within the scope of their employment or duties whether arising out of a governmental or proprietary function *except as specifically provided by the legislature under Article II, section 18 of The Constitution of the State of Montana.*"

Section 2. There is a new R.C.M. section numbered 82-4328 that reads as follows:

82-4328. Immunity from suit for legislative acts and omissions. (1) As used in this section:

(a) the term "governmental entity" includes the state, counties, municipalities, and school districts;

(b) the term "legislative body" includes the legislature vested with legislative power by Article V of The Constitution of the State of Montana and any local governmental entity given legislative powers by statute, including school boards.

(2) A governmental entity is immune from suit for an act or omission of its legislative body or a member, officer, or agent thereof.

(3) A member, officer, or agent of a legislative body is immune from suit for damages arising from the lawful discharge of an official duty associated with the introduction or consideration of legislation or action by the legislative body.

(4) The immunity provided for in this section does not extend to any tort committed by the use of a motor vehicle, aircraft, or other means of transportation.

HeinOnline -- 1977 Vol. I 632 1977

Section 3. There is a new R.C.M. section numbered 82-4329 that reads as follows:

82-4329. Immunity from suit for judicial acts and omissions. (1) The state and other governmental units are immune from suit for acts or omissions of the judiciary.

(2) A member, officer, or agent of the judiciary is immune from suit for damages arising from his lawful discharge of an official duty associated with judicial actions of the court.

(3) The judiciary includes those courts established in accordance with Article VII of The Constitution of the State of Montana.

Section 4. There is a new R.C.M. section numbered 82-4330 that reads as follows:

82-4330. Immunity from suit for certain gubernatorial actions. The state and the governor are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving bills or in calling sessions of the legislature.

Section 5. There is a new R.C.M. section numbered 82-4331 that reads as follows:

82-4331. Immunity from suit for certain actions by local elected executives. A local governmental entity and the elected executive officer thereof are immune from suit for damages arising from the lawful discharge of an official duty associated with vetoing or approving ordinances or other legislative acts or in calling sessions of the legislative body.

Section 6. There is a new R.C.M. section numbered 82-4332 that reads as follows:

82-4332. State or other governmental entity immune from exemplary and punitive damages. The state and other governmental entities are immune from exemplary and punitive damages.

Section 7. There is a new R.C.M. section numbered 82-4333 that reads as follows:

82-4333. Actions under invalid law or rule — same as if valid — when. (1) If an officer, agent, or employee of the state or of a county, municipality, taxing district, or other political subdivision of the state acts in good faith, without malice or corruption, and under the authority of law and that law is subsequently declared invalid as in conflict with the constitution of Montana or the constitution of the United States, neither he nor any other officer or employee of the governmental entity he represents, nor the governmental entity he represents, is civilly liable in any action in which he, such other officer, or such governmental entity would not have been liable had the law been valid.

(2) If an officer, agent, or employee of the state, or of a county, municipality, taxing district, or other political subdivision of the state acts in good faith, without malice or corruption, and under the authority of a duly promulgated rule or ordinance and that rule or ordinance is subsequently declared invalid, neither he nor any other officer, agent, or

HeinOnline -- 1977 Vol. I 633 1977

employee of the governmental unit he represents, nor the governmental entity he represents, is civilly liable in any action in which no liability would attach had the rule or ordinance been valid.

Section 8. There is a new R.C.M. section numbered 82-4334 that reads as follows:

82-4334. Limitation on governmental liability for damages in tort — petition for relief in excess of limits. (1) Neither the state, a county, municipality, taxing district, nor any other political subdivision of the state is liable in tort action for:

(a) noneconomic damages; or

(b) economic damages suffered as a result of an act or omission of an officer, agent, or employee of that entity in excess of $300,000 for each claimant and $1 million for each occurrence.

(2) The legislature or the governing body of a county, municipality, taxing district, or other political subdivision of the state may, in its sole discretion, authorize payments for noneconomic damages or economic damages in excess of the sum authorized in subsection (1)(b) of this section, or both, upon petition of plaintiff following a final judgment. No insurer is liable for such noneconomic damages or excess economic damages unless specifically authorized in the contract of insurance.

(3) As used in this section:

(a) "economic damages" means tangible pecuniary losses;

(b) "noneconomic damages" means those damages not included in economic, punitive, or exemplary damages including, without limitation, damages for pain and suffering, loss of consortium, mental distress, and loss of reputation.

Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 1, 1977.

CHAPTER NO. 190

AN ACT TO PERMIT THE DEPARTMENT OF LIVESTOCK TO SEEK PROHIBITORY OR MANDATORY INJUNCTIVE RELIEF WHEN NECESSARY TO FULFILL ITS DUTIES UNDER ANIMAL HEALTH AND LIVESTOCK MARKETING LAWS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 46-210.1 that reads as follows:

46-210.1. Injunctive remedies. The department may apply for and

HeinOnline -- 1977 Vol. I 634 1977

the court may grant a temporary or permanent injunction restraining any person from violating the provisions of this chapter except sections 46-239.1 through 46-239.3 or rules adopted under this chapter with the above exception, notwithstanding the existence of other remedies at law. When the application of other remedies has been insufficient to compel action to control, extirpate, or prevent the spread of disease or upon a showing that an animal disease emergency exists and that other remedies probably would be insufficient to compel action to control the emergency, the department may apply for and the court may grant mandatory injunctive relief.

Section 2. There is a new R.C.M. section numbered 46-2906.1 that reads as follows:

46-2906.1. Injunctive remedy. The buying of livestock by a person not licensed and bonded as required by this chapter may be enjoined by the district court on petition from the department. Upon a showing that a person is engaging in the business of a livestock dealer as defined in 46-2901 without the license and bond required by this chapter, the court shall enjoin the person from further activities as a livestock dealer until the license and bond have been properly obtained. It is not necessary to show that any individual has been injured by the actions complained of in order to issue the injunction. The injunction provided by this section is an additional remedy to the criminal penalties provided in 46-2906.

Approved April 1, 1977.

CHAPTER NO. 191

AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO A THREE-DAY COOLING OFF PERIOD ON DOOR-TO-DOOR SALES; AMENDING SECTIONS 85-501, AND 85-503 THROUGH 85-506, R.C.M. 1947; REPEALING SECTION 85-502, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-501, R.C.M. 1947, is amended to read as follows:

"**85-501. Purpose.** The purpose of this act is to afford consumers, subjected to high pressure *personal solicitation* sales tactics a "cooling-off" period."

Section 2. There is a new R.C.M. section numbered 85-502.1 that reads as follows:

"**85-502.1. Definitions.** As used in this act the following definitions apply:

(1) "Buyer" means anyone who gives a consideration for the purchase or use of goods or services.

(2) "Personal solicitation" means any attempt by a seller who regularly engages in transactions of the same kind to sell goods or services which

HeinOnline -- 1977 Vol. I 635 1977

are primarily for personal, family, or household purposes, when either the seller or a person acting for him contacts the buyer by telephone or in person other than at the place of business of the seller, except:

(a) an attempted sale in which the buyer personally knows the identity of the seller, the name of the business, firm, or organization he represents and the identity or kinds of goods or services offered for sale;

(b) an attempted sale in which the buyer has initiated the contact with the seller;

(c) an attempted sale of a newspaper subscription in which the seller is a minor child engaged in both the delivery and the sale of the newspaper; or

(d) an attempted sale of an insurance policy.

(3) "Personal solicitation sale" means the purchase, lease, or rental of any goods or services following a personal solicitation by the seller or a person acting for him, provided the buyer is required to give consideration in excess of $25 in cash or credit therefor

(4) "Seller" means a lessor, renter, or anyone offering goods or services for consideration, including assignee of a seller.

Section 3. There is a new R.C.M. section numbered 85-502.2 that reads as follows:

85-502.2. Disclosure obligation. Before any personal solicitation each seller shall, at the time of initial contact or communication with the potential buyer, clearly and expressly disclose the individual seller's name, the name of the business, firm, or organization he represents, the indentity or kinds of goods or services he wishes to demonstrate or sell, and that he wishes to demonstrate or sell the identified goods or services. When the initial contact is made in person, the seller shall also show the potential buyer an identification card which clearly states the seller's name and the name of the business or organization he represents. The disclosures required by this section shall be made before asking any questions or making any statements except an initial greeting. Nonprofit organizations are exempt from the requirements of this section.

Section 4. Section 85-503, R.C.M. 1947, is amended to read as follows:

"**85-503. Buyer's right to cancel personal solicitation sale — time allowed — notice — return of goods.** (1) Except as provided in subsection (5), in addition to any right otherwise to revoke an offer, the buyer or any other person obligated for any part of the purchase price may cancel a *personal* solicitation sale until midnight of the third business day after the day on which the buyer has signed an agreement or offer to purchase relating to such sale, *provided that in the case of a personal solicitation sale made by telephone, the buyer may cancel at any time prior to his signing of an agreement or offer to purchase relating to such sale.*

(2) Cancellation occurs when written notice of cancellation is given to the seller.

(3) Notice of cancellation, if given by mail, *is considered* given when deposited in a mailbox properly addressed and postage prepaid.

HeinOnline -- 1977 Vol. I 636 1977

(4) Notice of cancellation need not take the form prescribed and shall be sufficient if it indicates the intention of the buyer not to be bound.

(5) A *personal* solicitation sale may not be canceled if, in the case of goods, the goods cannot be returned to the seller in substantially the same condition as when received by the buyer."

Section 5. Section 85-504, R.C.M. 1947, is amended to read as follows:

"**85-504. Notice to buyer of right to cancel — form and contents — notice of cancellation.** (1) The seller shall furnish the buyer a notice which *contains* the statement set forth in *subsection* (a) *or a statement as prescribed by federal trade commission rule governing door-to-door sales,* and printed in capital and *lowercase* letters of not less than *10-point boldfaced* type with the seller's name and business address and the statement set forth in *subsection* (b)*:*

(a) YOU MAY CANCEL THIS SALE WITHIN THREE BUSINESS DAYS.

If you decide within *3* days that you want to cancel the sale, tear off and mail the bottom of this card. To cancel, the card must be mailed BY CERTIFIED MAIL within *3* days after you sign the contract.

(date)

(b) CONTRACT *CANCELED*

I hereby cancel this sale.

(Buyer's signature)

(2) Until the seller has complied with this section the buyer or any other person obligated for any part of the purchase price may cancel the *personal* solicitation sale by notifying the seller in any manner and by any means of his intention to cancel; provided, however, that failure to mail the cancellation by certified mail does not nullify the cancellation as long as the cancellation is mailed within the prescribed time period. The period prescribed by *85-503* shall begin to run from the time the seller complies with this section."

Section 6. Section 85-505, R.C.M. 1947, is amended to read as follows:

"**85-505. Repayment to buyer canceling — liability for failure to repay — retention of goods by buyer.** (1) Except as provided in this section, within 10 days after a *personal* solicitation sale has been canceled or an offer to purchase revoked, the seller shall tender to the buyer any payments made by the buyer and any note of other evidence of indebtedness.

(2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may elect to recover an amount equal to the trade-in allowance stated in the agreement.

(3) If the seller refuses within the period prescribed by subsection (1) to return the cash down payment or goods tendered as down payment, he shall be liable to the buyer for the entire down payment, and if the

HeinOnline -- 1977 Vol. I 637 1977

buyer is successful in his action therefor the court shall also award him $100 plus reasonable attorneys' fees and costs.

(4) Until the seller has complied with this section the buyer may retain possession of goods delivered to him by the seller and shall have a lien on the goods in his possession or control for any recovery to which he may be entitled."

Section 7. Section 85-506, R.C.M. 1947, is amended to read as follows:

"**85-506. Redelivery of goods — care of goods by buyer.** (1) Except as provided by *85-505(4)*, within a reasonable time after a *personal* solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale but need not tender at any place other than his residence. If the seller fails to demand possession of such goods within a reasonable time after cancellation or revocation, the goods shall become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days shall be presumed to be a reasonable time.

(2) The buyer shall take reasonable care of the goods in his possession both before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk and such goods must be returned in substantially the same condition as received."

Section 8. There is a new R.C.M. section numbered 85-507 that reads as follows:

85-507. Violation. Except where inconsistent with the provisions of this act, a violation of this act is a violation of the Montana Unfair Trade Practices and Consumer Protection Act of 1973.

Section 9. **Repealer.** Section 85-502, R.C.M. 1947, is repealed.

Approved April 1, 1977.

CHAPTER NO. 192

AN ACT REVISING THE LIVESTOCK AUCTION MARKET LAW TO CLARIFY THAT THE TRANSFER OF OWNERSHIP OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY REQUIRED TO OPERATE A LIVESTOCK MARKET IS PERMITTED WITHOUT A DETERMINATION AND SHOWING OF PUBLIC CONVENIENCE AND NECESSITY; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 46-909.1 that reads as follows:

46-909.1. Transfer of certificate. The board may approve the transfer of ownership of a certificate of public convenience and necessity issued

HeinOnline -- 1977 Vol. I 638 1977

pursuant to this chapter without a determination and showing of public convenience and necessity. Such approval may be granted only after a public hearing at which the transferee's qualifications to operate a livestock market have been thoroughly examined and found sufficient to properly operate a livestock market. A minimum of 10 days' notice by mail must be given to all persons to whom notice is sent pursuant to the provisions of 46-909 on a hearing to consider an initial application for a certificate.

Section 2. **Legislative intent.** The legislature declares that the intent of the previously existing livestock auction market law was to permit the transfer of ownership of a certificate of public convenience and necessity without a determination and showing of public convenience and necessity.

Section 3. **Effective date.** This act is effective upon its passage and approval.

Approved April 1, 1977.

CHAPTER NO. 193

AN ACT TO AMEND SECTIONS 6-501 AND 82-1133, R.C.M. 1947, RELATING TO BID SECURITY ON PUBLIC CONTRACTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 6-501, R.C.M. 1947, is amended to read as follows:

"**6-501. Bids accompanied by covenant of indemnity — contents — bidder's security — money, checks or bonds — forfeiture.** In all cases where (a) the state of Montana, or any department (including the department of administration, unless otherwise authorized by express provision of law), institution, board, commission, agency, authority or subordinate jurisdiction thereof, or (b) any county, or other political subdivision of this state, or (c) any municipal corporation or authorized subdivision thereof, or (d) school districts, irrigation districts, or other public authority organized under the laws of the state of Montana (any and all thereof being herein referred to as a "public authority" or "obligee") is authorized by law to solicit bids, tenders or proposals for public works, improvements or undertakings of any kind, or for the purchase of commodities, goods, or property, or for the procurement of technical or special services on a bid basis (exclusive of services on the basis of salaries or wages) or for the sale and purchase of bonds, debentures, notes or any other forms of indebtedness of any such public authority, the respective executive, administrative or other officers of and acting for such public authority shall require, as a condition precedent to considering any such bids, as evidence of good faith on the part of the bidder, and as indemnity for the benefit of such public authority against the failure or refusal of any bidder to enter into any written contract that may be awarded upon and following acceptance of bid, or consummating any sale and purchase of any forms of indebtedness, that any bid shall contain a written covenant of indemnity conditioned as herein prescribed and that the bid shall

HeinOnline -- 1977 Vol. I 639 1977

be accompanied by bid security of the nature herein specified, for the performance of such covenant. The advertisement, request, or solicitation for bids or offers shall distinctly specify that all bidders, offerors, tenderers or contractors shall,

(a) In any case where bids are solicited other than for purchase of any forms of indebtedness, expressly covenant in any bid that if the bidder shall be awarded the contract the bidder will, within the time required, as stated in the advertisement or solicitation, enter into a formal contract and give a good and sufficient bond to secure the performance of the terms and conditions of the contract; otherwise, the bidder will pay unto the public authority the difference in money between the amount of the bid of the said bidder and the amount for which the public authority legally contracts with another party to perform the work or supply the property, commodities or services, as the case may be, if the latter amount be in excess of the former, but in no event shall the bidder's liability or the liability of the surety of such bidder, exceed the penal sum stated in the solicitation or advertisement for bids, which sum shall be represented by the money posted or stated in the security instrument or bid bond; or

(b) In any case where the bids are solicited for the purchase and sale of any forms of indebtedness of such public authority, expressly covenant that the money or bank instrument accompanying the bid, in the sum specified by the public authority, shall be kept and retained by the public authority as liquidated damages for failure to consummate the purchase of such forms of indebtedness as may be awarded on acceptance of bid, and in compliance with the terms thereof.

In no event shall the bidder's liability, or the liability of the maker of the security instrument, or the liability on the bid bond exceed the amount specified by the public authority in the solicitation or advertisement for bids, whether the amount shall be posted in money, or be stated as the amount payable in the security instrument, or as the maximum amount payable in the bid bond. The public authority shall distinctly specify in the solicitation or advertisement for bids the penal or other sum fixed by statute to be paid by any bidder failing or refusing as aforesaid, in any case where such sum or sums are fixed by statute for bid security; otherwise, it shall in all cases specify the sum, *but in no case less then 10% of the bid price,* which it may deem reasonably necessary to protect and indemnify the public authority against the failure or refusal of the bidder to enter into the contract, or consummate the purchase of indebtedness, as the case may be.

In all cases under category (a) the bidder, offeror, or tenderer shall accompany any bid with either (1) lawful moneys of the United States, or (2) with a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana, or by any banking corporation incorporated under the laws of the state of Montana, or (3) a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana; and in all cases under category (b) the bidder shall accompany the bid with the security described in (1) or (2) above. The moneys or, in lieu of moneys, any of such bank instruments or bid bonds shall be payable directly to the public authority soliciting or advertising for bids.

HeinOnline -- 1977 Vol. I 640 1977

If, in any instance, one or more bids be accepted, or if a sale of any form of indebtedness is ordered, or if a contract is awarded, any bidder whose bid is accepted and who shall thereafter refuse to enter into and execute the proposed contract, or carry out and consummate the purchase of any form of indebtedness, as stated in the covenant in the bid, and herein, shall absolutely forfeit such moneys or bank instruments to the public authority concerned, and become immediately liable on the bid bond but not in excess of the penal sum therein stated. The moneys or bank instruments or bid bonds, as the case may be, shall be returned to those bidders whose bids are not accepted. The advertisement, request or other solicitation for bids or offers shall distinctly specify that lawful moneys of the United States, or a cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by banks, as herein specified, payable as aforesaid, or bid bond in any case appropriate therefor, shall constitute compliance with the requirement for bid security. But nothing herein contained shall exclude or be construed to excuse compliance with any other requirements for bonds or other or further security after acceptance of bids or following award of contract, or excuse compliance with any requirements for performance bonds, at any time, as such requirements may be prescribed or authorized by the laws of the state of Montana."

Section 2. Section 82-1133, R.C.M. 1947, is amended to read as follows:

"82-1133. **Number of bids required — bid security to accompany bid.** There must be bids from at least two (2) responsible contractors in their respective lines when said contract involves an expenditure of more than two thousand dollars ($2,000.00); each bid must be accompanied by *bid security in the amount of 10% of the bid, such security to consist of cash, cashier's check, certified check, bank money order, or bank draft, in any case drawn and issued by a national banking association located in the state of Montana or by any banking corportion incorporated under the laws of the state of Montana, or a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana.*"

Approved April 1, 1977.

CHAPTER NO. 194

AN ACT TO ALLOW TRUSTEES OF A SCHOOL DISTRICT TO ESTABLISH A BUS DEPRECIATION RESERVE FUND TO FACILITATE REPLACEMENT OF BUSES AND TWO-WAY RADIOS USED FOR SCHOOL FUNCTIONS OR ACTIVITIES; AMENDING SECTION 75-7024, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7024, R.C.M. 1947, is amended to read as follows:

"**75-7024. Bus depreciation reserve.** *(1)* The trustees of any district owning a bus or a two-way radio used for purposes *of transportation, as defined in 75-7001, or for purposes of conveying pupils to and from school functions or activities* may establish a bus depreciation reserve fund *to be used* for the *replacement* of such bus or radio.

(2) Whenever a bus depreciation reserve fund is established, the trustees may include in the district's budget, in accordance with the school budgeting provisions of this title, an amount each year that does not exceed 20% of the original cost of a bus or a two-way radio for *such* purposes. The annual revenue requirement for each district's bus depreciation reserve fund, determined within the limitations of this section, shall be reported by the county superintendent to the county commissioners on the second Monday of August as the bus depreciation reserve fund levy requirement for *that* district and a levy shall be made by the county commissioners in accordance with 75-6717.

(3) Any expenditure of bus depreciation reserve fund moneys shall be within the limitations of the district's final bus depreciation reserve fund budget and the school financial administration provisions of this *title* and *may* be made only for the purchase of buses or radios to replace the buses or radios for which the bus depreciation reserve fund was created.

(4) Whenever the trustees of a district maintaining a bus depreciation reserve fund *consider* it to be *in* the best *interest* of the district to transfer any portion or all of the bus depreciation reserve cash balance to any other fund maintained by the district, it shall submit such proposition to the electors of the district. The electors qualified to vote at the election shall qualify under 75-6410, and the election shall be called and conducted in the manner prescribed by this title for school elections. If a majority of those electors voting at the election approve the proposed transfer from the bus depreciation reserve fund, the transfer *is* approved and the trustees shall immediately order the county treasurer to make the approved transfer."

Approved April 1, 1977.

CHAPTER NO. 195

AN ACT TO REVISE THE REQUIREMENTS FOR LISTING UNCLAIMED PROPERTY AND TO ABOLISH REFUNDS UNDER $10; AMENDING SECTIONS 67-2211, AND 67-2219, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 67-2211, R.C.M. 1947, is amended to read as follows:

"**67-2211. Report of abandoned property.** *(1)* Every person holding moneys or other property, tangible or intangible, presumed abandoned under this act shall report *the property* to the state department of revenue as hereinafter provided.

HeinOnline -- 1977 Vol. I 642 1977

(2) The report shall be verified and shall include:

(a) *except* with respect to travelers' checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of *$10* or more presumed abandoned under this act;

(b) *in* case of unclaimed moneys of life insurance corporations, the full name of the insured or annuitant and his last known address according to the life insurance corporation's records;

(c) *the* nature and identifying number, if any, or description of the property and the amount appearing from the records to be due. *Items* of value under *$10* each may be reported in aggregate.

(d) *the* date when the property became payable, demandable, or returnable and the date of the last transaction with the owner with respect to the property; and

(e) *other* information which the state department of revenue prescribes by rule as necessary for the administration of this act.

(3) If the person holding property presumed abandoned is a successor to other persons who previously held the property for the owner or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(4) The report shall be filed before November 1 every 3 years as of June 30 next preceding, but the reports of life insurance corporations, banking and financial organizations, and *cooperatives*, shall be filed before May 1 of each year as of December 31 next preceding. The state department of revenue may request that any other reports be filed each year. The state department of revenue may postpone the reporting date upon written request by any person required to file a report. The state department of revenue shall furnish forms for this report.

(5) If the holder of property presumed abandoned under this act knows the whereabouts of the owner and if the owner's claim has not been barred by the statute of limitations, the holder shall before filing the annual report communicate with the owner and take necessary steps to prevent abandonment from being presumed. The holder shall exercise due diligence to ascertain the whereabouts of the owner.

(6) Verification if made by a partnership shall be executed by a partner; if made by an unincorporated association or private corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

(7) The initial report filed under this act shall include all items of property that would have been presumed abandoned if this act had been in effect during the *10-year* period preceding its effective date."

Section 2. Section 67-2219, R.C.M. 1947, is amended to read as follows:

"**67-2219. Claim for abandoned property paid or delivered.** Any

HeinOnline -- 1977 Vol. I 643 1977

person claiming an interest in any property delivered to the state under this act may file a claim thereto or to the proceeds from the sale thereof on the form prescribed by the state department of revenue, *except that no claim for less than $10 may be filed.*"

Approved April 1, 1977.

CHAPTER NO. 196

AN ACT TO PROHIBIT THE USE OF RECORDED OR ELECTRICALLY AMPLIFIED CALLS AS AN AID IN TAKING ANY WILDLIFE, EXCEPT PREDATORY ANIMALS AND THOSE BIRDS NOT PROTECTED BY STATE OR FEDERAL LAW; AMENDING SECTION 26-301, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-301, R.C.M. 1947, is amended to read as follows:

"**26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.** (1) *(a)* It shall be unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot or kill, any game animal, or game bird from any self propelled or drawn vehicle, or on, or from any public highway in the state of Montana, or by the aid or with the use of any set gun, jack-light, or other artificial light, trap, snare, salt lick, nor shall any such set gun, jack-light or other artificial light, trap, snare, salt lick or other device to entrap or entice game animals or game birds be used, made or set, nor may rifles be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission; provided, however, that this does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number ten (10) gauge fired from the shoulder, nor shall any game fish be caught, captured, or taken, or attempted to be caught, captured or taken by the aid or with the use of any gun, or trap, nor shall any such set gun, or trap or other device to entrap game fish be used, made, or set.

(b) It is unlawful to use any recorded or electrically amplified bird or animal calls or sounds or recorded or electrically amplified imitations of bird or animal calls or sounds to assist in the hunting, taking, killing, or capturing of wildlife, except predatory animals and those birds not protected by state or federal law.

(2) (a) No game birds or game or fur-bearing animals shall be killed, taken or shot at from any aircraft, nor shall any aircraft be used for the purpose of concentrating, pursuing, driving, rallying or stirring up any game or migratory birds, game or fur-bearing animals, nor shall any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving or stirring up any upland game birds, or game or fur-bearing animals.

HeinOnline -- 1977 Vol. I 644 1977

(b) No person in an aircraft in the air shall spot or locate any game, or migratory bird, game or fur-bearing animals and communicate the location or approximate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person or persons then on the ground.

(3) No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence, or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) No person may use a shotgun to hunt, kill or shoot deer except with loads as specified by the commission.

(5) No person shall chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners, employees of the state fish and game commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, and stock-killing mountain lions, or other means of taking stock-killing bears and stock-killing mountain lions except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be twelve (12) hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

(6) The state fish and game commission shall have the power to designate certain waters where set lines may be used to fish for certain species of game or nongame fish, and the commission may designate the number of hooks and lines and the length of line or lines which may be used as set lines.

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission shall declare an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging, the taking of paddlefish with long bow and arrow when the commission shall declare an open season when paddlefish may be taken by long bow and arrow, the taking of walleyed pike, sauger, northern pike and nongame fish with spear or gig when the commission shall declare an open season for taking walleyed pike, sauger, northern pike and nongame fish with spear or gig, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and four (4) feet in width, in such waters as may be designated by the commission.

(8) No person, while hunting game animals or game birds shall use a motor-driven vehicle on any other than an established road or trail, unless he has reduced a big game animal to possession and cannot easily retrieve said big game animal, in which case a motor-driven vehicle may

HeinOnline -- 1977 Vol. I 645 1977

be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted such permission, provided that after such retrieval, such motor-driven vehicle is again returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting game animals or game birds, shall drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game animal or game bird with the use or aid of any motor-driven vehicle. No person, while hunting game animals or game birds shall drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the land owner and in possession of the hunter. The restrictions in this subsection on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.

(9) Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

(10) The provisions of this section relating to methods of herding, driving, capturing, taking, locating or concentrating of fish, game animals, game birds or fur-bearing animals do not apply to the department of fish and game, or any employee thereof, while acting within the scope and course of the powers and duties of the department.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law."

Approved April 1, 1977.

CHAPTER NO. 197

AN ACT TO AMEND SECTION 87-135, R.C.M. 1947, WHICH SECTION IS A PART OF THE UNEMPLOYMENT COMPENSATION LAW, BY PROVIDING PENALTIES FOR FILING DELINQUENT CONTRIBUTION REPORTS; AMENDING THE PENALTY AND INTEREST PROVISIONS ON PAST-DUE CONTRIBUTIONS; DELETING LANGUAGE NO LONGER APPLICABLE; AND INCREASING THE PENALTY AND INTEREST ASSESSMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-135, R.C.M. 1947, is amended to read as follows:

"**87-135. Penalty and interest on past-due contributions.** *Contribu-*

HeinOnline -- 1977 Vol. I 646 1977

tion reports not made and filed on the date on which they are due as provided by subsections (a)(1) and (b)(2) of 87-109 shall be subject to a penalty assessment of $10. Contributions unpaid on the date on which they are due and payable, as *provided by subsections (a)(1) and (b)(2) of 87-109* shall be subject to a penalty assessment of *$10 or 10% of the contribution due,* whichever is greater, and shall bear interest at the rate of *1% per month or fraction thereof.* Interest and penalty collected pursuant to this subsection shall be paid into the unemployment compensation administration fund. When failure to pay contributions in time and before delinquency was not caused by willful intent of the employer and for good cause shown, the division may abate the penalty *for late filing or late payment or both. Interest shall not be subject to abatement."*

Approved April 1, 1977.

CHAPTER NO. 198

AN ACT TO PROVIDE FOR THE FILLING OF VACANCIES AND ANTICIPATED VACANCIES IN THE LEGISLATURE; AMENDING SECTIONS 43-202, 43-215, AND 43-216, R.C.M. 1947; AND REPEALING SECTION 59-604, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 43-202, R.C.M. 1947, is amended to read as follows:

"**43-202. Term of office.** The term of office of a senator is *4* years or until his successor is elected and qualified and of a representative *2* years or until his successor is elected and qualified; and the term of service thereof shall begin on the first Monday of January next succeeding his election. *If* a senator *is* elected to fill a vacancy, his term of service shall begin on the next day after his election."

Section 2. Section 43-215, R.C.M. 1947, is amended to read as follows:

"**43-215. Filling vacancies in the legislature — appointment by board of county commissioners — calling of board meeting — election — appointment requirements.** *(1)* When a vacancy occurs in the *legislature,* the vacancy shall be filled by appointment by the board of county commissioners or, in the event of a multicounty district, the boards of county commissioners comprising the district sitting as one appointing board.

(2) The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the *legislature,* and he shall act as the presiding officer of the meeting.

(3) (a) Whenever the vacancy occurs in the house of representatives, the appointee shall serve until the end of the term to which his predecessor was elected.

(b) Whenever the vacancy occurs in the senate, the appointee shall serve until a successor can be elected as provided in subsection (4).

(4) (a) As used in subsection (4), "term" means the 4-year period to which a senator is normally elected in the absence of a vacancy.

(b) Whenever a vacancy occurs 40 days or more before the general election held during the second year of the term, an individual shall be elected to complete the term at that general election. The election procedure to be used to elect the successor is as follows:

(i) Whenever the vacancy occurs 40 days or more prior to the primary election during the second year, the same procedure as is used for senators who will be elected to full 4-year terms at that general election shall be utilized.

(ii) Whenever the vacancy occurs on or after the 40th day prior to the primary election, any political party desiring to enter a candidate in the general election shall select a candidate as provided in 23-3406. A political party may adopt rules for the conduct of the selection process and shall notify the secretary of state and the appropriate county clerk and recorders of the party nominee. A person desiring to be a candidate as an independent shall follow the procedures provided in subsections (1) through (4) of 23-3318. The petition for an independent candidate shall be filed with the secretary of state on or before the 30th day prior to the general election.

(c) Whenever a vacancy occurs on or after the 40th day prior to the general election held during the second year of the term, the person appointed by the board under subsection (1) shall serve until the end of the term.

(5) (a) Whenever his predecessor served as a member of a political party, the appointee named under subsection (1) shall be a member of the same political party and shall be selected from a list of three individuals provided by the county central committees, acting together, of the counties wherein a portion of the senate district lies. Whenever the appointing board is unable to elect an appointee from the submitted list, they shall request a second list of three names from the county central committees. The second list may not contain any of the names submitted on the first list. The appointing board shall then select an appointee from the individuals named on both lists.

(b) The provisions of subsection (5)(a) do not apply if his predecessor served as an independent.

(6) The appointment of a legislator under this section must take place within 15 days after the vacancy occurs."

Section 3. Section 43-216, R.C.M. 1947, is amended to read as follows:

"43-216. Alternate method of selection — failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to receive a majority of the votes, the final decision may be made by lot from *the first and second lists of candidates as provided by 43-215(5)(a), or from a list of three individuals if the predecessor served as an independent,* in accordance with rules of selection adopted by the appointing board."

HeinOnline -- 1977 Vol. I 648 1977

Section 4. There is a new R.C.M. section numbered 43-216.1 that reads as follows:

43-216.1. Anticipated vacancy. (1) Whenever it appears that a vacancy will exist in the legislature because of the inability of an elected legislator to take office at the commencement of the term to which he was elected, an appointee may be selected in advance of the commencement of the term under the provisions of 43-215 and 43-216.

(2) For purposes of determining the term of office of the appointee and the 15-day period of 43-215(6), the vacancy occurs on the first day of the term to which his predecessor was elected.

(3) An appointee under this section may take office only if the vacancy in fact exists at the commencement of the term of office.

Section 5. **Repealer.** Section 59-604, R.C.M. 1947, is repealed.

Approved April 1, 1977.

CHAPTER NO. 199

AN ACT TO PROVIDE CIVIL REMEDIES FOR DAMAGE CAUSED BY TRESPASSING BISON.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-1409, R.C.M. 1947, is amended to read as follows:

"**46-1409. Liability of owners of stock for trespass.** If any cattle, horse, mule, ass, hog, sheep, *bison,* or other domestic animal break into any inclosure, the fence being legal, as hereinbefore provided, the owner of such animal is liable for all damages to the owner or occupant of the inclosure which may be sustained thereby. This section must not be construed so as to require a legal fence in order to maintain an action for injury done by animals running at large contrary to law."

Approved April 1, 1977.

CHAPTER NO. 200

AN ACT TO CLARIFY THE ORDER OF PRIORITIES FOR THE DISTRIBUTION OF THE ASSETS OF LIQUIDATED INSURANCE COMPANIES AND GIVING THE RECEIVER EARLIER ACCESS TO THE USE OF ASSETS OF INSOLVENT INSURANCE COMPANIES; AMENDING SECTION 40-5127, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-5127, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 649 1977

"**40-5127. Priority of claims for compensation.** (1) Compensation actually owing to employees other than officers of an insurer, for services rendered within *3* months prior to the commencement of a proceeding against the insurer under this chapter, but not exceeding $500 for each employee, shall be paid prior to the payment of any other debt or claim, and in the discretion of the commissioner may be paid as soon as practicable after the proceeding has been commenced; except that at all times the commissioner shall reserve such funds as will in his opinion be sufficient for the expenses of administration. Such priority shall be in lieu of any other similar priority which may be authorized by law as to wages or compensation of such employees.

(2) The priorities of distribution in a liquidation proceeding shall be in the following order:

(a) expenses of administration;

(b) compensation of employees as provided in subsection (1);

(c) claims for taxes and debts due the federal or any state or local government which are secured by liens perfected prior to the commencement of delinquency proceedings;

(d) claims by policyholders, beneficiaries, and insureds arising from and within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company and liability claims against insurers which claims are within the coverage of and not in excess of the applicable limits of insurance policies and insurance contracts issued by the company, as well as claims presented by the Montana insurance guaranty association, the Montana life and guaranty association, or any similar organization in another state which represents covered claims as defined in 40-5705(3) or contractual obligations as defined in 40-5805;

(e) all other claims including subrogation claims of other insurers."

Section 2. There is a new R.C.M. section numbered 40-5134 that reads as follows:

40-5134. Proposal for disbursement. (1) Within 120 days of a final determination of insolvency of a company by a court of competent jurisdiction, the receiver shall make application to the court for approval of a proposal to disburse assets out of such company's marshaled assets, from time to time as such assets become available, to the Montana insurance guaranty association, the Montana life and health guaranty association or to any entity or person performing a similar function in another state. Such associations are herein referred to as the associations.

(2) Such proposal shall at least include provisions for:

(a) reserving amounts for the payment of expenses of administration and the payment of claims of secured creditors to the extent of the value of the security held and claims falling within the priorities established in subsections (2)(a), (2)(b), (2)(c), and (2)(d) of 40-5127;

(b) disbursement of the assets marshaled to date and subsequent disbursements of assets as they become available;

HeinOnline -- 1977 Vol. I 650 1977

(c) equitable allocation of disbursements to each of the associations entitled thereto;

(d) the securing by the receiver from each of the associations entitled to disbursements pursuant to this section of an agreement to return to the receiver, without interest, such assets previously disbursed as may be required to pay claims of secured creditors and claims falling within the priorities established in subsections (2)(a), (2)(b), (2)(c), and (2)(d) of 40-5127 in accordance with such priorities. No bond may be required of any such association.

(e) a full report to be made by the association to the receiver accounting for all assets so disbursed to the association, all disbursements made therefrom, any interest earned by the association on such assets, and any other matter as the court may direct.

(3) The receiver's proposal shall provide for disbursements to the associations in amounts estimated to be at least equal to the claim payments made or to be made thereby for which such associations could assert a claim against the receiver and shall further provide that if the assets available for disbursement from time to time do not equal or exceed the amount of such claim payments made or to be made by the associations, then disbursements shall be in the amount of available assets.

(4) The receiver's proposal shall, with respect to an insolvent insurer writing life or health insurance or annuities, provide for disbursements of assets to the Montana life and health guaranty association or to any other entity or organization reinsuring, assuming, or guaranteeing policies or contracts of insurance under the provisions of the Montana life and health guaranty association act.

(5) Notice of such application shall be given to the associations in and to the commissioners of insurance of each of the states. Any such notice is considered to have been given when deposited in the United States mail, certified and first-class postage prepaid, at least 30 days prior to submission of such application to the court. Action on the application may be taken by the court provided the above-required notice has been given and provided further that the receiver's proposal complies with subsections (2)(a) and (2)(d).

Approved April 1, 1977.

CHAPTER NO. 201

AN ACT TO AMEND SUBSECTIONS (2), (c), AND (d) OF SECTION 87-108 TO ELIMINATE THE BOARD OF LABOR APPEALS AS A PARTY DEFENDANT; TO PERMIT THE EMPLOYMENT SECURITY DIVISION TO APPEAL DECISIONS OF THE BOARD OF LABOR APPEALS; AND TO PROVIDE TIME FOR APPEAL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-108, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 651 1977

"87-108. **Procedure and appeals.** (a) Procedure. The manner in which disputed claims shall be presented, the reports thereon required from the claimant and from employers, and the conduct of hearings and appeals shall be in accordance with regulations prescribed by the division *or the board of labor appeals* for determining the rights of the parties, whether or not such regulations conform to common law or statutory rules of evidence and other technical rules or procedure. A full and complete record shall be kept of all proceedings in connection with a disputed claim. All testimony at any hearing upon a disputed claim shall be recorded, but need not be transcribed unless the disputed claim is further appealed. The division shall have continuing jurisdiction over all claims filed for benefits to revise, modify, alter, cancel and amend all orders, findings and determinations made therein at any time and shall not lose such jurisdiction unless and until the jurisdiction of such claim and subject matter thereof has been taken by a court of competent jurisdiction in a proceedings filed therein as provided for in subsection (d) of this section.

(b) Witness fees. Witnesses subpoenaed pursuant to this section shall be allowed fees at a rate fixed by the division. Such fees shall be deemed a part of the expense of administering this act.

(c) Appeal to courts. Any decision of the board of labor appeals in the absence of an appeal therefrom as herein provided shall become final *30* days after the date of notification or mailing thereof, *except in the case of the division when such decision becomes final 20 days following the board's decision,* and judicial review thereof shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the board of labor appeals. The division shall be deemed to be a party to any judicial action involving any such decision, and may be represented in any such action by *an* attorney employed by the division or at the division's request, by the attorney general.

(d) Court review. Within *30* days after the decision of the board of labor appeals has become final, any party aggrieved thereby may secure judicial review thereof by commencing an action in the district court of the county in which said party resides *and* in which action any other party to the proceeding before the board of labor appeals shall be made a defendant. In such action, a petition which need not be verified, but which shall state the grounds upon which a review is sought, shall be served upon *the administrator of the division or the administrator's designee* and such service shall be deemed completed service on all parties, but there shall be left with the party so served as many copies of the petition as there are defendants and the *division* shall forthwith mail one such copy to each such defendant. With its answer, the *division* shall certify and file with said court all documents and papers and a transcript of all testimony taken in the matter, together with *the board of labor appeals'* findings of fact and decision. The board of labor appeals may also in its discretion, certify to such court questions of law involved in any decision by it. *Whenever the division seeks review of a decision of the board of labor appeals, all interested parties shall be served with a copy of its petition together with all documents filed with the court.* In any judicial proceeding under this section, the findings of the board of labor appeals as to the facts, if supported by evidence and in the absence of fraud, shall be

HeinOnline -- 1977 Vol. I 652 1977

conclusive, and the jurisdiction of said court shall be confined to questions of law. Such action, and the questions so certified, shall be heard in a summary manner and shall be given precedence over all other civil cases except cases arising under the workmen's compensation law of this state. An appeal may be taken from the decision of the said district court to the supreme court of Montana in the same manner, but not inconsistent with the provisions of this act, as is provided in civil cases. It shall not be necessary, in any judicial proceeding under this section, to enter exceptions to the rulings of the board of labor appeals and no bond shall be required for entering such appeal. Upon the final determination of such judicial proceeding, the division shall enter an order in accordance with such determination."

Approved April 1, 1977.

CHAPTER NO. 202

AN ACT REVISING REPRESENTATION ON THE BOARD OF CRIME CONTROL; CLARIFYING THE FUNCTIONS OF THE BOARD OF CRIME CONTROL; DELETING TRANSITIONAL PROVISIONS; AMENDING SECTION 82A-1207, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-1207, R.C.M. 1947, is amended to read as follows:

"82A-1207. Board of crime control — creation — continued — transfer — composition. (1) The administratively created agency known as the governor's crime control commission is hereby created by law as the board of crime control, and its functions are continued.

(2) The board is transferred to the department for administrative purposes only as prescribed in 82A-108. However, the board may hire its own personnel, and 82A-108(2)(d) does not apply.

(3) The board is composed of *18* members appointed by the governor *in accordance with 82A-112, but 82A-112(2)(b) does not apply, and members are to be appointed in accordance with any special requirements of Title I of the Omnibus Crime Control and Safe Streets Act, as amended.* The board shall be representative of state and local law-enforcement *and criminal justice* agencies, *including agencies directly related to the prevention and control of juvenile delinquency,* units of general local government, *and public agencies maintaining programs to reduce and control crime and shall include representatives of citizens and professional and community organizations, including organizations directly related to delinquency prevention.*

(4) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, *as amended,* the board shall perform the functions assigned to it under that act. The board shall have the authority to establish minimum qualifying standards

HeinOnline -- 1977 Vol. I 653 1977

for employment of peace officers, *whose primary responsibility as authorized by law includes either the prevention and detection of crime or supervision of the enforcement of the penal, traffic, or fish and game laws of this state and its political subdivisions,* require basic training for such officers, establish minimum standards for equipment and procedures and for advanced in-service training for such officers and establish minimum standards for any law enforcement training schools administered by the state or any of its political subdivisions of agencies, to insure the public health, welfare and safety. The board *may* waive the minimum qualification standard for good cause shown."

Approved April 1, 1977.

CHAPTER NO. 203

AN ACT TO AMEND SECTIONS 79-308 AND 81-102, R.C.M. 1947, TO AUTHORIZE THE BOARD OF INVESTMENTS TO EXECUTE DEEDS TO TRANSFER TITLE OF REAL PROPERTY OBTAINED THROUGH FORECLOSURE OF ANY INVESTMENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 79-308, R.C.M. 1947, is amended to read as follows:

"**79-308. Unified investment program for public funds.** (1) The uniform investment program directed by article VIII, section 13, of the 1972 Montana constitution to be provided for public funds shall be administered by the board of investments in accordance with the rules provided in this chapter, and with that degree of judgment and care, under circumstances from time to time prevailing, which men of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

(2) All state funds shall be invested and reinvested in securities enumerated in section 7 [79-310] of this act, to the maximum extent consistent with this policy and with the need and timing of cash expenditures for particular purposes.

(3) (a) The board of investments may execute deeds of conveyance transferring all real property obtained through foreclosure of any investments purchased under the provisions of 79-310, when full payment has been received therefor.

(b) The board of investments may:

(i) direct the withdrawal of any funds deposited by or for the state treasurer pursuant to sections 79-301 and 79-306;

(ii) direct the sale of any securities in the program at their full and true value, when found necessary to raise money for payments due from the treasury funds for which the securities have been purchased.

HeinOnline -- 1977 Vol. I 654 1977

(4) The state treasurer shall keep an account of the total of each investment fund and of all the investments belonging to such fund, and of the participation of each treasury fund account therein, and shall make from time to time such reports with reference thereto as may be directed by the board of investments.

(5) The cost of administering and accounting for each investment fund shall be deducted from the income therefrom, except that such costs of the trust and legacy fund shall be paid from income otherwise receivable from the pooled investment fund; and the amounts required for this purpose shall be appropriated by the legislature from the respective investment funds."

Section 2. Section 81-102, R.C.M. 1947, is amended to read as follows:

"**81-102. Definitions.** Unless the context requires otherwise, in this title:

(1) "Department" means the department of state lands provided for in title 82A, chapter 11.

(2) "Board" means the board of land commissioners provided for in article X, section 4 of the constitution of this state.

(3) "Commissioner" means the commissioner of state lands provided for in section 82A-1104.

(4) "State land" or "lands" means lands granted to the state by the United States for any purpose, either directly or through exchange for other lands; lands deeded or devised to the state from any person; and lands that are the property of the state through the operation of law. The term does not include lands the state conveys through the issuance of patent, lands used for building sites, campus grounds, or experimental purposes by any state institution that are the property of that institution, *or lands acquired through foreclosure of any investments purchased under the provisions of 79-310.*"

Approved April 1, 1977.

CHAPTER NO. 204

AN ACT AMENDING SECTION 69-6508, R.C.M. 1947, TO CHANGE THE METHOD OF FILLING VACANCIES ON THE ENVIRONMENTAL QUALITY COUNCIL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-6508, R.C.M. 1947, is amended to read as follows:

"**69-6508. Environmental quality council.** The environmental quality council shall consist of thirteen (13) members to be as follows:

(a) The governor or his designated representative shall be an ex officio

member of the council and shall participate in council meetings as a non-voting member.

(b) Four (4) members of the senate and four (4) members of the house of representatives appointed before the fiftieth legislative day in the same manner as standing committees of the respective houses are appointed. A vacancy on the council occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the *same method as the original appointment.* No more than two (2) of the appointees of each house shall be members of the same political party.

(c) Four (4) members of the general public; two (2) public members shall be appointed by the speaker of the house with the consent of the house minority leader, and two (2) shall be appointed by the president of the senate with the consent of the senate minority leader.

In considering the appointments of (b) and (c) above, consideration shall be given to their qualifications to analyze and interpret environmental trends and information of all kinds; to appraise programs and activities of the state government in the light of the policy set forth in section 69-6503 of this act; to be conscious and responsive to the scientific, economic, social, aesthetic, and cultural needs and interests of the state; and to formulate and recommend state policies to promote the improvement of the quality of the environment."

Approved April 1, 1977.

CHAPTER NO. 205

AN ACT TO PERMIT THE CHAIRMAN OF THE PUBLIC SERVICE COMMISSION OR HIS DESIGNEE TO APPROVE TRAVEL EXPENSE CLAIMS; AMENDING SECTION 70-134, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-134, R.C.M. 1947, is amended to read as follows:

"**70-134. Traveling expenses of commission.** The commission, secretary, and such clerks and experts as may be employed, shall be entitled to receive from the state their expenses while traveling on the business of the commission, as provided for in sections 59-538, 59-539, and 59-801. Such expenditure shall be sworn to by the person who incurred the expenses, and be approved by the chairman of the commission *or his designee.*"

Approved April 1, 1977.

CHAPTER NO. 206

AN ACT TO REQUIRE NOTIFICATION TO THE ARSON BUREAU WHENEVER A PERSON CONVICTED OF ARSON OR ACQUITTED

HeinOnline -- 1977 Vol. I 656 1977

OF ARSON ON THE GROUND OF MENTAL DISEASE OR DEFECT IS ADMITTED OR RELEASED BY A PENAL OR MENTAL FACILITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 80-1403.1 that reads as follows:

80-1403.1. Report to arson bureau. (1) Each of the following institutions or facilities having the charge or custody of a person convicted of arson, or of a person acquitted of arson on the ground of mental disease or defect, shall give written notification to the arson bureau of the department of justice whenever such a person is admitted or released by it:

(a) Warm Springs state hospital;

(b) state prison;

(c) Mountain View school;

(d) Pine Hills school;

(e) Swan River youth forest camp;

(f) any county or city detention facility.

(2) The notification shall disclose:

(a) the name of the person;

(b) where the person is or will be located; and

(c) the type of fire the person was involved in.

Approved April 1, 1977.

CHAPTER NO. 207

AN ACT TO PROVIDE FOR $7.50 IN COURT COSTS IN JUSTICES' COURTS FOR EACH PRELIMINARY HEARING HELD AND TO PROVIDE THAT JUSTICE'S COURT COSTS IN CRIMINAL ACTIONS SHALL BE WITHHELD REGARDLESS OF THE COURT'S FINDING OR THE SENTENCE IMPOSED; AMENDING SECTION 25-310, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-310, R.C.M. 1947, is amended to read as follows:

"**25-310. Justice court costs in criminal actions.** *(1)* The following court costs shall be withheld by justices of the peace from *accumulated* fines and forfeitures in applicable criminal actions*:*

(a) for each action filed, $7.50;

(b) for each preliminary hearing held, an additional $7.50;

(c) where there is a trial, an additional $7.50.

(2) The costs listed in subsection (1) shall be withheld regardless of the court's finding or the sentence imposed."

Approved April 1, 1977.

CHAPTER NO. 208

AN ACT FOR THE GENERAL CLARIFICATION AND REVISION OF THE OCCUPATIONAL DISEASE ACT OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 92-1303.1 that reads as follows:

92-1303.1. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Beneficiary" is as defined in 92-413.

(2) "Child" is as defined in 92-417.

(3) "Disablement" means the event of becoming physically incapacitated by reason of an occupational disease from performing any work for remuneration or profit. "Silicosis", when complicated by active pulmonary tuberculosis, is presumed to be total disablement. "Disability", "total disability", and "totally disabled" are synonymous with "disablement", but they have no reference to "partial permanent disability".

(4) "Division" is as defined in 92-426.

(5) "Employer" is as defined in 92-410.1.

(6) "Employee" is as defined in 92-411.

(7) "Husband" is as defined in 92-425.

(8) "Independent contractor" is as defined in 92-438.1.

(9) "Insurer" is as defined in 92-435. The term includes an employer who is self-insured under compensation plan No. 1.

(10) "Invalid" is as defined in 92-416.

(11) "Pneumoconiosis" means a chronic dust disease of the lungs arising out of employment in coal mines and includes anthracosis, coal workers' pneumoconiosis, silicosis, or anthracosilicosis arising out of such employment.

(12) "Order" is as defined in 92-429.

HeinOnline -- 1977 Vol. I 658 1977

(13) "Silicosis" means a chronic disease of the lungs caused by the prolonged inhalation of silicon dioxide (SiO_2), characterized by small discrete nodules of fibrous tissue similarly disseminated throughout both lungs causing the characteristic x-ray pattern and by other variable clinical manifestations.

(14) "Wages" is as defined in 92-423.1.

(15) "Wife" is as defined in 92-424.

(16) "Year" is as defined in 92-433.

Section 2. Section 92-1311, R.C.M. 1947, is amended to read as follows:

"92-1311. Payment of compensation — exceptions and limitations. *(1) When he has complied with other provisions of this chapter, compensation* shall be paid to *a claimant* who becomes disabled by reason of occupational disease arising out of his employment, subject to the conditions *set forth in this chapter.*

(a) Except as provided for in this section, compensation *may not* be paid when the last day of the injurious exposure of the employee to the hazard of the occupational disease has occurred prior to *July 1, 1959.*

(b) No compensation *may* be paid for a disease, other than silicosis or due to ionizing radiation, unless total disability results within 120 days from the last day upon which the employee actually worked for the employer against whom compensation is claimed. *However, the division,* upon good cause shown, may waive this limitation in the interest of justice, but in any case *the* period may not be extended to more than *1* year from the date of last employment by the employer.

(c) Except as provided for in subsection (1)(d) of this section, no compensation *may* be paid *for* silicosis unless during the *8* years immediately preceding the disablement the injured employee has been exposed to harmful quantities of silicon dioxide dust for a total period of not less than 1,000 workshifts in employment in this state and unless total disability results within *4* years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(d) A silicotic employee who is discharged by his employer to escape liability for silicosis benefits under this *chapter is* eligible to receive compensation under this *chapter* when totally disabled if he has 700 actual workshifts since January 1, 1954, for that employer. *When* any employee in employment on or after January 1, 1959, because he has an occupational disease incurred in and caused by such employment which is not yet disabling, is discharged or transferred from the employment in which he is engaged or when *he* ceases *his* employment and it is in fact, as determined by the medical panel, inadvisable for him on account of *a* nondisabling occupational disease to continue in *employment* and *he* suffers wage loss by reason of *the* discharge, transfer, or cessation, the *division* may allow compensation on account thereof as it *considers* just, not exceeding *$10,000.*

(2) Compensation shall be paid to the *beneficiaries* of every employee

HeinOnline -- 1977 Vol. I 659 1977

covered by this *chapter* in cases where death results from an occupational disease arising out of his employment, subject to the following conditions:

(a) Except as provided for in subsection (1)(d) of this section, compensation *may not* be paid when the last day of injurious exposure of the employee to the hazards of the occupational diseases occurred prior to *July 1, 1959.*

(b) No compensation *may* be paid for death from silicosis unless during the *8* years immediately preceding the disablement the deceased employee has been exposed to harmful quantities of silicon dioxide dust for a period of not less than 1,000 workshifts in employment in this state.

(c) No compensation *may* be paid for death from silicosis unless the death results within 4 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from silicosis for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the *division.* In such cases compensation shall be paid if death results within 7 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(d) No compensation *may* be paid for death from any occupational disease, other than silicosis or due to ionizing radiation, unless death results within 1 year from the last day upon which the employee actually worked for the employer against whom compensation is claimed, except in those cases where death results during a period of continuous total disability from an occupational disease, other than silicosis or ionizing radiation, for which compensation has been paid or awarded, or for which a claim, compensable but for such death, is on file with the *division.* In such cases compensation shall be paid if death results within 3 years from the last day upon which the employee actually worked for the employer against whom compensation is claimed.

(3) Proof of the exposure to silicon dioxide dust for a period of not less than 1,200 workshifts in employment in this state, with proof of total disability from silicosis, *is* prima facie evidence of exposure to harmful quantities of such dust during all such period."

Section 3. There is a new R.C.M. section numbered 92-1312.1 that reads as follows:

92-1312.1. Time when claims must be presented. (1) When a claimant seeks benefits under this chapter, his claims for benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the claimant knew or should have known that his total disability condition resulted from an occupational disease. When a beneficiary seeks benefits under this chapter, his claims for death benefits must be presented in writing to the employer, the employer's insurer, or the division within 1 year from the date the beneficiaries knew or should have known that the decedent's death was related to an occupational disease.

(2) The division may, upon a reasonable showing by the claimant or

HeinOnline -- 1977 Vol. I 660 1977

a decedent's beneficiaries that the claimant or the beneficiaries could not have known that the claimant's condition or the employee's death was related to an occupational disease, waive the claim time requirement up to an additional 2 years.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, no claim to recover benefits under this chapter may be maintained unless the claim is properly filed within 3 years after the last day upon which the claimant or the deceased employee actually worked for the employer against whom compensation is claimed.

Section 4. Section 92-1314, R.C.M. 1947, is amended to read as follows:

"**92-1314. Pulmonary specialist medical panel and pulmonary specialists.** *(1)* The Montana medical association may, at least annually, certify to the *division* as pulmonary specialists nominees three or more licensed physicians of the state who shall have had at the time of certification at least 5 years' practice in the diagnosis, care, and treatment of diseases of the pulmonary tract and the interpretation of *x-ray* films thereof *and may also certify to the division as occupational disease specialist nominees three or more licensed physicians of the state who have at the time of certification qualifications in the diagnosis, care, and treatment of nonpulmonary occupational diseases. From the two lists submitted as provided for in this section, the division shall appoint two separate medical panels. One panel is the pulmonary specialist medical panel and the other is the occupational disease medical panel. The division shall appoint from the list of pulmonary specialist nominees three or more physicians to serve on the pulmonary specialist medical panel. The division shall appoint from the list of occupational disease specialist nominees three or more physicians to serve on the occupational disease specialist medical panel.*

(2) If the Montana medical association fails to *submit the two lists of nominees as provided for in this section, the division* shall appoint *members to the medical panels by appointing to the pulmonary specialist medical panel* three or more licensed physicians in the state of Montana who have had at the time of appointment at least 5 years' practice in the diagnosis, care, and treatment of diseases of the pulmonary tract and the interpretation of *x-ray* films thereof *and by appointing to the occupational disease medical panel three or more licensed physicians of the state who have at the time of appointment qualifications to diagnose, care for, and treat nonpulmonary occupational diseases.*"

Section 5. There is a new R.C.M. section numbered 92-1314.1 that reads as follows:

92-1314.1. Procedure for medical examination. (1) In order to determine the compensability of claims under this chapter based on pulmonary conditions, the following procedure shall be followed:

(a) The division shall direct the claimant to a pulmonary specialist who is a member of the pulmonary specialist medical panel for an examination. The pulmonary specialist shall conduct an examination to determine whether the claimant is totally disabled and is suffering from a pulmonary occupational disease. The pulmonary specialist shall submit a report of his findings to the division.

HeinOnline -- 1977 Vol. I 661 1977

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first pulmonary specialist, request that the claimant be examined by a second pulmonary specialist who shall be a member of the pulmonary specialist medical panel. If a second examination is requested, the division shall direct the claimant to a second pulmonary specialist and the pulmonary specialist shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from a pulmonary disease. The pulmonary specialist shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to the pulmonary specialist medical panel for its review. The panel shall issue its report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining physician. If a second examination is requested, the division shall issue its order based on the report of the pulmonary specialist medical panel.

(2) In order to determine the compensability of claims under this chapter based on nonpulmonary conditions, the following procedure shall be followed:

(a) The division shall direct the claimant to an occupational disease specialist who is a member of the occupational disease medical panel for an examination. The specialist shall conduct an examination to determine whether the claimant is totally disabled and is suffering from an occupational disease. The specialist shall submit a report of his findings to the division.

(b) Either the claimant or the insurer may, within 20 days after the receipt of the report by the first specialist, request that the claimant be examined by a second specialist. If a second examination is requested, the division shall direct the claimant to a second specialist who is a member of the occupational disease medical panel and the specialist shall conduct an examination to determine whether he believes the claimant is totally disabled and is suffering from an occupational disease. The specialist shall submit a report of his findings to the division. When a second examination has been requested, the reports of the examinations shall be submitted to the occupational disease medical panel for its review. The panel shall issue its report concerning the claimant's physical condition and whether the claimant is suffering from an occupational disease.

(c) If a second examination is not requested, the division shall issue its order determining whether the claimant is entitled to occupational disease benefits based on the report of the first examining specialist. If a second examination is requested, the division shall issue its order based on the report of the occupational disease medical panel.

(3) A report submitted to the division by the appropriate medical panel and placed in the division's records is prima facie evidence as to the matters contained in the report.

HeinOnline -- 1977 Vol. I 662 1977

(4) Upon the division's own motion or if a claimant or an insurer requests that a hearing be held by the division prior to the time the division issues its final determination concerning the claimant's entitlement to occupational disease benefits, the division shall hold a hearing.

(5) At a hearing held before the division or the workers' compensation judge, the report of the medical panel and the two medical examinations conducted by members of the medical panel are exclusive and final and no other medical evidence or additional medical examinations are admissible. However, the physicians to which the claimant has been referred as provided for in this section may, in order to assist them in reaching their conclusion, consult with the claimant's attending physician.

(6) Within 20 days after the division has issued its order of determination as to whether the claimant is entitled to benefits under this chapter, a party may request a rehearing. In order to perfect an appeal to the workers' compensation judge, the appealing party must request a rehearing before the division. The division may grant a rehearing and, if a rehearing is granted, the division's final determination shall not be issued until after the rehearing. If the division does not grant a rehearing, the division's final determination is issued on the date the rehearing is denied.

Section 6. Section 92-1315, R.C.M. 1947, is amended to read as follows:

"**92-1315. Standards for determining whether death or disability due to pneumoconiosis.** The standards for determining death or total disability due to pneumoconiosis are as follows:

(1) A miner is under a total disability due to pneumoconiosis if:

(a) he is unable to engage in any substantial gainful activity by reason of pneumoconiosis which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; or

(b) the irrebuttable presumption *established in 92-1315.2(3) applies.*

(2) (a) Total disability may not be found for purposes of this *section* unless pneumoconiosis is the impairment involved. Whether or not pneumoconiosis in a particular case constitutes a disability as defined in *subsection (1) of this section* is determined from all the facts of that case. Primary consideration is given to the severity of the individual's pneumoconiosis. *Except where other evidence rebuts a finding of disability (e.g., the individual is actually engaging in substantial gainful activity), medical* considerations alone can justify a finding that the individual is under a disability where his impairment is one that meets the duration requirement in *subsection (1)(a) of this section* and is listed in the appendix to this *subsection. However, the presumption established in 92-1315.2(3) applies.*

(b) Pneumoconiosis may be found disabling if it does prevent the individual from engaging in any substantial gainful activity. *The* individual *may* be determined to be under a disability only if his pneumoconiosis is the primary reason for his inability to engage in substantial gainful

HeinOnline -- 1977 Vol. I 663 1977

activity. *It* must *also* be established that the individual has a respiratory impairment because of pneumoconiosis *which is* demonstrated on the basis of an MVV and FEV^1 which are equal to or less than the values specified in the following table or by a medically equivalent test:

Height (Inches)	MVV(MBC) equal to or less than	and	FEV_1 equal to or less than
	L./Min.		L.
57 or less	52		1.4
58	53		1.4
59	54		1.4
60	55		1.5
61	56		1.5
62	57		1.5
63	58		1.5
64	59		1.6
65	60		1.6
66	61		1.6
67	62		1.7
68	63		1.7
69	64		1.8
70	65		1.8
71	66		1.8
72	67		1.9
73 or more	68		1.9

(3) (a) A finding of the existence of pneumoconiosis may not be made in the absence of:

(i) a chest roentgenogram showing the existence of pneumoconiosis classified as category 1, 2, 3, A, B, or C, according to the international labor organization (1958), international labor organization (1968), or union internationale contra cancer/Cincinnati (1968) classifications of the pneumoconioses (if the chest roentgenogram is classified as category Z, it should be reclassified as category O or category 1 and only the latter accepted as evidence of pneumoconiosis);

(ii) an autopsy showing the existence of pneumoconiosis; or

(iii) a biopsy (other than a needle biopsy) showing the existence of pneumoconiosis. *The* biopsy *is* not expected to be performed for the sole purpose of diagnosing pneumoconiosis. Where a biopsy is performed for other purposes, however (e.g., in connection with a lung resection), the report thereof will be considered in determining the existence of pneumoconiosis.

(b) The roentgenogram, to conform to accepted medical standards, should represent a posterior-anterior view of the chest taken at a distance of 6 feet between the *x-ray* tube and the *x-ray* film on a 14 by 17 inch *x-ray* film.

(c) A report of autopsy or biopsy shall include a detailed gross (macroscopic) and microscopic description of the lungs or visualized por-

HeinOnline -- 1977 Vol. I 664 1977

tions of the lungs. If an operative procedure has been performed to obtain a portion of a lung, the evidence should include a copy of the operative note and the pathology report of the gross and microscopic examination of the surgical specimen. If an autopsy has been performed, the evidence should include a complete copy of the autopsy report.

(4) (a) An individual's impairment shall be determined to be medically the equivalent of an impairment listed in the appendix to this *subsection* only if the medical findings with respect thereto are at least equivalent in severity and duration to the listed findings of the listed impairment.

(b) Any decision made under *subsections (2)(a)* and *(6)(a) of this section* as to whether an individual's impairment is medically the equivalent of an impairment listed in the appendix to this *subsection* shall be based on medical evidence demonstrated by medically acceptable clinical and laboratory diagnostic techniques, including a medical judgment furnished by one or more physicians designated by the *division* relative to the question of medical equivalence.

(c) Any decision as to whether a medical test is medically equivalent to the test described in *subsection (2)(b) of this section* shall be based on appropriate medical evidence, including a judgment furnished by one or more physicians designated by the *division* relative to the question of the medical equivalence of *the* test.

(5) A miner suffering or who has suffered from pneumoconiosis must submit the evidence necessary to establish that the pneumoconiosis arose out of employment in the coal mines. *However, the presumption established in 92-1312.2(1) applies.*

(6) The claimant must submit the evidence necessary to establish that the miner's death was due to pneumoconiosis and that the pneumoconiosis arose out of employment in coal mines. Death will be found due to a respirable disease when death is ascribed to a chronic dust disease or to another chronic disease of the lung. Death will not be found due to a respirable disease in those cases in which the disease reported does not suggest a reasonable possibility that death was in fact due to pneumoconiosis; e.g., cancer of the lung, disease due to trauma, *or* pulmonary emboli. *However, the presumptions established in subsections (2) and (3) of 92-1315.2 apply.*"

Section 7. There is a new R.C.M. section numbered 92-1315.2 that reads as follows:

92-1315.2. Presumptions in determining whether death or disability due to pneumoconiosis. In the event of death or disability due to pneumoconiosis, the following presumptions apply:

(1) If a miner who is suffering or who has suffered from pneumoconiosis was employed for 10 years or more in one or more coal mines, there is a rebuttable presumption that his pneumoconiosis arose out of that employment.

(2) If a miner was employed for 10 years or more in one or more coal mines and died from a respiratory disease, there is a rebuttable presumption that the death was due to pneumoconiosis.

HeinOnline -- 1977 Vol. I 665 1977

(3) There is an irrebuttable presumption that the miner is totally disabled due to pneumoconiosis or that death was due to pneumoconiosis, as the case may be, if he is suffering or suffered from a chronic dust disease of the lung which:

(a) when diagnosed by chest roentgenogram, yields one or more large opacities (greater than one centimeter in diameter) and would be classified in category A, B, or C in the international classification of radiographs of the pneumoconioses by the international labor organization;

(b) when diagnosed by biopsy or autopsy, yields massive lesions in the lung; or

(c) when diagnosis is made by other means, would be a condition which would reasonably be expected to yield results described in (a) or (b) above if diagnosis had been made in the manner prescribed in (a) or (b).

Section 8. Section 92-1316, R.C.M. 1947, is amended to read as follows:

"**92-1316. Where pulmonary occupational disease causes death.** Where *a pulmonary occupational disease* causes death and a claim for death benefits is filed, the pulmonary specialists, or any one of them if the medical evidence be not controverted, shall examine all available evidence pertaining to the claim and shall make findings and thereupon report to the *division.* The report *is* prima facie evidence of fact as to the matters therein contained."

Section 9. Section 92-1317, R.C.M. 1947, is amended to read as follows:

"**92-1317. When occupational disease other than a pulmonary disease causes death.** When an occupational disease, other than *a pulmonary disease,* causes death and a claim for death benefits is filed therefor, *the division shall select at least two physicians who in the division's judgment could properly determine the condition regarding the decedent's death in relation to a possible occupational disease, and the physicians* shall examine all available evidence pertaining to the claim and shall make findings and report to the *division.* The report *is* prima facie evidence of fact as to the matters therein contained."

Section 10. Section 92-1318, R.C.M. 1947, is amended to read as follows:

"**92-1318. Autopsy.** Upon the filing of a claim for compensation for death caused by *an* occupational disease where an autopsy is necessary to determine the cause of death, *an* autopsy shall be ordered by the *division. The* autopsy shall be made under the supervision of the county coroner. The *division* may designate a duly licensed physician who is a specialist in such examinations to perform or attend *the* autopsies and to certify his findings thereon. *The* findings shall be examined *by the physicians submitting reports under the provisions of 92-1316 and 92-1317 before the final reports under those sections are submitted to the division.*"

Section 11. Section 92-1319, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 666 1977

"92-1319. **Periodic medical examinations.** *(1) Upon the request of the division or the insurer, each* employee entitled to compensation shall submit *to a* medical examination from time to time *by a physician designated by the division who is a member of the appropriate medical panel. The examination shall be* at a place reasonably convenient for the *employee.*

(2) The *order directing the examination* shall fix a time and place having regard to the convenience of the employee, his physical condition, and *his* ability to attend. The employee and any other party in interest may have a physician present at the examination if *the* physician is provided and paid for by the employee or other party.

(3) If the employee refuses to submit to the examination or obstructs the examination, his right to compensation *is* suspended until the examination has been made, and no compensation *is* payable during or for *the* period *of suspension.*

(4) A physician who makes or is present at the examination may be required to testify as to the result thereof.

(5) The *division* may reduce or suspend the compensation of an employee who persists in unsanitary or injurious practices tending to imperil or retard his recovery, or who refuses to submit to such medical or surgical treatment as is reasonably essential to promote his recovery."

Section 12. Section 92-1320, R.C.M. 1947, is amended to read as follows:

"92-1320. **Payment of medical examination and autopsy expenses.** *The expense* of the first medical examination as provided in *92-1314.1* shall be borne by the *insurer.* The expense of *a reexamination* shall be borne by the dissatisfied party requesting *the reexamination.* The expense of the periodic medical examinations, as provided in 92-1319 shall be borne by the party requesting *the* periodic medical examination. The expense of the autopsy, as provided for in 92-1318, shall be borne by the party requesting *the* autopsy."

Section 13. Section 92-1323, R.C.M. 1947, is amended to read as follows:

"92-1323. **Prohibiting lump-sum settlements.** *(1)* No *final and binding* award made upon any claim pursuant to this *chapter* may be converted into a lump-sum payment, in whole or in part, except *as provided in this section. If a claimant has* entered into a contract of employment with an attorney for the recovery of *benefits under this chapter and* the terms of *the* employment contract *are* reasonable, the amount of *the* attorney's *fee* may be ordered by the *division* to be paid by the insurer and thereafter deducted proportionately from weekly payments thereafter to be made to the claimant *under* this *chapter. The division* may require payments to be deducted each week in *an* amount it *considers* advisable from the payments thereafter to be made to the claimant *under* this *chapter* and paid to *the* attorney as they are so deducted from the weekly payments to the claimant.

HeinOnline -- 1977 Vol. I 667 1977

(2) Whenever there are contested issues as to an insurer's liability for a claim under this chapter, including a claim based on 92-1311(1)(d), a claimant and an insurer may enter into a full and final compromise settlement of the claim. However, no such settlements are binding on the parties until approved by the division. After the division approves a full and final compromise settlement, the claim is closed and the insurer's liability for a settled claim is forever released."

Section 14. Section 92-1324, R.C.M. 1947, is amended to read as follows:

"92-1324. Burial expenses. In addition to and separate and apart from any other compensation or benefit provided for in this *chapter*, there shall be paid in case of death of an employee, which death is the result of an occupational disease contracted in the course of employment, the reasonable burial expenses of the employee, not exceeding *the maximum amount provided for in 92-705."*

Section 15. Section 92-1325, R.C.M. 1947, is amended to read as follows:

"92-1325. Medical and hospital expenses. In addition to the compensation provided by this *chapter*, the following shall be furnished:

(1) If an employee becomes totally disabled from an occupational disease, he *is* entitled to receive, *without limitation as to length of time or dollar amount, reasonable* medical services, hospitalization, medicines, and such other treatment as may be approved by the *division.*

(2) An employee who suffers *from an* occupational *disease as defined in* 92-1304, but who is able to continue in employment while being treated therefor, *is* entitled to receive *the* medical services, treatments, and medicines reasonably required, not exceeding the value of *$2,500."*

Section 16. Section 92-1330, R.C.M. 1947, is amended to read as follows:

"92-1330. Agreement by employee to waive compensation or to pay premium void — no liability in certain cases. *(1)* An agreement by an employee to waive his rights to *coverage under the Occupational Disease Act of Montana or* to pay any portion of the premium paid by his employer *is* void.

(2) An employer may give, within *2* weeks of *the beginning of employment, a* physical *examination* to *an applicant* for employment. Where an applicant for employment, whether *he* has been formerly employed by the employer to whom application is made or not, though not actually disabled, is found upon competent medical and *x-ray* examination to be afflicted with an occupational disease, *the* employer *is* not liable under this *chapter* for disability from the particular disease or diseases with which the employee is found to be afflicted or for any normal progression without aggravation of *the* disease or diseases if a report of *the* medical examination *is* approved by the *division* as provided *in this section.*

(3) The report of the medical examination of the applicant for employment and *x-rays*, if any, shall be delivered to the *division* by the

HeinOnline -- 1977 Vol. I 668 1977

employer within *15* days after *the* examination. *With the* medical report and *x-rays*, if any, *there* shall be attached a certificate by the examining physician certifying that the medical report is the report of the physical examination of the applicant for employment.

(4) The *division* shall submit *the* medical report and *x-rays*, if any, to a physician of its choice and *the* physician shall report to the *division* his finding as to whether the medical report is satisfactory. The *division* shall within 20 days after the receipt of *the* medical report from the employer enter its order approving or disapproving *the* report and specifying the particular disease or diseases found. *The* order shall be in writing stating the reasons for *the* approval or disapproval. A copy of *the* order shall be mailed to the employer and the applicant for employment within 24 hours after the *division* has approved or disapproved *the* report.

(5) An applicant for employment may commence work prior to the approval or disapproval of *the* report by the *division. However,* if the *division disapproves the* report, the employer may discharge *the* applicant for employment without liability to *him.*

(6) If no physical examination is given to the applicant for employment within *the 2-week* period, *the* applicant for employment *is* fully eligible *for* the benefits *under this chapter.*

(7) The *division* may *adopt* reasonable rules relative to the form, execution, and filing of reports *submitted under this section* not inconsistent with the provisions of this *chapter.*"

Section 17. There is a new R.C.M. section numbered 92-1334.1 that reads as follows:

92-1334.1. Occupational disease coverage under compensation plans. (1) Every employer enrolled under compensation plan No. 1 (Title 92, chapter 9), every insurer writing workers' compensation coverage under compensation plan No. 2 (Title 92, chapter 10), and the state compensation insurance fund under compensation plan No. 3 (Title 92, chapter 11), all provided for under the Workers' Compensation Act, are considered to also provide full coverage for claims under the occupational disease act. Any policy of insurance for workers' compensation coverage under the Workers' Compensation Act written by a private insurance carrier or the state compensation insurance fund is considered to provide full occupational disease coverage under the provisions of Title 92, chapter 13.

(2) Except as provided in this chapter, the division shall apply the appropriate provisions of Title 92, chapters 9, 10, and 11, to the administration of the Occupational Disease Act of Montana in the same manner as they are applied to the administration of the Workers' Compensation Act.

(3) Under compensation plan No. 3, any premiums and other receipts held by the division for occupational disease insurance coverage shall be transferred and become part of the workers' compensation industrial insurance account, and payments for occupational disease claims by the state fund shall be paid out of the industrial insurance account."

HeinOnline -- 1977 Vol. I 669 1977

Section 18. Section 92-1335, R.C.M. 1947, is amended to read as follows:

"**92-1335. Hearing, findings, and awards.** *Appeals from a final determination of the division shall be made to the workers' compensation judge. The judge, after a hearing held pursuant to 92-852, shall make a final determination concerning the claimant's claim. The judge may overrule the division only on the basis that the division's determination is:*

(1) in violation of constitutional or statutory provisions;

(2) in excess of the statutory authority of the agency;

(3) made upon unlawful procedure;

(4) affected by other error of law;

(5) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion."

Section 19. Section 92-1337, R.C.M. 1947, is amended to read as follows:

"**92-1337. Where payment due to child under eighteen years.** Where payment is due to a child under 18 years of age or to a person adjudged incompetent, the *payments* shall be made to the parent or to the duly appointed *conservator or* guardian, as the case may be, and the *payments* acquit the insurer of further liability. In other cases, payment shall be made to the person entitled thereto or to his duly authorized representative."

Section 20. Section 92-1339, R.C.M. 1947, is amended to read as follows:

"**92-1339. Common-law defenses not available.** Employers subject to and who fail to comply with the provisions of *92-1307 are* not entitled to the benefits of this *chapter* during the period of noncompliance and *are* not *entitled to invoke* the defenses:

(1) that the employee was negligent, unless *the* negligence was willful;

(2) that the disability was caused by the negligence of a fellow employee; *or*

(3) that the employee had assumed the risks inherent, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances."

Section 21. Section 92-1340, R.C.M. 1947, is amended to read as follows:

"**92-1340. Penalties for violation.** An employer subject to this *chapter* who fails to comply with *92-1307* or a person who violates any other provision of this *chapter* is guilty of a misdemeanor punishable by a fine of *no more than $500.*"

HeinOnline -- 1977 Vol. I 670 1977

Section 22. Section 92-1343, R.C.M. 1947, is amended to read as follows:

"**92-1343. Legal action by division.** Upon request of the *division*, the attorney general shall institute and prosecute actions for the enforcement of the provisions of this *chapter* or for any penalty provided for in this *chapter. The attorney general* shall prosecute or defend all actions brought by or against the *division* in *its* official capacity. The *division* may compromise any action brought under this *chapter.*"

Section 23. Section 92-1346, R.C.M. 1947, is amended to read as follows:

"**92-1346. Claim forms prescribed by division.** Claims for compensation under this *chapter* shall be filed on forms prescribed and provided for by the *division* and shall be filed in the same manner as claims for compensation under the *Workers'* Compensation Act unless otherwise provided *in this chapter.*"

Section 24. Section 92-1352, R.C.M. 1947, is amended to read as follows:

"**92-1352. Powers of division.** The *division* is hereby vested with full power, authority, and jurisdiction to do and perform any and all things, whether herein specifically designated or in addition thereto, which are necessary or convenient in the exercise of any power, authority, or jurisdiction conferred upon it under this *chapter.*"

Section 25. Section 92-1358, R.C.M. 1947, is amended to read as follows:

"**92-1358. Books, records, and payrolls to be open to inspection.** The books, records, and payrolls of the employer pertinent to the administration of this *chapter* shall always be open to inspection by the *division* or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of *persons* employed, and such other information as may be necessary for the *division* and its management under this *chapter.* Refusal on the part of the employer to submit *the* books, records, and payrolls for *the* inspection *subjects* the offending employer to a penalty of $100 for each offense, to be collected by civil action in the name of the state."

Section 26. **Repealer.** Sections 92-1303, 92-1306, 92-1309, 92-1312, 92-1313, 92-1328, 92-1334, 92-1336, 92-1344, 92-1349, and 92-1356, R.C.M. 1947, are repealed.

Approved April 1, 1977.

CHAPTER NO. 209

AN ACT TO AMEND SECTIONS 84-5902, 84-5906, AND 84-5907, R.C.M. 1947, RELATING TO THE MICACEOUS MINERAL MINES LICENSE TAX.

HeinOnline -- 1977 Vol. I 671 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-5902, R.C.M. 1947, is amended to read as follows:

"**84-5902. Persons subject to tax.** Every person engaged in or carrying on the business of working or operating any mine or mining property in the state of Montana from which vermiculite, perlite, kerrite, maconite, or any other micaceous minerals are mined, extracted, or produced must pay to the department of revenue, for the exclusive use and benefit of the state of Montana, a license tax for engaging in and carrying on such business in an amount equal to 5 cents per ton for each and every ton of concentrates mined, extracted, or produced by such person during such year."

Section 2. Section 84-5906, R.C.M. 1947, is amended to read as follows:

"**84-5906. Quarterly statement — payment of tax.** Each and every person must, within 30 days after the end of each quarter, make out on forms prescribed by the department of revenue and deliver to the department a statement showing the total number of tons of concentrates of vermiculite, perlite, kerrite, maconite, or any other micaceous minerals mined or produced by such person during each month of such quarter and during the whole quarter and such other information as *the department* may require, together with the total amount due to the state as license taxes for such quarter, and must, within such 30 days and at the same time such statement is delivered to the department, pay to the department the amount of the license taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Any person engaged in carrying on such business at more than one place or operating more than one mine in this state may include all thereof in one statement. *The department may grant a reasonable extension of time for filing statements and payment of taxes due upon good cause shown therefor.*"

Section 3. Section 84-5907, R.C.M. 1947, is amended to read as follows:

"**84-5907. Failure to file statement — determination of tax — collection.** *(1)* If any person shall fail, neglect, or refuse to file any statement required by 84-5906 within the time required or shall fail to pay the tax required by this act on or before the date such payment is due, the department of revenue shall, immediately after such time has expired, proceed to inform itself as best it may regarding the amount produced by such person within this state during such quarter and during each month thereof and shall determine and fix the amount of the license taxes due to the state from such person for such quarter.

(2) The department of revenue shall add to the amount of all delinquent micaceous mineral mines license taxes a penalty of 10% of the amount of such license taxes plus interest at the rate of 1% per month or fraction thereof computed on the total amount of license taxes and penalty. Interest

HeinOnline -- 1977 Vol. I 672 1977

shall be computed from the date the license taxes were due to the date of payment. The 10% penalty may be waived by the department if reasonable cause for the failure and neglect to file the statement required by 84-5906 is provided.

(3) The department shall mail, to the person required to file a quarterly statement and pay any license tax, a letter and tax assessment statement setting forth the amount of delinquent license tax, penalty, and interest due. The letter shall advise that if payment is not made within 15 days a lien may be filed. Upon receipt of the letter the person shall remit to the department, within 15 days, the full amount of license tax, penalty, and interest due. All tax, penalty, and interest due from any person under this chapter shall be a lien upon any and all real property of such person upon the filing by the department of the duplicate tax assessment statement in the office of the county clerk in the county where such real property is situated. The lien has precedence over any other claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced at law."

Approved April 1, 1977.

CHAPTER NO. 210

AN ACT TO CHANGE THE DATE FOR RENEWING AIRCRAFT REGISTRATION; CLARIFYING OTHER PROVISIONS RELATED TO AIRCRAFT REGISTRATION; CORRECTING OBSOLETE REFERENCES; AMENDING SECTIONS 1-325, 1-326, AND 84-4218, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-325, R.C.M. 1947, is amended to read as follows:

"**1-325. Aircraft must be registered — situs for registration.** (1) Aircraft customarily kept in this state shall be registered with the department of community affairs, which may charge a fee therefor of not more than ten dollars ($10). The registration shall be renewed annually on or before *March* 1 each year. This act shall not apply to:

(a) aircraft owned and operated by the federal government, the state or any political subdivision thereof;

(b) aircraft owned and held by an aircraft dealer solely for the purpose of resale;

(c) aircraft operated by an airline company and regularly scheduled for the primary purpose of carrying persons or property for hire in interstate or international transportation*; or*

(d) dismantled or otherwise nonflyable aircraft.

(2) An aircraft shall be registered as property within a particular county of the state. This county shall be the county of the owner's prin-

HeinOnline -- 1977 Vol. I 673 1977

cipal residence, if the owner is a natural person, or the owner's principal place of doing business in the state, if the owner is not a natural person. However, if the owner declares by affidavit that the aircraft is customarily kept at a landing facility in another county within the state, he may register the aircraft as property within such other county. All aircraft shall be subject to all state, county and school district tax levies and all other levies designated for aircraft or airport related uses. Such aircraft shall not be liable for other city tax levies.

(3) Aircraft not registered in the state, but entering the state to engage in commercial operations, shall be registered prior to commencing operation."

Section 2. Section 1-326, R.C.M. 1947, is amended to read as follows:

"**1-326. Penalty for late registration, evasion, or false registration statement.** (1) When an aircraft required to be registered under the provisions of this act is not registered on or before *March* 1 of the current calendar year, a penalty fee of one hundred dollars ($100) shall be added to the registration fee and collected. Registration of an aircraft in the name of the applicant for the year immediately preceding the year for which application for registration is made shall be prima facie evidence that the aircraft has been based in this state during the year for which application for registration is made.

(2) An application for registration shall be accompanied by a copy of the receipt for, *or statement of* personal property tax paid, *signed* by the treasurer of the county where the aircraft is registered *or a statement of lien assignment against real property signed by the county assessor where the aircraft is registered.* A person who pays personal property tax on his aircraft to any jurisdiction other than the county where the aircraft is required to be registered is liable for the tax in that county without credit for such other taxes paid. In addition to this civil liability, a person who attempts to establish the situs of his aircraft in any jurisdiction other than the county where the aircraft is required to be registered with intent to avoid payment of taxes to that county commits the offense of false swearing as defined in section 94-7-203.

(3) A person who operates an aircraft required to be registered in the state without having *displayed upon* such aircraft a certificate of registration issued by the department of community affairs for that aircraft, commits a misdemeanor."

Section 3. Section 84-4218, R.C.M. 1947, is amended to read as follows:

"**84-4218. Prorated taxes.** A person who acquires an aircraft required to be registered under section 1-325 after *March* 1 in any year shall register the aircraft within thirty (30) days of acquiring it. The county *assessor* shall prorate the personal property tax due on the aircraft for the remaining portion of the year in the manner provided *in 84-6011.*"

Approved April 1, 1977.

HeinOnline -- 1977 Vol. I 674 1977

CHAPTER NO. 211

AN ACT TO PERMIT THE ASSESSMENT OF A CAMPER AT THE TIME THE MOTOR VEHICLE TO WHICH THE CAMPER IS CUSTOMARILY ATTACHED IS ASSESSED; AMENDING SECTIONS 53-647 AND 84-406, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-647, R.C.M. 1947, is amended to read as follows:

"**53-647. Annual application for decals.** Application *may* be made to the department of revenue or county treasurer for the issuance of tax-paid decals annually *when the motor vehicle to which the camper is customarily attached is registered.*"

Section 2. Section 84-406, R.C.M. 1947, is amended to read as follows:

"**84-406. Time of assessment — motor vehicles — mobile homes — livestock — snowmobiles.** (1) The department of revenue or its agent must, between the first day of January and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in each county subject to taxation, except such as is required to be assessed by the state department of revenue, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first day of January next preceding. It must also ascertain and assess all mobile homes arriving in the county after 12 midnight of the first day of January next preceding. The procedure provided by this section shall not apply to:

(a) Motor vehicles which are required by subdivision (2) hereof to be assessed as of the first day of January, or upon their anniversary registration date; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid.

(b) Livestock which are required by subdivision (3) of this section to be assessed on an average inventory basis in each county. Credits must be assessed as provided in section 84-101, subdivision 6.

(c) Property defined in section 53-642 as "special mobile equipment" which is subject to assessment of personal property taxes on the date that application is made for a special mobile equipment plate.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(e) Snowmobiles which are required by subdivision 5 hereof to be assessed as of the first day of July.

(2) The department or its agent must ascertain and assess all motor vehicles, except mobile homes, in each county subject to taxation as of January 1, or as of the anniversary registration date of those vehicles subject to sections 53-154 through 53-162, in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January or the anniversary registration date thereof, whichever is applicable, in

HeinOnline -- 1977 Vol. I 675 1977

each year. *A camper which is customarily attached to a motor vehicle shall be assessed at the time the vehicle is assessed.* Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at full and true value as of the first day of January.

Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The assessed value of livestock in each county on the assessment date shall be computed by adding the assessed value of all livestock more than nine (9) months of age owned by the taxpayer in each county on the last day of each month since the last assessment date and dividing the sum by twelve (12). For purposes of this subdivision "livestock" means cattle, sheep, horses, and mules.

(4) The department of revenue or its agent must ascertain and assess all snowmobiles in each county subject to taxation as of July 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such snowmobile was at 12 midnight on the first day of July in each year; provided, however, that snowmobiles which constitute inventory of snowmobile dealers shall be assessed to the dealers as of 12 midnight of the first day of January in each year; and further provided that all snowmobiles that have been assessed and for which taxes have been paid for the period of January 1, 1975 through December 31, 1975, shall be assessed for only six (6) months during the period July 1, 1975 through June 30, 1976."

Approved April 1, 1977.

CHAPTER NO. 212

AN ACT TO REQUIRE INSURERS TRANSACTING PROFESSIONAL LIABILITY INSURANCE TO INCLUDE IN THEIR ANNUAL STATEMENT TO THE INSURANCE COMMISSIONER CERTAIN STATISTICS AND INFORMATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 40-2827 that reads as follows:

HeinOnline -- 1977 Vol. I 676 1977

40-2827. Definition of profession. For purposes of 40-2827 through 40-2829, "profession" means the occupations engaged in by physicians, osteopaths, registered nurses, licensed practical nurses, dentists, optometrists, podiatrists, chiropractors, hospitals, attorneys, certified public accountants, public accountants, architects, veterinarians, pharmacists, and professional engineers.

Section 2. There is a new R.C.M. section numbered 40-2828 that reads as follows:

40-2828. Information required of professional liability insurers. Each insurance company engaged in issuing professional liability insurance in the state of Montana shall include the following information, by profession, from its experience in the state of Montana, in its annual statement to the insurance commissioner:

(1) the number of insureds as of December 31 of the calendar year next preceding;

(2) the amount of earned premiums paid by the insureds during the calendar year next preceding;

(3) the number of claims made against the insurer's insureds and the number of claims outstanding as of December 31 of the calendar year next preceding;

(4) the number of claims paid by the insurer during the calendar year next preceding and the total monetary amount thereof;

(5) the number of lawsuits filed against the insurer's insureds and the number of insureds included therein during the calendar year next preceding;

(6) the number of lawsuits previously filed against the insurer's insureds which were dismissed without settlement or trial and the number of insureds included therein during the calendar year next preceding;

(7) the number of lawsuits previously filed against the insurer's insureds which were settled without trial, the total monetary amount paid as settlements in such settled cases, and the number of insureds included therein during the calendar year next preceding;

(8) the number of lawsuits against the insurer's insureds which went to trial during the calendar year next preceding and the number of such cases ending in the following:

(a) judgment or verdict for the plaintiff;

(b) judgment or verdict for the defendant;

(c) other;

(9) the total monetary amount paid out, in those lawsuits specified in subsection (8);

(10) the total number of the insurer's insureds included in those lawsuits specified in subsection (8);

HeinOnline -- 1977 Vol. I 677 1977

(11) the number of new trials granted during the calendar year next preceding;

(12) the number of lawsuits pending on appeal as of December 31 of the next preceding calendar year; and

(13) such other information and statistics as the insurance commissioner considers necessary.

Section 3. There is a new R.C.M. section numbered 40-2829 that reads as follows:

40-2829. Submission by insurance commissioner to boards. The insurance commissioner shall, within 60 days of request, submit in writing to the appropriate licensing authority the data and information furnished him pursuant to 40-2827 through 40-2829 relevant to the particular profession or facility.

Section 4. **Codification.** Sections 1 through 3 of this act shall be codified in Chapter 28, Title 40, as sections of the Insurance Code.

Approved April 1, 1977.

CHAPTER NO. 213

AN ACT TO ALLOW THE BOARD OF MEDICAL EXAMINERS TO WAIVE PERSONAL APPEARANCES BEFORE THE BOARD PRIOR TO ISSUING A LICENSE TO PRACTICE MEDICINE; AMENDING SECTION 66-1027, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-1027, R.C.M. 1947, is amended to read as follows:

"**66-1027. Qualifications for licensure — limitations.** (1) No person may be granted a physician's certificate to practice medicine in this state unless he:

(a) Is a citizen of the United States;

(b) Is of good moral character, as determined by the board;

(c) Is a graduate of an approved medical school as defined in section 66-1028;

(d) Has completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is at least the equivalent of one (1) year internship; and

(e) Has made a personal appearance before the board *unless such appearance has been specifically waived by the board.* The board may authorize the department to issue the license subject to terms of probation or other conditions or limitations set by the board, or may refuse a license

HeinOnline -- 1977 Vol. I 678 1977

if the applicant has committed unprofessional conduct or is otherwise unqualified.

(2) No person may be granted a temporary license to practice medicine in this state unless he:

(a) Is a citizen of the United States, or has filed a properly executed declaration of intention to become a citizen of the United States;

(b) Is of good moral character, as determined by the board;

(c) Is a graduate of an approved medical school as defined in section 66-1028;

(d) Has completed an approved internship of at least one (1) year or, in the opinion of the board, has had experience or training which is at least the equivalent of one (1) year internship; and

(e) Has made a personal appearance before at least one (1) member of the board.

(3) A temporary license may be issued to a physician employed by a public institution who is practicing under the direction of a licensed physician. The board may authorize the department to issue a temporary license subject to terms of probation or other conditions or limitations set by the board, or may refuse a temporary license to a person if he has committed unprofessional conduct. The issuance of a temporary certificate imposes no future obligation or duty on the part of the board to grant full licensure or to renew or extend the temporary license. The board may, in the case of an applicant for a temporary certificate, require a written, oral, or practical examination of the applicant."

Approved April 1, 1977.

CHAPTER NO. 214

AN ACT TO ALLOW RETIREES UNDER THE STATEWIDE POLICE RESERVE FUND, THE HIGHWAY PATROLMEN'S RETIREMENT SYSTEM, THE GAME WARDENS' RETIREMENT SYSTEM, THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM, THE SHERIFFS' RETIREMENT SYSTEM, AND THE JUDGES' RETIREMENT SYSTEM WHO ARE ENROLLED IN AN EMPLOYEE GROUP INSURANCE PLAN TO HAVE THE MONTHLY PREMIUM DEDUCTED FROM THEIR RETIREMENT BENEFITS AND PAID DIRECTLY TO THE CARRIER; AMENDING SECTIONS 11-1845, 31-221, 68-1420, 68-2620, AND 93-1126, R.C.M. 1947; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1845, R.C.M. 1947, is amended to read as follows:

"**11-1845. Protection of benefits from legal process.** The benefits

HeinOnline -- 1977 Vol. I 679 1977

provided in 11-1844 and in 11-1814 are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency or other process of law and are unassignable *except as specifically provided in 11-1845.1.*"

Section 2. There is a new R.C.M. section numbered 11-1845.1 that reads as follows:

11-1845.1. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the department of administration and paid directly by the department to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

Section 3. Section 31-221, R.C.M. 1947, is amended to read as follows:

"**31-221. Exemption from taxes and execution.** Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable *except as specifically provided in 31-221.1.*"

Section 4. There is a new R.C.M. section numbered 31-221.1 that reads as follows:

31-221.1. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

Section 5. Section 68-1420, R.C.M. 1947, is amended to read as follows:

"**68-1420. Exemption from taxes and execution.** Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable *except as specifically provided in 68-1420.1.*"

Section 6. There is a new R.C.M. section numbered 68-1420.1 that reads as follows:

68-1420.1. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retire-

HeinOnline -- 1977 Vol. I 680 1977

ment may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

Section 7. There is a new R.C.M. section numbered 68-2502.1 that reads as follows:

68-2502.1. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

Section 8. Section 68-2620, R.C.M. 1947, is amended to read as follows:

"**68-2620. Retirement annuities exempt from state or municipal tax, sale, garnishment, attachment, or other process and shall be unassignable.** Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable *except as specifically provided in 68-2620.1.*"

Section 9. There is a new R.C.M. section numbered 68-2620.1 that reads as follows:

68-2620.1. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

Section 10. Section 93-1126, R.C.M. 1947, is amended to read as follows:

"**93-1126. Exemption from taxes and execution.** Any money received or to be paid as a member's annuity, state annuity, or return of deductions or the right of any of these shall be exempt from any state or municipal tax and from levy, sale, garnishment, attachment, or any other process whatsoever and shall be unassignable *except as specifically provided in 93-1126.1.*"

Section 11. There is a new R.C.M. section numbered 93-1126.1 that reads as follows:

HeinOnline -- 1977 Vol. I 681 1977

93-1126.1. Withholding of group insurance premium from retirement benefit. A retiree who is a participant in an employee group insurance plan which permits participation in the group plan following retirement may elect to have the monthly premium for such group insurance withheld by the retirement system and paid directly by the system to the insurance carrier. In order to qualify for this withholding, a retiree must be a participant in a group insurance plan available to the employees of his former employer. No withholding may be made for any retiree covered by an individual insurance policy.

Section 12. **Effective date.** This act is effective on its passage and approval.

Approved April 1, 1977.

CHAPTER NO. 215

AN ACT TO DELETE PORTIONS OF SECTION 40-3909, R.C.M. 1947, RELATING TO DEPENDENTS' COVERAGE UNDER GROUP LIFE INSURANCE POLICIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-3909, R.C.M. 1947, is amended to read as follows.

"**40-3909. Dependents' coverage.** Any group life policy issued under section 40-3902 (employee groups), or 40-3903 (labor union groups) or 40-3904 (trustee groups) may be extended to insure the employees or members against loss due to the death of their spouses and minor children, or any class or classes thereof, subject to the following requirements:

(1) The premium for the insurance shall be paid by the policyholder, either from the employer's or union's funds or funds contributed by the employer or union, or from funds contributed by the insured employees or members, or from both. If any part of the premium is to be derived from funds contributed by the insured employees or members, the insurance with respect to spouses and children may be placed in force only if at least seventy-five per cent (75%) of the then eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, elect to make the required contribution. If no part of the premium is to be derived from funds contributed by the employees or members, all eligible employees or members, excluding any as to whose family members evidence of insurability is not satisfactory to the insurer, must be insured with respect to their spouses and children.

(2) The amounts of insurance must be based upon some plan precluding individual selection either by the employees or members or by the policyholder, employer or union.

(3) Upon termination of the insurance with respect to the members

HeinOnline -- 1977 Vol. I 682 1977

of the family of any employee or member by reason of the employee's or member's termination of employment, termination of membership in the class or classes eligible for coverage under the policy, or death, the spouse shall be entitled to have issued by the insurer, without evidence of insurability, an individual policy of life insurance, without disability or other supplementary benefits, providing application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one days after such termination, subject to the requirements of subdivisions (1), (2) and (3) of section 40-3917 of this chapter. If the group policy terminates or is amended so as to terminate the insurance of any class of employees or members and the employee or member is entitled to have issued an individual policy under section 40-3919 of this chapter, the spouse shall also be entitled to have issued by the insurer an individual policy, subject to the conditions and limitations provided above. If the spouse dies within the period during which he would have been entitled to have an individual policy issued in accordance with this provision, the amount of life insurance which he would have been entitled to have issued under such individual policy shall be payable as a claim under the group policy, whether or not application for the individual policy or the payment of the first premium therefor has been made.

(4) Notwithstanding section 40-3917 of this chapter, only one certificate need be issued for delivery to an insured person if a statement concerning any dependent's coverage is included in such certificate."

Approved April 1, 1977.

CHAPTER NO. 216

THE RECIPROCAL AGREEMENT FOR COLLECTION OF WAGES ACT OF 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 41-1326 that reads as follows:

41-1326. Short title. This act may be cited as "The Reciprocal Agreement for Collection of Wages Act of 1977".

Section 2. There is a new R.C.M. section numbered 41-1327 that reads as follows:

41-1327. Purpose. The purpose of this act is to provide for a method of reciprocal enforcement in other states of Montana's wage payment laws contained in Title 41, chapter 13, and to provide for reciprocal enforcement in Montana of similar wage payment laws of other states.

Section 3. There is a new R.C.M. section numbered 41-1328 that reads as follows:

41-1328. Reciprocal agreements for collection of wages. The department of labor and industry may enter into reciprocal agreements

HeinOnline -- 1977 Vol. I 683 1977

with the labor department or corresponding agency of another state or with the person, board, officer, or commission authorized to act for and on behalf of the department or agency for the collection in the other state of claims or judgments for wages and other demands based upon claims previously assigned to the department of labor and industry.

Section 4. There is a new R.C.M. section numbered 41-1329 that reads as follows:

41-1329. Actions in other states for collections of claims — assignments for collection. The department of labor and industry may, to the extent provided by a reciprocal agreement entered into pursuant to 41-1328 or by the laws of another state, maintain actions in the courts of another state for the collection of claims for wages, judgments, and other demands and may assign the claims, judgments, and demands to the labor department or agency of another state for collection to the extent permitted or provided for by the laws of the other state or by reciprocal agreement.

Section 5. There is a new R.C.M. section numbered 41-1330 that reads as follows:

41-1330. Claims assigned by other states — actions — collection. The department of labor and industry may, upon the written request of the labor department or other corresponding agency of another state or a person, board, officer, or commission of the other state authorized to act for and on behalf of the labor department or corresponding agency, maintain actions in the courts of this state upon assigned claims for wages, judgments, and demands arising in the other state in the same manner and to the same extent that these actions by the department of labor and industry are authorized when arising in this state. However, these actions may be commenced and maintained only in those cases where the other state, by appropriate legislation or by reciprocal agreement, extends a like comity to similar cases arising in this state.

Section 6. There is a new R.C.M. section numbered 41-1331 that reads as follows:

41-1331. Limitations. Limitations regarding the amount of wages covered by a reciprocal agreement or the time during which the wages are accrued shall be the limitations imposed by the laws of the state originating the action.

Section 7. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 1, 1977.

CHAPTER NO. 217

AN ACT TO AUTHORIZE USE OF THE WORD "BANK" IN THE NAME OR TITLE OF ANY BANK HOLDING COMPANY REGISTERED WITH THE FEDERAL RESERVE SYSTEM.

HeinOnline -- 1977 Vol. I 684 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 5-508.1 that reads as follows:

5-508.1. Registered bank holding companies may use word "bank" in name or title. Nothing contained in section 5-508 shall prohibit use of the word "bank" in the name or title of any bank holding company registered with the board of governors of the federal reserve system pursuant to Title 12, United States Code, section 1844, and such use of the word "bank" is hereby authorized.

Approved April 4, 1977.

CHAPTER NO. 218

AN ACT TO AMEND SECTION 94-5-607, R.C.M. 1947, "ENDANGERING WELFARE OF CHILDREN", TO MAKE IT CLEARLY APPLICABLE TO ALL PERSONS, WHETHER OR NOT THEY HAVE CUSTODY OF THE CHILDREN; AND TO REDEFINE THE SCOPE OF THE OFFENSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-5-607, R.C.M. 1947, is amended to read as follows:

"**94-5-607. Endangering welfare of children.** (1) A parent, guardian, or other person supervising the welfare of a child less than sixteen (16) years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection or support.

(2) A parent *or* guardian or *any* person *who is 18 years of age or older, whether or not he is supervising the welfare of the child,* commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a *child* by:

(a) supplying or encouraging the use of intoxicating substances by a child;

(b) assisting, promoting, or encouraging a child to:

(i) abandon his place of residence without the consent of his parents or guardian;

(ii) enter a place of prostitution; *or*

(iii) engage in sexual conduct.

(3) A person convicted of endangering welfare of children shall be fined not to exceed five hundred dollars ($500) or be imprisoned in the county jail for any term not to exceed six (6) months, or both. A person

convicted of a second offense of endangering welfare of children shall be fined not to exceed one thousand dollars ($1,000) or be imprisoned in the county jail for any term not to exceed six (6) months, or both.

(4) Evidence. On the issue of whether there has been a violation of the duty of care, protection, and support, the following in addition to all other admissible evidence, shall be admissible: cruel treatment, abuse, infliction of unnecessary and cruel punishment, abandonment, neglect, lack of proper medical care, clothing, shelter and food; evidence of past bodily injury.

(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered."

Approved April 4, 1977.

CHAPTER NO. 219

AN ACT TO PROVIDE FOR THE NONPARTISAN ELECTION OF CITY JUDGES UNDER THE COMMISSION-MANAGER FORM OF GOVERNMENT AND TO PROVIDE FOR A 4-YEAR TERM FOR SUCH CITY JUDGES; PROVIDING FOR THE INITIAL ELECTION; PROVIDING FOR QUALIFICATION OF A CITY JUDGE; PROVIDING FOR FILLING A VACANCY IN THE OFFICE OF CITY JUDGE; AMENDING SECTION 11-3271, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-3271, R.C.M. 1947, is amended to read as follows:

"**11-3271. Election and term of city judge.** *In each municipality having a commission-manager form of government, a city judge shall be elected every 4 years in a nonpartisan election held in conjunction with the regularly scheduled municipal election. The city judge shall hold office for a term of 4 years.*"

Section 2. There is a new R.C.M. section numbered 11-3271.1 that reads as follows:

11-3271.1. Qualification of a city judge. The qualifications to hold the office of city judge shall be set by ordinance by the commission. The ordinance shall be consistent with any rules adopted by the Montana supreme court on city judge qualifications.

Section 3. There is a new R.C.M. section numbered 11-3271.2 that reads as follows:

11-3271.2. Initial election. The first election of a city judge under this act shall be held in conjunction with the next regularly scheduled municipal election held 30 days or more after the effective date of this act.

HeinOnline -- 1977 Vol. I 686 1977

Section 4. There is a new R.C.M. section numbered 11-3271.3 that reads as follows:

11-3271.3. Vacancy in the office of city judge. If a vacancy occurs in the office of city judge, the commission shall appoint a qualified individual to serve for the remainder of the term.

Section 5. **Effective date.** This act is effective on its passage and approval.

Approved April 4, 1977.

CHAPTER NO. 220

AN ACT TO PROVIDE FOR A STATUTE OF LIMITATIONS FOR LEGAL MALPRACTICE ACTIONS AND TO CLARIFY THE EFFECT OF DISABILITIES ON STATUTES OF LIMITATIONS; AMENDING SECTION 93-2703, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 93-2625 that reads as follows:

93-2625. Actions for legal malpractice. An action against an attorney licensed to practice law in Montana, or a paralegal assistant or a legal intern employed by an attorney, based upon the person's alleged professional negligent act or for error or omission in the person's practice must be commenced within 3 years after the plaintiff discovers, or through the use of reasonable diligence should have discovered the act, error, or omission, whichever occurs last, but in no case may the action be commenced after 10 years from the date of the act, error, or omission.

Section 2. Section 93-2703, R.C.M. 1947, is amended to read as follows:

"**93-2703. Exception as to persons under disabilities.** If a person entitled to bring an action, mentioned in *Title 93, chapter 26,* be, at the time the cause of action accrued, either:

1. Within the age of majority; or,

2. Insane; or,

3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life;

the time of such disability is not a part of the time limited in sections 93-2401 to 93-2720 for commencing the action; except that the time so limited cannot be extended more than five years by any such disability, except infancy; or, in any case, more than one year after the disability ceases."

Approved April 4, 1977.

HeinOnline -- 1977 Vol. I 687 1977

CHAPTER NO. 221

AN ACT TO PROVIDE THAT A HIGHWAY PATROLMAN RECEIVE REGULAR DUTY PAY WHILE RESPONDING TO A SUBPOENA IN A CIVIL OR CRIMINAL CAUSE WHEN CALLED IN CONNECTION WITH HIS OFFICIAL PATROL DUTIES AND THAT THE DEPARTMENT OF JUSTICE MAY BILL THE PERSON OR ORGANIZATION REQUESTING THE ISSUANCE OF THE SUBPOENA FOR REIMBURSEMENT FOR THE PATROLMAN'S TIME.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 31-105.2 that reads as follows:

31-105.2. Reimbursement for time spent answering subpoena. A highway patrolman shall receive all regular duty pay and benefits for time spent answering a subpoena in a civil or criminal cause when he has been called to testify in connection with his official patrol duties. The department of justice may bill the person or organization requesting the issuance of the subpoena for reimbursement for the patrolman's time.

Approved April 4, 1977.

CHAPTER NO. 222

AN ACT AMENDING SECTION 91A-5-303, R.C.M. 1947, TO PROVIDE FOR DISCRETIONARY RATHER THAN MANDATORY APPOINTMENT OF COUNSEL IN A PROCEEDING TO DETERMINE INCAPACITY AND THE NEED TO APPOINT A GUARDIAN FOR A PERSON ALLEGED TO BE INCAPACITATED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 91A-5-303, R.C.M. 1947, is amended to read as follows:

"91A-5-303. Procedure for court appointment of a guardian of an incapacitated person. (1) The incapacitated person or any person interested in his welfare may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity. *The* allegedly incapacitated person *may have* counsel of his own choice *or the court may, in the interest of justice,* appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. The visitor also shall interview

HeinOnline -- 1977 Vol. I 688 1977

the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests."

Approved April 4, 1977.

CHAPTER NO. 223

AN ACT AMENDING SECTION 91A-3-203, R.C.M. 1947, TO PROVIDE FOR COURT APPOINTMENT OF ANY QUALIFIED PERSON AS PERSONAL REPRESENTATIVE OF A DECEDENT'S ESTATE WHEN TWO OR MORE PERSONS HAVING PRIORITY OF APPOINTMENT CANNOT AGREE IN NOMINATING ANOTHER TO ACT FOR THEM OR IN APPLYING FOR APPOINTMENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 91A-3-203, R.C.M. 1947, is amended to read as follows:

"**91A-3-203. Priority among persons seeking appointment as personal representative.** (1) Whether the proceedings are formal or informal, persons who are not disqualified have priority for appointment in the following order:

(a) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;

(b) the surviving spouse of the decedent who is a devisee of the decedent;

(c) other devisees of the decedent;

(d) the surviving spouse of the decedent;

(e) other heirs of the decedent;

(f) public administrator;

(g) forty-five (45) days after the death of the decedent, any creditor.

(2) An objection to an appointment can be made only in formal proceedings. In case of objection the priorities stated in (1) apply except that

(a) if the estate appears to be more than adequate to meet exemptions and costs of administration but inadequate to discharge anticipated unsecured claims, the court, on petition of creditors, may appoint any qualified person;

HeinOnline -- 1977 Vol. I 689 1977

(b) in case of objection to appointment of a person other than one whose priority is determined by will by an heir or devisee appearing to have a substantial interest in the estate, the court may appoint a person who is acceptable to heirs and devisees whose interests in the estate appear to be worth in total more than half of the probable distributable value, or, in default of this accord any suitable person.

(3) A person entitled to letters under (b) through (e) of (1) above, may nominate a qualified person to act as personal representative. Any person entitled to letters may renounce his right to nominate or to an appointment by appropriate writing filed with the court. When two (2) or more persons share a priority, those of them who do not renounce must concur in nominating another to act for them, or in applying for appointment. *If they are unable to concur in nominating another to act for them or in applying for appointment, the court may appoint any qualified person.*

(4) Conservators of the estates of protected persons, or if there is no conservator, any guardian except a guardian ad litem of a minor or incapacitated person, may exercise the same right to nominate, to object to another's appointment, or to participate in determining the preference of a majority in interest of the heirs and devisees that the protected person or ward would have if qualified for appointment.

(5) Appointment of one who does not have priority, including priority resulting from renunciation or nomination determined pursuant to this section, may be made only in formal proceedings. Before appointing one without priority, the court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

(6) No person is qualified to serve as a personal representative who is:

(a) under the age of eighteen (18);

(b) a person whom the court finds unsuitable in formal proceedings.

(7) A personal representative appointed by a court of the decedent's domicile has priority over all other persons except where the decedent's will nominates different persons to be personal representative in this state and in the state of domicile. The domiciliary personal representative may nominate another, who shall have the same priority as the domiciliary personal representative.

(8) This section governs priority for appointment of a successor personal representative but does not apply to the selection of a special administrator."

Approved April 4, 1977.

CHAPTER NO. 224

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELAT-

HeinOnline -- 1977 Vol. I 690 1977

ING TO POLICE RETIREMENT AND DEATH AND DISABILITY BENEFITS; AMENDING SECTIONS 11-1823, 11-1825, 11-1828, 11-1829, 11-1830, 11-1836, 11-1838, 11-1839, 11-1840, 11-1842, 11-1843, 11-1844, 11-1845, 11-1850, 82A-222, AND 82A-223, R.C.M. 1947; REPEALING SECTIONS 11-1821.1 AND 11-1824, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1823, R.C.M. 1947, is amended to read as follows:

"**11-1823. City's contribution to fund.** *(1)* For the purpose of paying the salaries of policemen who have been placed upon the reserve list of cities under this act, the *governing body of the* city or town shall deposit in the fund monthly an amount equal to 11% of the total salaries for the preceding month paid to active police officers of that city, exclusive of overtime and payments in lieu of sick leave and annual leave. Payments made by cities covered by this act shall be made by the treasurer of that city to the department of administration. *If* the demand against *a* city for its deposits in *the* fund *is* such that it cannot be met within the general taxing authority of *the* city, an additional levy not to exceed 3 mills may be made until the general taxing authority *is* sufficient to meet the demand.

(2) As of July 1, 1975, each city, other than one of the first or second class, which has a police reserve fund and which has not elected to participate in the statewide fund shall deposit in its fund monthly an amount equal to 11% of the total salaries for the preceding month paid to active police officers of such city, exclusive of overtime and payments in lieu of sick leave and annual leave, for the purpose of paying the salaries of police officers on the reserve list. If the demand against a city for deposits in its fund is such that it cannot be met within the general taxing authority of the city, an additional levy not to exceed 3 mills may be made until the general taxing authority is sufficient to meet the demand."

Section 2. Section 11-1825, R.C.M. 1947, is amended to read as follows:

"**11-1825. Officer's contribution deducted from salary.** The treasurer of *an* incorporated city which has as of *July 1, 1975, created* or which *thereafter* may create a police reserve fund shall retain from the monthly salary of *each* police *officer on* the active list a sum equal to 6% of *his* monthly compensation for his services as *a* police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave. *The* monthly deduction from the salaries of police officers shall be paid into the *statewide fund* or *into* the city's police reserve fund, as the case may be, for the purpose of paying the salaries of police officers *on* the reserve list."

Section 3. Section 11-1828, R.C.M. 1947, is amended to read as follows:

"**11-1828. Local boards of trustees of fund.** *(1) Each city or town which has a police reserve fund must have a board of trustees of such fund, except as provided in 82A-222.*

(2) A board of trustees existing under subsection (1) must consist of the mayor, clerk, and attorney of *the* city or town and two members from the active list of police officers of *the* city or town.

(3) The two trustees who are also police officers shall serve terms of 2 years. They shall be selected by a majority vote of the members of the police department on the active list of *the* city or town. *One shall be selected each year between May 1 and May 10, so that their terms are staggered. Immediately after the selection has been made, a* certificate of election shall be certified to the city clerk by the chairman and secretary of the meeting at which *the* selection was made."

Section 4. Section 11-1829, R.C.M. 1947, is amended to read as follows:

"**11-1829. Actuarial valuation and investment of police reserve funds.** (1) *(a)* The city treasurer shall submit to the department of community affairs before October 1 *of* each odd-numbered year all information requested by the department necessary to complete an actuarial valuation of the *city's* police reserve *fund. The valuation shall consider the actuarial soundness of the police reserve fund for the 2 preceding fiscal years.*

(b) The valuation is to be prepared by a qualified actuary selected by the department. A qualified actuary is a member of the American *academy* of *actuaries* or of any organization *considered* by the department to have similar standards.

(c) In each fiscal year in which an actuarial valuation is prepared, the department shall submit to the state auditor a request for payment of the expense incurred in securing the actuarial valuation. The expense may not exceed $6,000 in any fiscal year. *The* state auditor shall make payment to the actuary designated in the request.

(2) Whenever the *moneys* in the police reserve fund exceed *the greater of the following amounts, the city treasurer shall remit the excess to the state treasurer, who shall invest the remittances under the direction of the board of investments as provided in 79-311:*

(a) *1 ½* times the monthly benefit paid in the preceding month*;* or

(b) $5,000.

(3) After January 1, 1975, all investments of the police reserve fund shall be transferred as directed by the board of investments. The board of investments may defer *a* transfer to a date later than January 1, 1975, but not later than the maturity date of the investment. The board of *investments* may make rules to implement this section."

Section 5. Section 11-1830, R.C.M. 1947, is amended to read as follows:

"**11-1830. Limit on use of fund.** *A police reserve* fund *may* not be used for any purpose other than *to make payments authorized by this chapter* to members of the police department on the reserve list *and to make authorized investments.*"

HeinOnline -- 1977 Vol. I 692 1977

Section 6. Section 11-1836, R.C.M. 1947, is amended to read as follows:

"**11-1836. Credit of payments to fund — annual report of board.** *Cities participating in the statewide fund shall deposit the payment provided for in 11-1834 with the department of administration. Each* city or town *which has* a police reserve fund *and which has not elected to participate in the statewide fund* shall deposit *the* payment to the credit of *its* police reserve fund. The board of trustees of each police reserve fund shall on or before April *1* of each year report to the state auditor as to the financial condition of *its* fund. Payments provided for in *11-1829 and* 11-1834 are in addition to those provided for in 11-1823."

Section 7. Section 11-1838, R.C.M. 1947, is amended to read as follows:

"**11-1838. Purpose.** It is the purpose of this act to provide for a *statewide* fund for police reserve officers of cities of the first and second class in Montana, for the investment of such fund, for the payment of benefits to police reserve officers, and for uniformity of programs and procedures for police reserve officers. The act further proposes to permit cities in Montana other than those *of* the first and second class to *elect to participate in the statewide fund.*"

Section 8. Section 11-1839, R.C.M. 1947, is amended to read as follows:

"**11-1839. Definitions.** Unless the context requires a different meaning, *the following definitions apply in this chapter:*

(1) "Boards of trustees" means the boards of trustees which exist on July 1, 1975, or at the time of an election to participate in the statewide fund or which would have existed but for 82A-222 by virtue of the creation of a police reserve fund.

(2) "Cities" means all cities of the first and second class and all cities other than those of the first and second class *which elect to participate in the statewide fund or which create* a police reserve fund *after July 1, 1975.*

(3) "Police officers" includes "policemen", "active police", "patrolmen", and other similar terms denoting law enforcement officers.

(4) "Police reserve fund" or "fund" includes the police reserve funds of all cities defined in subsection (2).

(5) "Statewide fund" means the funds deposited with and managed by the department of administration in accordance with section 5, Chapter 335, Laws of 1974, and 11-1841."

Section 9. Section 11-1840, R.C.M. 1947, is amended to read as follows:

"**11-1840. Transfer of police reserve fund.** (1) As soon as practical after *July 1, 1975, each city* of the first *or* second class or the *board* of trustees thereof shall cause the treasurer of *the* city to transmit to the

department of administration all moneys in *the* city's fund and shall cause to be transferred to the department of administration title and physical possession of all bonds, warrants, certificates of deposit, or securities which are part of *its* fund.

(2) *Each city,* other than *one* of the first *or* second class, *which has* a police reserve fund as of *July 1, 1975,* and *which elects* to *participate in the statewide fund* shall as soon as practical after the effective date of *the* election transmit to the department of administration all moneys in *the* city's fund and shall cause to be transferred to the department of administration title and physical possession of all bonds, warrants, certificates of deposit, or securities which are part of *its* fund."

Section 10. Section 11-1842, R.C.M. 1947, is amended to read as follows:

"**11-1842. Changes in status of officers — notice required.** Each city shall provide to the department of administration, at times to be specified by the department, such information as to the hiring of any police officer by that city and as to the change of status of such police officer as the department *may* require. When a police officer is to be placed upon the reserve list, the department shall so place him and shall notify the city involved of that action. An officer having an option to be placed upon the reserve list shall notify the department of his exercise of *the* option, if he exercises it, and the department shall place him *on* the reserve list if he is eligible. In cases of disability under *11-1843(1)(d),* the determination shall be made by the city involved as *prescribed* in that section, and, if the police officer is determined to be eligible for inclusion on the reserve list, the city involved shall so notify the department."

Section 11. Section 11-1843, R.C.M. 1947, is amended to read as follows:

"**11-1843. Eligibility for police reserves.** *(1)* The following persons are eligible for the police reserves of a city and shall become police reserves as *provided in this section*:

(a) A person who *is* employed by any city as a police officer *on July 1, 1975, is eligible for the police reserves* when *he* has completed 20 years or more in the aggregate as *a* probationary officer, a regular officer, or a special officer of *the* police department, in any capacity *or* rank. *A* police officer serving in the United States military in time of war or national emergency shall be given credit *in* his police record for such service in the same manner as though *he were* on active police duty.

(b) A person who *is* first employed by a city as a police officer after *July 1, 1975, is eligible for the police reserves* when *he has reached the age of 50 and* has completed 20 years or more in the aggregate as *a* probationary officer, a regular officer, or a special officer *of the police department,* in any capacity or rank. *He shall receive credit for* military service *as prescribed* in subsection *(a).*

(c) Police officers, whether *first* employed *before or after July 1, 1975,* who reach the age of 65 while in active service shall pass from the active list to the reserve list.

HeinOnline -- 1977 Vol. I 694 1977

(d) When a police officer *receives* injuries or disabilities in the active discharge of *his* duties *as* a police officer, which injuries or disabilities *are,* in the opinion of the board of police commissioners or city council of the city or town, of such character *as* to impair his ability *to* discharge his duties as *an active police officer,* he shall become a member of the police reserves of *the* city or town.

(2) A police officer *who is* eligible for the reserve list *under subsection (1)(a) or (1)(b)* of this section *may* transfer, as of the time he becomes eligible, to the reserve list or may elect to serve an additional 1 to 10 years as an active police officer, *except* that he may not elect to serve past his *65th* birthday."

Section 12. Section 11-1844, R.C.M. 1947, is amended to read as follows:

"**11-1844. Benefits.** (1) *When a police* officer *is* transferred from the active list to the reserve list of *a* city, he shall thereafter *receive* monthly payments from the *statewide fund or the city's police reserve fund, whichever is applicable,* as follows:

(a) *A* police officer *who is* eligible under 11-1843*(1)(a) or (1)(b)* and does not elect to serve any additional years as an active police officer or *who is* placed *on* the reserve list *under 11-1843(1)(c)* prior to reaching 20 years of service *shall receive* a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during *his* last year of active service.

(b) *A* police officer *who is* eligible after 20 years *of service and* who elects to serve additional years *shall receive* the payment provided *for* in subsection *(1)*(a) *plus* an additional 1% of such *payment* per year of additional service, up to a maximum of 60% of the base salary, excluding overtime and payment in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during *his* last year of active service. *A* police officer whose eligibility depends *on* 11-1843*(1)(b)* and who completes 20 years of service before reaching the age of 50 *is considered* to have elected to serve *an* additional *year* for each year between the completion of his *20th* year of service and his *50th* birthday, and he shall be paid the additional 1% for each such year.

(c) A *police officer* who is placed *on* the reserve list *under 11-1843(1)(c) and* who was theretofore eligible at his option to be placed *on the* reserve list under 11-1843*(1)(a) or (1)(b)* but elected to serve additional years shall be paid for *the* additional years over his original eligibility at the rate *prescribed* in subsection *(1)*(a).

(d) A police officer who is eligible under 11-1843(1)(d) before completing 20 years of service shall receive a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one month during his last year of active service.

(e) A police officer *who is* placed on the reserve list under 11-1843*(1)(d)*

HeinOnline -- 1977 Vol. I 695 1977

and who, at the time of *his* injury or disability, was eligible at his option to be placed on the reserve list under 11-1843*(1)(a) or (1)(b)* but had elected to serve additional years and was then serving such additional years shall be paid for *the* additional years over his original eligibility at the rate *prescribed* in subsection *(1)*(a).

(2) Upon the death of *a* police officer on the active list or reserve list of *a* city, his surviving spouse, if there be one, shall, as long as such spouse remains the surviving spouse, be paid from the *statewide fund or the city's* police reserve fund, *whichever is applicable,* a sum equal to one-half the base salary, excluding overtime and payments in lieu of sick leave or annual leave, he was receiving as an active officer computed on the highest salary received in any one month during *his* last year of active service. If the officer leaves *one or more* dependent minor children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent minor children, collectively if there *is* more than one, shall *receive* the same monthly payments as *a* surviving spouse *would receive,* until *they* reach the age of 18 years or *are* married. *The payments* shall be *made* to *their* duly appointed, qualified, and acting guardian for *their* use. *If* there is more than one *such* child, upon each child reaching the age of 18 *or marrying,* the pro rata payments to that child shall cease and shall be made to the remaining children, until *all the children have either reached* the age of 18 or *are* married."

Section 13. Section 11-1845, R.C.M. 1947, is amended to read as follows:

"**11-1845. Protection of benefits from legal process.** The benefits provided *for* in 11-1844 are not subject to execution, garnishment, attachment, *or* the operation of bankruptcy, insolvency, or other process of law and are unassignable."

Section 14. Section 11-1850, R.C.M. 1947, is amended to read as follows:

"**11-1850. Election of other cities to participate.** Cities other than those of the first and second class may elect to *participate in the statewide fund* by *passing* an ordinance stating the election and the consent of the city to be bound by the *law relating to the fund. Upon* the enactment of such *an* ordinance, *a city will be bound by that law.*"

Section 15. Section 82A-222, R.C.M. 1947, is amended to read as follows:

"**82A-222. Board of trustees abolished — functions transferred.** The boards of trustees of police reserve funds in cities of the first and second class created under *section 12, Chapter 120, Laws of 1929,* are abolished, and their functions, except the quasi-judicial functions *provided for in* 82A-223, are transferred to the department of administration. *A board* of trustees created *under section 8, Chapter 100, Laws of 1927,* and existing as of *July 1, 1975, in a city* other than *one in* the first *or* second class *is* abolished as of such time as *the* city *elects* to *join the statewide fund defined in 11-1839,* and, at such time, the functions of *the* board, except the quasi-judicial functions *provided for in* 82A-223, are transferred to

HeinOnline -- 1977 Vol. I 696 1977

the department of administration. Notwithstanding the provisions of *11-1850,* any city other than one in the first *or* second class electing after *July 1, 1975,* to create a police reserve fund *must* comply with the provisions of this act and *may* not create a local board of trustees, and the department of administration shall *perform* all functions with regard to *the* fund *that* a local board of trustees would *perform, except* the quasi-judicial functions *provided for in 82A-223.*"

Section 16. Section 82A-223, R.C.M. 1947, is amended to read as follows:

"**82A-223. Quasi-judicial functions transferred.** The quasi-judicial functions of *the following are transferred or shall originally exist, as the case may be, to or in the board provided for in 82A-210:*

(1) boards of trustees of police reserve funds of cities of the first and second class;

(2) boards of trustees of police reserve funds *created under section 8, Chapter 100, Laws of 1927, in* cities other than those of the first and second class *which elect to join the statewide fund defined in 11-1839;* and

(3) boards of trustees which would, but for this act, have been created by cities other than those of the first and second class under *section 8, Chapter 100, Laws of 1927.*"

Section 17. **Repealer.** Sections 11-1821.1 and 11-1824, R.C.M. 1947, are repealed.

Approved April 4, 1977.

CHAPTER NO. 225

AN ACT TO AMEND SECTION 93-601-2 AND 93-701-4, R.C.M. 1947, TO EXTEND REPORTER'S PRIVILEGE TO INFORMATION OBTAINED FOR COMMUNICATION TO THE PUBLIC.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 93-601-2, R.C.M. 1947, is amended to read as follows:

"**93-601-2. Disclosure of information and source of information — when not required.** *(1) Without his consent no person* engaged, *or who was so engaged at the time the information sought was procured,* in the work of or connected with or employed by any newspaper, *news service,* radio station, television station, *or community antenna television service* for the purpose of gathering, *writing,* editing, *or* disseminating news *may be examined as to, or may* be required to disclose, *any information obtained or prepared or* the source of *that* information in any legal proceeding *if the information was gathered, received, or processed in the course of his employment.*

(2) A person engaged as in subsection (1) may not be adjudged in con-

HeinOnline -- 1977 Vol. I 697 1977

tempt by a judicial, legislative, administrative, or any other body having the power to issue subpoenas for refusing to disclose the source of any information or for refusing to disclose any information obtained or prepared in gathering, receiving, or processing information in the course of his employment.

(3) Dissemination, except as provided in subsection (4), in whole or in part does not constitute a waiver of provisions of subsection (1) or (2), or both.

(4) If the person claiming the privilege voluntarily offers to testify, with or without having been subpoenaed, before a judicial, legislative, administrative, or other body having the power to issue subpoenas, he waives the provisions of subsections (1) and (2)."

Section 2. Section 93-701-4, R.C.M. 1947, is amended to read as follows:

"**93-701-4. Persons in certain relations cannot be examined.** There are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate; therefore, a person cannot be examined as a witness in the following cases:

1. A husband cannot be examined for or against his wife without her consent; nor a wife for or against her husband without his consent; nor can either, during the marriage or afterward, be, without the consent of the other, examined as to any communication made by one to the other during the marriage; but this exception does not apply to a civil action or proceeding by one against the other nor to a criminal action or proceeding for a crime committed by one against the other.

2. An attorney cannot, without the consent of his client, be examined as to any communication made by the client to him or his advice given thereon in the course of professional employment.

3. A clergyman or priest cannot, without the consent of the person making the confession, be examined as to any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs.

4. A licensed physician or surgeon cannot, without the consent of his patient, be examined in a civil action as to any information acquired in attending the patient, which was necessary to enable him to prescribe or act for the patient.

5. A public officer cannot be examined as to communications made to him in official confidence, when the public interests would suffer by the disclosure.

6. Any person engaged in teaching psychology in any school, or who acting as such is engaged in the study and observation of child mentality, shall not without the consent of the parent or guardian of such child being so taught or observed testify in any civil action as to any information so obtained.

7. A counselor, psychologist, nurse, or teacher, employed by any educa-

HeinOnline -- 1977 Vol. I 698 1977

tional institution, cannot be examined as to communications made to him in confidence by a duly registered student of such institution; provided, however, that this provision shall not apply where consent has been given by the student, if not a minor, or if he is a minor, by the student and his parent or legal guardian.

8. A speech pathologist or audiologist cannot, without the consent of his client, be examined in a civil action as to any communication made by the client to him."

Approved April 4, 1977.

CHAPTER NO. 226

AN ACT TO CREATE CERTAIN EXEMPTIONS TO THE INSPECTION AND PERMITTING SYSTEM FOR ENFORCEMENT OF THE STATE PLUMBING CODE; AMENDING SECTION 66-2427, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-2427, R.C.M. 1947, is amended to read as follows:

"**66-2427. Permit fee — payment — penalties.** (1) It is unlawful for any person to engage in the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof without first obtaining a permit from the board of plumbers.

A separate permit shall be obtained for each building or structure.

No person may allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in his employ.

(2) No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety. No permit is required where the installation is exempt under the provisions of section 66-2426 or 66-2401. *No state permit is required whenever the installation occurs in an area governed by a municipality and where there is in effect a municipal building code which covers plumbing installations and which provides inspection procedures.* Nothing contained in this act shall prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit providing he does the work himself. The provisions of this act do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this act.

(3) Persons required by this section to apply for a permit shall make application on forms provided by the board or authorized representative. He shall give a description of the character of the work proposed to be

done, and the location, ownership, occupancy and use of the premises in connection therewith. The board of plumbers or its authorized representative may require sketches, specifications or drawings and such other information it deems necessary in order to determine the scope of the work contemplated.

If the board determines that the sketches, specifications, drawings, descriptions and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the board.

(4) Any person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently permitted to obtain a permit, pay double the permit fee for the work, except that this provision does not apply to emergency work when it is proved to the satisfaction of the board of plumbers or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such cases, a permit shall be obtained as soon as it is practical to do so, and if there is unreasonable delay in applying for the permit, a double fee shall be charged.

For the purpose of this section, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached shall be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings shall be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved.

When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit.

The board of plumbers shall establish permit fees in accordance with the Montana Administrative Procedure Act and the fees shall be deposited to the earmarked revenue fund of the board of plumbers for use in the administration and enforcement of this act and the Montana state plumbing code.

(5) All plumbing and drainage systems may be inspected by the board of plumbers or their authorized representative to insure compliance with the requirements of the state plumbing code.

(6) It is the duty of the person doing work authorized by the permit to notify the board orally or in writing, that the work is ready for inspection. The notification shall be given not less than 24 hours before the work is to be inspected.

It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code.

(7) Whenever any work is being done contrary to the provisions of the state plumbing code, the board or its authorized representative may, after a hearing conducted under the provisions of the Montana Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work.

HeinOnline -- 1977 Vol. I 700 1977

(8) The board may suspend or revoke a permit, whenever it is issued in error or on the basis of incorrect information supplied, or work performed thereunder is in violation of any of the provisions of Title 66, chapter 24, R.C.M. 1947."

Approved April 4, 1977.

CHAPTER NO. 227

AN ACT TO RAISE THE LIMITATION ON THE AMOUNT OF RECOVERY FROM PARENTS OF CHILDREN WHO WILLFULLY DESTROY PROPERTY FROM $300 TO $1,500; AMENDING SECTIONS 61-112.1 AND 61-112.2, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 61-112.1, R.C.M. 1947, is amended to read as follows:

"**61-112.1. Destruction of property by person under eighteen — liability of parents for.** Any municipal corporation, county, city, town, school district, or department of the state of Montana or any person or any religious organization, whether incorporated or unincorporated, *is* entitled to recover damages in a civil action in an amount not to exceed *$1,500* in a court of competent jurisdiction from the parents of any person under the age of 18 years, living with the parents, who shall maliciously or willfully destroy property, real, personal, or mixed, belonging to such municipal corporation, county, city, town, school district, or department of the state of Montana or person or religious organization."

Section 2. Section 61-112.2, R.C.M. 1947, is amended to read as follows:

"**61-112.2. Limitation on amount of recovery.** The recovery shall be limited to the actual damages in an amount not to exceed *$1,500* in addition to taxable court costs and a reasonable attorney's fee to be set by the court not to exceed $100. The right to recover attorney fees as provided by this section *is* limited to a person bringing an action under 61-112.1."

Approved April 4, 1977.

CHAPTER NO. 228

AN ACT TO PROVIDE FOR A DEFINITION OF DEATH.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section to be numbered 69-7201 that reads as follows:

HeinOnline -- 1977 Vol. I 701 1977

69-7201. Definition of death. A human body with irreversible cessation of total brain function, as determined according to usual and customary standards of medical practice, is dead for all legal purposes.

Approved April 4, 1977.

CHAPTER NO. 229

AN ACT TO REPEAL SECTION 82A-217, R.C.M. 1947, WHICH SUBSTITUTES THE WORDS "DEPARTMENT OF ADMINISTRATION" FOR "STATE BUDGET DIRECTOR" OR "BUDGET DIRECTOR" IN CERTAIN SECTIONS OF TITLE 43, CHAPTER 10, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new section that reads as follows:

Name change. Wherever the words "department of administration" appear in 43-1002, 43-1003, and 43-1006 pursuant to 82A-217, the words "budget director" are substituted.

Section 2. **Repealer.** Section 82A-217, R.C.M. 1947, is repealed.

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved April 4, 1977.

CHAPTER NO. 230

AN ACT TO AMEND SECTION 82-1919, R.C.M. 1947, TO PERMIT THE DEPARTMENT OF INSTITUTIONS TO PURCHASE CLOTHING ITEMS WITHOUT CONFORMING TO BID REQUIREMENTS OF SECTION 82-1917, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1919, R.C.M. 1947, is amended to read as follows:

"**82-1919. Purchase of fresh fruits and vegetables — emergency purchases.** (1) Fresh fruits and vegetables (other than potatoes) shall not be included in the supplies to be purchased as provided in this chapter. The department may allow a state agency or institution to purchase fresh fruits and vegetables. An itemized account shall be kept of these purchases and the account shall be furnished to the department.

(2) Likewise, when immediate delivery of articles or performance of service is required by the public exigencies, the articles or service so required may be procured by open purchase or contract at the place and

HeinOnline -- 1977 Vol. I 702 1977

in the manner in which the articles are usually bought and sold or the services engaged between individuals, but under the direction of the department.

(3) The department of administration may exempt the department of institutions from the provisions of 82-1917 for the purchase of suitable clothing by the department of institutions for residents of juvenile correctional facilities.

(4) As used in this section, "suitable clothing" means styled, seasonable clothing, which will allow the resident to make a normal appearance in the community."

Approved April 4, 1977.

CHAPTER NO. 231

AN ACT TO REVISE THE PROCEDURE RELATING TO ALLEGED VIOLATIONS OF YOUTH AFTERCARE AGREEMENTS; AMENDING SECTION 80-1414.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-1414.1, R.C.M. 1947, is amended to read as follows:

"**80-1414.1. Hearing on alleged violation of aftercare agreement — appeal to the district court.** (1) When an allegation of a violation of the terms and conditions of a youth's aftercare agreement is made by the department, the youth shall be granted a hearing at or near the site of the alleged violation within 10 days after the day that the allegation was made to determine:

(a) Whether the youth committed the violation; and

(b) Whether the violation is of such a nature that he should be returned to the juvenile facility from which he was released.

(2) With regard to this hearing, the youth shall be given:

(a) Written notice of the alleged violation of his aftercare agreement, including notice that the purpose of the hearing is to determine whether he has committed the violation, and, if so, whether or not the violation is of such a nature that he should be returned to the juvenile facility from which he was released;

(b) Disclosure of the evidence against him *and the facts constituting the alleged violation*;

(c) Opportunity to be heard in person and to present witnesses and documentary evidence to controvert the evidence against him, and to show that there are compelling reasons which justify or mitigate the violation. Either party shall have the power to issue subpoenas to witnesses;

(d) The right to confront and cross-examine adverse witnesses;

HeinOnline -- 1977 Vol. I 703 1977

(e) The right to be represented by an attorney; and

(f) A record of the hearing which may be taken by tape recorder and transcribed on appeal.

(3) The department shall appoint a referee who shall not be an employee of the department to conduct the hearing. The department shall adopt rules and regulations necessary to effect a prompt and full review.

(4) If the referee finds, by a preponderance of the evidence, that the youth did in fact commit the alleged violation, and that there are no compelling reasons which justified or mitigated the violation, the department may return the youth to the juvenile facility from which he was released. The referee shall give a written decision to the youth listing the reasons for his decision.

(5) Either the department or the youth may appeal from the decision at the hearing to the district court of the county in which the alleged violation occurred, by serving and filing a notice of appeal with the court within 10 days of the decision. The district court, upon receipt of a notice of appeal, shall order the department to promptly certify to the court a record of all proceedings before the *department* and shall proceed to a prompt hearing on the appeal, based upon the record on appeal. The decision of the *department* shall not be altered except for abuse of discretion or manifest injustice.

(6) Pending the hearing on a violation, a youth may not be detained except when his detention or care is required to protect the person or property of the youth or of others; or he may abscond or be removed from the community in which the alleged violation occurred. Procedures for taking into custody and detention of a youth charged with violation of his aftercare agreement shall be as provided in sections 10-1211, and 10-1214, R.C.M. 1947, except that detention pending a hearing on alleged violation may not be for longer than 72 hours *unless the hearing time is extended, not to exceed 5 additional days, by the youth court upon stipulation of the youth or the youth's counsel and the state.*"

Approved April 4, 1977.

CHAPTER NO. 232

AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF THE LAWS RELATING TO AERONAUTICS; AMENDING SECTIONS 1-401, 1-502, 1-701, 1-702, 1-704, 1-903, 1-912, 1-918, AND 1-1101, R.C.M. 1947; AND REPEALING SECTIONS 1-829 THROUGH 1-832 AND 1-1001 THROUGH 1-1005, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-401, R.C.M. 1947, is amended to read as follows:

"**1-401. Acquisition and operation of state airports.** (1) The department may, on behalf of and in the name of this state:

HeinOnline -- 1977 Vol. I 704 1977

(a) acquire *real or personal property* by purchase, gift, devise, lease, condemnation proceedings, or otherwise for the purpose of establishing and constructing airports, restricted landing areas, and other air navigation facilities;

(b) acquire in like manner, own, control, establish, construct, enlarge, improve, maintain, equip, operate, regulate, and police airports, restricted landing areas, and other air navigation facilities either within or outside this state;

(c) prior to acquisition, *make* investigations, surveys, and plans;

(d) erect, install, construct, and maintain *facilities* at those airports for the servicing of aircraft and for the comfort and accommodation of air travelers; and

(e) dispose of any property, airport, restricted landing area, or any other air navigation facility by sale, lease, or otherwise in accordance with the laws of this state governing the disposition of other like property of the state.

(2) The department may not, however, acquire or take over an airport, restricted landing area, or other air navigation facility owned or controlled by a municipality of this state without the consent of the municipality. *The department* may erect, equip, operate, and maintain on an airport, buildings and equipment necessary and proper to establish, maintain, and conduct the airport and air navigation facilities connected with it.

(3) Where necessary, in order to provide unobstructed air space for the landing and taking off of aircraft utilizing airports and restricted landing areas acquired or operated under the provisions of this title, *the department* may acquire, in the manner provided for the acquisition of property for airport purposes, easements through or other interests in air space over land or water, interests in airport hazards outside the boundaries of the airports or restricted landing areas, and such other airport protection privileges as are necessary to ensure safe approaches to the landing areas of airports and restricted landing areas and the safe and efficient operation of them. *The department* may also acquire in the same manner the right or easement, for a term of years or perpetually, to place or maintain suitable marks for the daytime marking and suitable lights for the nighttime marking of airport hazards, including the right of ingress and egress to or from the airport hazards for the purpose of maintaining and repairing the lights and marks. This authority does not limit the right, power, or authority of the state or a municipality to zone property adjacent to an airport or restricted landing area pursuant to a law of this state.

(4) The department may engage in all those activities jointly with the United States, other states, and with municipalities or other agencies of this state.

(5) For the purpose of acquiring any property which it is authorized to acquire, the department may exercise the right of eminent domain, in the name of the state, in the manner provided by the laws of this state for the acquisition of real property for public purposes. The acquisition of property for any of those purposes is a public use.

HeinOnline -- 1977 Vol. I 705 1977

(6) The department may:

(a) lease, for a term not exceeding 10 years, airports or other air navigation facilities or real property acquired or set apart for airport purposes to private parties, a municipal or state government, or the national government, or a department of either of them, for operation;

(b) lease or assign, for a term not exceeding 10 years, *space, area, improvements, or equipment on those airports* to private parties, a municipal or state government or the national government, or a department of either for operation or use consistent with the purposes of this title;

(c) sell any part of those airports, other air navigation facilities, or real property to a municipal or state government or to the United States or a department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto; and

(d) confer the privilege of concessions *for* supplying goods, commodities, things, services, and facilities *upon the premises of those airports.* However, in so doing the public may not be deprived of its rightful, equal, and uniform use thereof.

(7) It may determine the charges or rental for the use of state airports, the charges for service or accommodations under its control, and the terms and conditions under which the properties may be used. However, the public may not be deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expenses of operation to the state. The state has, and the department may enforce, agisters' liens as provided by law for repair, improvement, storage, or care of any personal property."

Section 2. Section 1-502, R.C.M. 1947, is amended to read as follows:

"**1-502. Governmental nature of aeronautical functions.** The acquisition of lands for establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities, whether by the state separately or jointly with a municipality; the assistance of this state in that acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the department are public and governmental functions, exercised for a public purpose and *as a matter* of public necessity; and such lands and other property and privileges acquired and used by the state in the manner and for the purposes enumerated in this title are acquired and used for public and governmental purposes and as a matter of public necessity."

Section 3. Section 1-701, R.C.M. 1947, is amended to read as follows:

"**1-701. Purpose.** *For* the purpose of ensuring safety from death or injury for aeronauts and passengers, to protect the property of those engaged in aeronautics, and to encourage and promote air travel and transportation of mail, passengers, express, and freight by air, it is *consid-*

HeinOnline -- 1977 Vol. I 706 1977

ered necessary to eliminate dangerous obstructions of air space in the vicinity of airports or landing fields which may now be or which may hereafter be acquired, owned, operated, controlled, or maintained by the United States, the state of Montana *or* any county or municipality thereof. *In order* to promote the public order, health, and safety by providing unobstructed air space for the safe descent, landing, ascent, and operation of aircraft utilizing public airports in the state of Montana, the height of buildings and other structures in the vicinity of the airports and landing fields in the state of Montana owned, leased, operated, maintained, or controlled by any of *those* public authorities *shall be* regulated and restricted as hereafter provided."

Section 4. Section 1-702, R.C.M. 1947, is amended to read as follows:

"**1-702. Regulation of building heights.** *(1) The height of buildings and other structures shall be regulated for* the purposes set forth in *1-701,* considering among other things:

(a) *requirements* and facilities necessary to secure the safe descent, landing, ascent, and operation of aircraft utilizing the public airports and landing fields in the state of Montana;

(b) *hazards* from the obstruction of air space *and the* relation of the height of buildings and other structures in the vicinity of such airports and landing fields to such hazards;

(c) the area within which buildings and other structures may dangerously obstruct air space in the vicinity of public airports and landing fields *and the* height of buildings or other structures within such area which is consistent with the safe use of such airports and landing fields; and

(d) the maintenance and use of *either* obstruction markers or lights, *or both,* upon buildings and other structures within *such area* as safety devices.

(2) The height of buildings and other structures is regulated and restricted within a distance of 2 miles from any public airport or landing field, measured at a right angle from any side or in a radial line from any corner of the established boundary line thereof, in any and all directions, as follows:

(a) The trapezoidal portion of the total *2-mile* zone area, 500 feet in width at the boundary of the field or airport and broadening to a width of *2,500* feet *2* miles distant, the center line of which *is* a continuation of the center line of each runway at and upon such public airports and landing fields, known as the approach zone, *may* have no building or other structure *or* natural feature or object of any kind therein, the height of which is more than one-twentieth its distance from the nearest boundary of the airport or landing field.

(b) The remaining portion of the *2-mile* zone area surrounding such public airports and landing fields, lying between the approach zones and known as turning zones, *may* have no building or other structure *or* natural feature or object of any kind therein, the height of which is more than one-seventh its distance from the nearest boundary of the airport or landing field.

HeinOnline -- 1977 Vol. I 707 1977

(3) In measuring distances and heights to determine the zone standard, measurements shall be taken from the nearest side of the building or structure or other object to the nearest side of the airport or landing field. *In* the event of airports having boundaries not regular, the nearest established perimeter of such port and field shall be used, as distinguished from *the* actual boundary."

Section 5. Section 1-704, R.C.M. 1947, is amended to read as follows:

"**1-704. Duty to acquire permit.** *(1) Each* person, firm, or corporation in this state proposing to erect, establish, or maintain any building or other structure that would exceed the height limit established by law *or to grow any natural object that would exceed such limit* when grown, *whenever the proposed erection or growth is within 2 miles of a public airport or landing field, shall apply* to the proper officer of the United States *or* the state of Montana *or* any county or municipality *thereof,* whichever of *those* bodies has control of the airport or landing field affecting the area, *for* a permit *to erect, establish, or maintain* the structure, building, or object proposed.

(2) No permit *may* be granted unless the specifications of the building or other structure or object reveal that the total height *does not or will* not exceed the height limits fixed by law for the zone in which the same is to be established.

(3) No permit *may* be issued in violation *of this section,* and any permit which is *issued* in violation *of this section is void.*"

Section 6. Section 1-903, R.C.M. 1947, is amended to read as follows:

"**1-903. Department control of airport operation and income.** The department *may* control *the operation* of airports constructed under he provisions of 1-902 and may provide for the imposition of landing fees, granting of fuel and service concessions, or the lease of portions of the premises for other related airport services or for purposes not inconsistent with the use of the premises for airport purposes. All income from the operation of such airports shall be deposited in the state treasury in *the airport* operating *account within the revolving fund.* All expenditures from *the account* shall be within the limits of legislative appropriations and shall be made upon vouchers signed and approved by the director of the department."

Section 7. Section 1-912, R.C.M. 1947, is amended to read as follows:

"**1-912. Bonds and other obligations.** (1) An authority *may* borrow money for any of its corporate purposes and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the authority, including revenues derived from:

(a) an airport or air navigation facility or facilities;

(b) taxes levied pursuant to 1-916 or other law for airport purposes;

(c) grants or contributions from the federal government; or

HeinOnline -- 1977 Vol. I 708 1977

(d) other sources.

(2) The bonds may be issued by resolution of the authority, without an election and without any limitation of amount, except *that no* such bonds *may* be issued at any time if the total amount of principal and interest to become due in any year on such bonds and on any then outstanding bonds for which revenues from the same source or sources are pledged exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds. *The* authority shall take all action necessary and possible to impose, maintain, and collect rates, charges, rentals, and taxes, if any are pledged, sufficient to make the revenues from the pledged source in such year at least equal to the amount of such principal and interest due in that year.

(3) The bonds may be sold at public or private sale and *may* bear interest at a rate not exceeding 10% *a year.* Except as otherwise provided herein, any bonds issued pursuant to this chapter by an authority *may* be payable as to principal and interest solely from revenues of the authority and shall state on their face the applicable limitations or restrictions regarding the source from which such principal and interest are payable.

(4) Bonds issued by an authority or municipality pursuant to the provisions of this chapter are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of 84-4905(2)(a).

(5) For the security of any such bonds, the authority or municipality may by resolution make and enter into any covenant, agreement, or indenture and *may* exercise any additional powers authorized to be exercised by a municipality under Title 11, chapter 24. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be *paid* from any revenues referred to in this chapter, prior to the payment of current costs of operation and maintenance of the facilities.

(6) Subject to the conditions stated in this *subsection (6),* the governing body of any municipality having a population in excess of 10,000, with respect to bonds issued pursuant to this chapter by the municipality or by an authority in which the municipality is included, *may* by resolution covenant that in the event that at any time all revenues, including taxes, appropriated and collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the municipality for the payment of such deficiency, and may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the municipality for the payment of such deficiency, and such taxes *are* not subject to any limitation of rate or amount applicable to other municipal taxes but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one municipality having a population in excess of 10,000 is included in an authority issuing bonds pursuant to this chapter, the municipalities may apportion the obligation to levy taxes for the payment of, or in anticipation of, a deficiency in the revenues appropriated for such bonds in such manner as the municipal-

HeinOnline -- 1977 Vol. I 709 1977

ities *may* determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies. No such resolution *becomes* effective until the question of its approval has been submitted to the qualified electors of the municipality at a special election called for *that* purpose by the governing body of the municipality and a majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed, to the extent applicable, by 11-2308 and 11-2310 for an election called by cities and towns, and *16-2024* and 16-2026 for an election called by counties. If a majority of the electors voting thereon vote against approval of the resolution, the municipality *has* no authority to make the covenant or to levy a tax for the payment of deficiencies pursuant to this section, but such municipality or authority may nevertheless issue bonds under this chapter payable solely from the sources referred to in *subsection* (1) above."

Section 8. Section 1-918, R.C.M. 1947, is amended to read as follows:

"**1-918. Joint exercise of powers.** *(1)* For the purposes of this section, unless otherwise qualified, the term "public agency" includes municipality and authority, each as defined in this chapter, any agency of the state government and of the United States, and any municipality, political subdivision, or agency of an adjoining state. *The* term "governing body" includes commissioners of an authority, the governing body of a municipality, and the head of an agency of a state or the United States if the public agency is other than an authority or municipality. All powers, privileges, and authority granted by this chapter may be exercised and enjoyed by an authority jointly with any public agency of this state, and jointly with any public agency of any adjoining state or of the United States to the extent that the laws of such other state or of the United States permit such joint exercise *or* enjoyment. Any agency of the state government, when acting jointly with any authority, may exercise and enjoy all the powers, privileges, and authority conferred by this chapter upon an authority.

(2) Any two or more public agencies may enter into agreements with each other for joint action pursuant to the provisions of this section. Each agreement shall specify its duration; the proportionate interest which each public agency *will* have in the property, facilities, and privileges involved in the joint undertaking; the proportion of costs of operation, capital outlay, and maintenance to be borne by each public agency; and such other terms as are *considered* necessary or required by law. The agreement may also provide for amendments and termination; disposal of all or any of the property, facilities, and privileges jointly owned prior to or at such times as *the* property, facilities, and privileges, or any part thereof, cease to be used for the purposes provided in this chapter or upon termination of the agreement; the distribution of the proceeds received upon any disposal, and of any funds or other property jointly owned and undisposed of; the assumption of payment of any indebtedness arising from the joint undertaking which remains unpaid upon the disposal of all assets or upon a termination of the agreement; and such other provisions as may be necessary or convenient.

(3) Public agencies acting jointly pursuant to this section shall create

HeinOnline -- 1977 Vol. I 710 1977

a joint board which shall consist of members appointed by the governing body of each participating public agency. The number to be appointed *and* their term and compensation, if any, shall be provided for in the joint agreement. Each joint board shall organize, select officers for such terms as are fixed by the agreement, and adopt and amend from time to time rules for its own procedure. The joint board, as agent of the participating public agencies, *may* plan, acquire, establish, develop, construct, enlarge, improve, maintain, equip, operate, regulate, protect, and police any airport or air navigation facility or airport hazard to be jointly acquired, controlled, and operated; and the board may be authorized by the participating public agencies to exercise on behalf of its constituent public agencies all the powers of each with respect to the airport, air navigation facility, or airport hazard, subject to the limitations of subsection *(4)* of this section.

(4) (a) The total expenditures to be made by the joint board for any purpose in any calendar year shall be as determined by a budget approved by the constituent public agencies on or before the preceding June 10 or as otherwise specifically authorized by the constituent public agencies.

(b) No airport, air navigation facility, airport hazard, or real or personal property, the cost of which is in excess of sums fixed therefor by the joint agreement or allotted in the annual budget, may be acquired, established, or developed by the joint board without the approval of the governing bodies of its constituent public agencies.

(c) Eminent domain proceedings under this section may be instituted by the joint board only by authority of the governing bodies of the constituent public agencies of the joint board. If so authorized, such proceedings shall be instituted in the names of the constituent public agencies jointly, and the property so acquired shall be held by *the* public agencies as tenants in common.

(d) The joint board *may* not dispose of any airport, air navigation facility, or real property under its jurisdiction except with the consent of the governing bodies of its constituent public agencies. *However,* the joint board may, without such consent, enter into contracts, leases, or other arrangements contemplated by 1-913 of this chapter.

(e) Resolutions, rules, or orders of the joint board dealing with subjects authorized by 1-913 of this chapter become effective only upon approval of the governing bodies of the constituent public agencies. *However,* upon such approval, the resolutions, rules, or orders of the joint board shall have the same force in the territories or jurisdictions involved as the ordinances, resolutions, rules, or orders of each public agency would have in its own territory or jurisdiction.

(5) For the purpose of providing the joint board with moneys for the necessary expenditures in carrying out the provisions of this section, a joint fund shall be created and maintained, into which shall be deposited the share of each of the constituent public agencies as provided by the joint agreement. Any federal, state, or other grants, contributions, or loans and the revenues obtained from the joint ownership, control, and operation of any airport or air navigation facility under the jurisdiction of the joint board shall be paid into the joint fund. Disbursements from

HeinOnline -- 1977 Vol. I 711 1977

such fund shall be made by order of the board, subject to the limitations prescribed in subsection *(4)* of this section."

Section 9. Section 1-1101, R.C.M. 1947, is amended to read as follows:

"**1-1101. Department as custodian of state airplanes.** The department is hereby *designated* the custodian of all airplanes owned or leased by the state of Montana or its boards, commissions, or agencies."

Section 10. **Repealer.** Sections 1-829 through 1-832 and 1-1001 through 1-1005, R.C.M. 1947, are repealed.

Approved April 4, 1977.

CHAPTER NO. 233

AN ACT TO CHANGE THE MAKEUP OF THE BOARD OF MORTICIANS TO INCLUDE A REPRESENTATIVE OF THE PUBLIC; AMENDING SECTION 82A-1602.16, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-1602.16, R.C.M. 1947, is amended to read as follows:

"**82A-1602.16. Board of morticians — appointment — qualifications — term.** (1) There is a board of morticians.

(2) The board consists of *six* members appointed by the governor, with the consent of the senate. *Five members* shall be licensed *morticians. One member shall be a representative of the public who is not engaged in the practice of mortuary science or funeral directing.*

(3) Each member shall serve for a term of 5 years.

(4) The public member may not participate in administering license examinations and mortuary inspections."

Approved April 4, 1977.

CHAPTER NO. 234

AN ACT REMOVING AND CLARIFYING STATUTORY REFERENCES TO SOVEREIGN OR GOVERNMENTAL IMMUNITY TO COORDINATE THOSE REFERENCES WITH ARTICLE II, SECTION 18, OF THE CONSTITUTION OF THE STATE OF MONTANA OR PROVISIONS OF TITLE 82, CHAPTER 43, R.C.M. 1947, AS AMENDED; AMENDING SECTIONS 1-502, 16-1802, 17-205, 32-4722, 40-4401, 40-4402, 75-8310, AND 93-2815, R.C.M 1947; AND REPEALING SECTIONS 11-1305, 11-1306, 16-2731, 16-2732, 16-2733, 31-172, 69-6405, 75-5940, AND 46-243, R.C.M. 1947.

HeinOnline -- 1977 Vol. I 712 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 1-502, R.C.M. 1947, is amended to read as follows:

"1-502. Aeronautics functions governmental — no liability for torts. The acquisition of lands for establishing airports or other air navigation facilities; the acquisition of airport protection privileges; the acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation of airports and other air navigation facilities whether by the state separately or jointly with a municipality; the assistance of this state in that acquisition, establishment, construction, enlargement, improvement, maintenance, equipment, and operation; and the exercise of any other powers granted to the department are public and governmental functions exercised for a public purpose and matters of public necessity, and such lands and other property and privileges acquired and used by the state in the manner and for the purposes enumerated in this title are acquired and used for public and governmental purposes and as a matter of public necessity."

Section 2. Section 16-1802, R.C.M. 1947, is amended to read as follows:

"16-1802. Claims to be itemized — time for presenting. No account must be allowed by the board unless the same is made out in separate items, the nature of each item stated; if it is for official services for which no specified fees are fixed by law, the time actually and necessarily devoted to such service must be stated. Claims against the county shall contain the following statement: "I certify that this claim is correct and just in all respects and that payment or credit has not been received." Claims need not be verified by affidavit. Every claim against the county, *except claims arising from injury to a person or property, which are limited under provisions of Title 82, chapter 43, as amended,* must be presented within a year after the last item accrued."

Section 3. Section 17-205, R.C.M. 1947, is amended to read as follows:

"17-205. In actions other than contract. In an action for the breach of an obligation not arising from contract and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the jury. *This section does not apply in actions for recovery of damages arising from injury to a person or property brought against a governmental entity under Title 82, chapter 43, as amended."*

Section 4. Section 32-4722, R.C.M. 1947, is amended to read as follows:

"32-4722. Advertising deemed unlawful — notice to remove — hearing — appeal to district court. (1) The following outdoor advertising is unlawful:

(a) *when* erected after June 24, 1971, contrary to this act, or erected after the effective date of this act beyond 660 feet of the nearest edge of the right-of-way of an interstate or primary highway outside of an urban area with the purpose of its message being read from such *main-traveled* way and visible from such *main-traveled* way, unless such outdoor advertising meets the criteria of subsections (i), (ii), or (iii) of subsection (a) of 32-4717;

HeinOnline -- 1977 Vol. I 713 1977

(b) *when* a permit is not obtained as prescribed in this act; or

(c) *when* a permittee fails to comply with a notice of violation as provided in 32-4721.

(2) The department shall give notice in writing, either by certified mail or by personal service, to the owner or occupant of the land on which advertising believed to be unlawful is located and to the owner of the outdoor advertising structure, if the latter is known, or if unknown, by posting notice, in a conspicuous place on the structure, of its intention to remove the unlawful advertising. Within 45 days after the notice, the owner of the land or of the structure may make a written request for a hearing before the commission to show cause why the structure should not be removed.

(3) If a hearing before the commission is not requested or if there is no appeal taken from the commission's decision at the hearing or if the commission's decision is affirmed on appeal, the department shall immediately remove or cause to be removed the unlawful outdoor advertising. The owner of the structure and the owner or occupant of the land are jointly and severally liable for the costs of the removal. The department may enter upon lands bearing outdoor advertising and make examination of such advertising. The department may, upon final determination by the commission that an item of outdoor advertising is unlawful, enter upon lands bearing such advertising and remove the unlawful advertising."

Section 5. Section 40-4401, R.C.M. 1947, is amended to read as follows:

"**40-4401. Waiver of defense of immunity required.** All contracts or policies of casualty insurance covering state-owned properties or state risks must contain an agreement on the part of the insurer waiving all right to raise the defense of immunity *from suit.* No money *may* be paid out of the state treasury to any person, firm, or corporation as a consideration or premium on any such policy or contract of casualty insurance unless the policy or contract contains such an agreement."

Section 6. Section 40-4402, R.C.M. 1947, is amended to read as follows:

"**40-4402. Immunity defense prohibited when liability insured — reduction of award to policy limits.** Whenever an insurer accepts any premium, money, or other consideration from a political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity for casualty or liability insurance, neither such insured nor insurer *may* raise the defense of immunity *from suit* in any damage action brought against such insured or insurer, and any agreement in the insurance contract permitting the defense of immunity is void. No attempt *may* be made in the trial of an action brought against such political subdivision of the state, municipality, or any public body, corporation, commission, board, agency, organization, or other public entity to suggest the existence of any insurance which covers in whole or in part any judgment or award which may be rendered

HeinOnline -- 1977 Vol. I 714 1977

in favor of plaintiff. If the court *determines* that the defendant could have successfully raised the defense of immunity, and if the verdict exceeds the limits of the applicable insurance, the court shall reduce the amount of such judgment or award to a sum equal to the applicable limit stated in the policy."

Section 7. Section 75-8310, R.C.M. 1947, is amended to read as follows:

"**75-8310. School safety patrols.** *(1)* The trustees of any district or the administration of any private school *may* organize and supervise school safety patrols for a school under their authority. The purpose of school safety patrols *is* to influence and encourage other pupils of the school to refrain from crossing public highways at points other than regular crossings and to direct pupils as to when and where to cross highways.

(2) The school safety patrol shall be formed from the children of the school who are 9 years of age or more or, if there are none, who are of the highest grade of such school. Before any child may serve on the school safety patrol, the parent or guardian of such child shall give written consent for his child to serve on the school safety patrol.

(3) No liability *attaches* to *a member of the school safety patrol* or parent or guardian, by virtue of the organization, maintenance, or operation of such school safety patrol because of *injury* sustained by any pupil.

(4) Identification and operation of school safety patrols shall be uniform throughout the state and the method of identification and signals to be used shall be as prescribed by the superintendent of public instruction in cooperation with the Montana highway patrol.

(5) Any municipality, city, or town of this state may provide for the training of members of the school safety patrol at any authorized school patrol camp located in this state and may pay the expense necessarily incurred in providing such training out of any funds available for such purpose."

Section 8. Section 93-2815, R.C.M. 1947, is amended to read as follows:

"**93-2815. Joinder of state as defendant in certain actions.** In any action or proceeding brought in any district court of the state of Montana affecting the title to real or personal property in which the state of Montana has or claims to have an interest or claim, the state of Montana may be made a party defendant to such actions or proceedings, and its rights or interests adjudicated."

Section 9. **Repealer.** Sections 11-1305, 11-1306, 16-2731, 16-2732, 16-2733, 31-172, 46-243, 69-6405, and 75-5940, R.C.M. 1947, are repealed.

Approved April 4, 1977.

HeinOnline -- 1977 Vol. I 715 1977

CHAPTER NO. 235

AN ACT TO PROVIDE FOR THE MANAGEMENT OF THE BOBCAT AS A FUR-BEARING ANIMAL; AMENDING SECTIONS 26-201, 26-202.1, 26-301, 26-303.5, 46-1902, AND 46-1903, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-201, R.C.M. 1947, is amended to read as follows:

"**26-201. Definitions.** For the purpose of this act, the following shall be construed, respectively to mean:

Commission. The state fish and game commission.

Person. The plural or singular, male or female, as the case demands, including individual, associations, partnerships, and corporations, unless the context otherwise requires.

Open season. The time during which game birds, fish, game and fur-bearing animals may be lawfully taken.

Closed season. The time during which game birds, fish, game and fur-bearing animals may not be lawfully taken.

Angling or fishing. The taking of, or attempting to take fish by hook and single line or single rod in hand or within immediate control.

Upland game birds. Sharptail grouse, blue grouse, prairie chicken, sage hen or sage grouse, fool hen, ruffed grouse, commonly called native pheasant or native partridge, quail, Chinese pheasant and Mongolian pheasant, commonly called ring-necked pheasant, Hungarian partridge, ptarmigan, wild turkey, and chukar partridge.

Migratory game birds. Waterfowl, including wild ducks, wild geese, brant, and swans; cranes, including little brown, sandhill and whooping cranes; rails, including coots, gallinules, sora or other rails; shore birds, including avocets, curlew, dowitcher, godwits, knots, upland plover, killdeer, sandpipers, Wilson snipes or jacksnipes, snipes, stilts, plovers, willets and yellow legs.

Nongame birds. All wild birds not defined herein as upland game birds or migratory game birds, shall be deemed nongame birds.

Game animals. Deer, elk, moose, antelope, caribou, mountain sheep, mountain goat, mountain lion, and bear.

Fur-bearing animals. Marten or sable, otter, muskrat, fisher, mink, *bobcat,* and beaver.

Predatory animals. Coyote, weasel, skunk, and civet cat.

Game fish. All species of the family salmonidae (chars, trout, salmon, grayling, and whitefish); all species of the genus stizostedion (sandpike or sauger and walleyed pike or yellowpike perch); all species of the genus esox (northern pike, pickerel and muskellunge); all species of the genus micropeterus (bass); all species of the genus polyodon (paddlefish); all species of the family acipenseridae (sturgeon); all species of the genus lota (burbot or ling); and the species ictalurus punctatus (channel catfish).

HeinOnline -- 1977 Vol. I 716 1977

Wild buffalo. Buffalo or bison which have not been reduced to captivity.

Nongame wildlife. Any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean, or other wild animal not otherwise legally classified by statute or regulation of this state."

Section 2. Section 26-202.1, R.C.M. 1947, is amended to read as follows:

"26-202.1. Licenses — fees — classifications of licenses — fees and powers under licenses. (1) Class A License—Resident Fishing License. Any resident as defined by section 26-202.3, upon payment of a fee of five dollars ($5) shall receive a Class A license which shall entitle the holder thereof to fish with hook and line or rod as authorized by regulations of the commission.

(2) Class A-1 license—Resident Game Bird License. Except as herein provided, any resident as defined by section 26-202.3, who is twelve (12) years of age or older, may, upon payment of a fee of four dollars ($4) receive a Class A-1 license, which will entitle the holder to pursue, hunt, shoot and kill game birds and possess the dead bodies of game birds which are so authorized by regulations of the commission.

(a) No hunting licenses shall be issued to any resident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided by this section.

The department of fish and game shall provide for a course of instruction in the safe handling of firearms and for the purpose may cooperate with any reputable association or organization having as one of its objectives the promotion of safety in the handling of firearms. The department may designate any person found by it to be competent to give instructions in the handling of firearms. A person so appointed shall give such course of instruction and upon the successful completion thereof shall issue to the person instructed a certificate of competency in the safe handling of firearms.

(3) Class A-2 License—Special Bow and Arrow License. A holder of any one of the following: a Class A-3, A-4, A-5, B-2, B-5, B-6, B-7, B-8, or B-10 license, may upon payment of an additional sum of six dollars ($6) to any agent of the fish and game commission authorized to issue fishing and hunting licenses be entitled to a Class A-2 license, which shall authorize the holder thereof to pursue, hunt, shoot, and kill the game animals authorized by the licenses held with bow and arrow and to possess these carcasses during special seasons, and in special areas, as may be designated by the fish and game commission.

(4) Class A-3, A-4, A-5, A-6 Licenses. Any resident as defined by section 26-202.3 who is twelve (12) years of age or older, may upon payment of the proper fee or fees be entitled to purchase one each of the following licenses: Class A-3, Deer A Tag, six dollars ($6) for the license year beginning May 1, 1976, and seven dollars ($7) for each license year thereafter; Class A-4, Deer B Tag, twelve dollars ($12); Class A-5 Elk Tag, eight dollars ($8); Class A-6, Black or Brown Bear Tag, six dollars ($6);

HeinOnline -- 1977 Vol. I 717 1977

which will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulation of the commission.

(5) Class B License—Nonresident Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of twenty dollars ($20) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a Class B license, which shall entitle the holder thereof to fish with hook and line as authorized by the rules and regulations of the commission.

(6) Class B-1 License—Nonresident Game Bird License. Except as herein provided, any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon payment of the sum of thirty dollars ($30) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class B-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess game birds as authorized by the rules and regulations of the commission.

No hunting licenses shall be issued to any nonresident person under the age of eighteen (18) years unless he presents to the person authorized to issue such license a certificate of competency as provided in section 26-202.1(2)(a) or a certificate verifying that he has successfully completed a course in the safe handling of firearms in any state or province.

(7) Class B-2 License—Nonresident Combination License. Within the limitations of this section or any commission rule, any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, upon the payment of fifty dollars ($50) may apply to the fish and game office, Helena, Montana for a Class B-2 license, and nonresident conservation license as prescribed in section 26-230, which shall authorize the holder to pursue, hunt, shoot, kill and possess game birds, and to fish with hook and line as authorized by the rules and regulations of the commission, and to purchase additional and special licenses and tags as provided by law or commission regulation.

(8) Class B-3 License—Temporary Nonresident or Tourist Fishing License. Any person not a resident as defined in section 26-202.3, upon payment of the sum of ten dollars ($10) to any agent of the fish and game commission authorized to issue fishing and hunting licenses, shall be entitled to a temporary nonresident fishing license, which shall authorize the holder to fish with hook and line as authorized by the rules and regulations of the fish and game commission for a period of six (6) days inclusive of the dates indicated on the license.

(9) Class B-5 License—Nonresident Deer License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older and a holder of a nonresident conservation license, upon the payment of the sum of fifty dollars ($50) shall be entitled to a Class B-5 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) deer in the area or areas designated in the license, as determined by the commission, and to possess the carcass of same.

HeinOnline -- 1977 Vol. I 718 1977

(10) Class B-6 License—Nonresident Antelope License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older and a holder of a Class B-2 nonresident combination license, upon the payment of the sum of fifty dollars ($50) shall be entitled to a Class B-6 license which shall authorize the holder to pursue, hunt, shoot, and kill one (1) antelope in the area designated in the license, as determined by the commission, and to possess the carcass of same.

(11) Class B-7 and B-8 Licenses. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older, and is a holder of a B-2 nonresident combination license, may upon payment of the proper fee or fees and subject to the limitations prescribed by law and commission regulation be entitled to apply to the Fish and Game Office, Helena, Montana, to purchase one each of the following licenses: Class B-7, Deer A Tag, fifty dollars ($50); Class B-8, Deer B Tag, fifty dollars ($50); and will entitle the holder to pursue, hunt, shoot, and kill the game animal or animals authorized by the license held and to possess the dead bodies of game animals of the state which are so authorized by the regulations of the commission.

(12) B-10 nonresident big game combination license. Any person not a resident as defined in section 26-202.3, R.C.M. 1947, but who is twelve (12) years of age or older may, upon payment of the proper fee or fees and subject to the limitations prescribed by law and commission regulation, be entitled to apply to the fish and game office, Helena, Montana, to purchase a B-10 nonresident big game combination license for two hundred twenty-five dollars ($225) which shall entitle the holder to all the privileges of a B-2 nonresident combination license, a deer A tag, and elk tag and a black bear license. This license includes the nonresident conservation license as prescribed in section 26-230, R.C.M. 1947.

(13) Special licenses. Any applicant who is twelve (12) years of age or older and is a resident as defined by section 26-202.3, or any applicant who is the holder of a Class B-2 nonresident combination license may apply for a special license, which in the judgment of the fish and game commission, is to be issued and shall pay the following fees therefor:

Moose, resident twenty-five dollars ($25), nonresident one hundred twenty-five dollars ($125);

Mountain Goat, resident fifteen dollars ($15), nonresident seventy-five dollars ($75);

Mountain Sheep, resident twenty-five dollars ($25), nonresident one hundred twenty-five dollars ($125);

Antelope, resident five dollars ($5);

Grizzly Bear, resident twenty-five dollars ($25), nonresident one hundred twenty-five dollars ($125);

Black or brown bear, nonresident fifty dollars ($50).

In the event a holder of a valid special grizzly bear license kills a grizzly bear, he must purchase a trophy license for a fee of twenty-five dollars

HeinOnline -- 1977 Vol. I 719 1977

($25) within ten (10) days after date of kill. Such trophy license shall authorize the holder to possess and transport said trophy.

In the event that the number of valid resident applications for licenses exceeds the number of licenses which the fish and game commission desires to issue in any hunting district, then the number of licenses issued to nonresident license holders in that hunting district shall not exceed ten per cent (10%) of the total issued.

(14) Class C License—Trapper's License. Any resident as defined in section 26-202.3, upon making application and paying the sum of ten dollars ($10) to the fish and game commission, shall be entitled to a trapper's license, which shall authorize the holder thereof to trap fur-bearing animals *and hunt bobcat*, within the state of Montana at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission, and at such places as may be designated in said license.

(15) Class C-1 License—Landowner's Trapping License. Any owner or tenant, or member of the immediate family of said owner or tenant, upon making application to the fish and game commission, and upon payment of the sum of one dollar ($1) shall be entitled to a landowner's trapping license which shall entitle the holder thereof to trap any fur-bearing animal on land owned or leased by him, or his immediate family, at such times and in such manner as may be lawful so to do under the laws of the state and the regulations of the fish and game commission and at such places as may be designated in said licenses.

(16) Exception. (a) A resident under the definition of section 26-202.3, who is sixty-two (62) years or older shall be entitled to fish and hunt game birds with a conservation license issued by the state fish and game commission for a fee of one dollar ($1). The form of such license shall be prescribed by the fish and game commission.

(b) Any veteran who is a patient residing at a hospital operated by the veterans administration, within or outside the state, and residents of all institutions under the jurisdiction of the state board of institutions, except the Montana state prison at Deer Lodge, will be entitled to fish without a license. Such residents shall carry a permit on a form prescribed by the commission and signed by the superintendent of the institution in lieu of a license.

(c) Disabled persons are entitled to fish without a license, if they are residents of Montana not residing in an institution and are certified as disabled by a licensed medical doctor, licensed to practice medicine in Montana.

Disability is defined as a physical or mental condition that prevents a person from doing any substantial gainful work that is expected to last for the rest of their life.

Such disabled persons shall carry a permit on a form prescribed by the commission.

(d) If a person is convicted of a violation of the fish and game laws or regulations of Montana, the privilege conferred by this subsection shall be revoked for not less than six (6) months.

HeinOnline -- 1977 Vol. I 720 1977

(e) Residents, as defined by section 26-202.3, under the age of fifteen (15) years may purchase Class A-1, A-3, and A-5 licenses at two dollars ($2) per license.

(f) The commission, by rule or regulation, may prescribe the number of Class B-5 and B-6, B-7, B-8, or B-10 licenses to be issued in each of the hunting districts designated by it. Any license sold may be restricted to a specific hunting area and may specify the species, age, and sex to be taken in order to insure the proper management and propagation of game animals in these areas, provided, however, that no number limit shall be placed on B-7, B-8 and B-10 license by area except in major hunter concentration areas as determined by the commission. Not more than seventeen thousand (17,000) nonresident big game combination licenses (B-10) may be sold in any one license year.

(g) Special antelope licenses. In the event the number of valid applications for special antelope licenses for a hunting district exceeds the quota set by the commission for the district, such licenses shall be awarded by a drawing. Persons making valid application who did not receive an antelope license during the season immediately preceding the drawing shall be given first preference in such drawing for first, second and third choice hunting districts. The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection.

(h) Special elk permits. In the event the number of valid applications for special elk permits for a hunting district exceeds the quota set by the commission for the district, these permits shall be awarded by a drawing. Persons making valid application who did not receive a special elk permit during the season immediately preceding the drawing shall receive first preference in this drawing for first, second, and third choice hunting districts. The commission may promulgate the rules necessary to implement this subsection.

(17) Only one (1) license of any one (1) class, except Class B-3 and B-4 licenses, shall be issued to any one (1) person, provided, however, that the commission may prescribe rules and regulations for the issuance or sale of a replacement license of the same class in the event the original license is lost, stolen or destroyed upon payment of the sum of one dollar ($1).

(18) Class AAA License—Sportsman's License. Any resident, as defined by section 26-202.3, who is twelve (12) years of age or older, upon payment of the sum of thirty-five dollars ($35) shall be entitled to a sportsman's license which shall permit the holder to exercise all rights granted to holders of Class A, A-1, A-3, A-5, A-6 and resident conservation licenses as prescribed in section 26-230. The commission shall furnish each holder of a sportsman's license an appropriate decal.

(19) Class D-1 License—Nonresident Mountain Lion License. Any person not a resident as defined in section 26-202.3, but who is twelve (12) years of age or older and a holder of a nonresident Class B-2 combination license, upon payment of the sum of twenty-five dollars ($25) to any agent of the fish and game commission authorized to issue fishing

HeinOnline -- 1977 Vol. I 721 1977

and hunting licenses shall be entitled to a Class D-1 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(20) Class D-2 License—Resident Mountain Lion License. Any person who is a resident as defined in section 26-202.3, and who is twelve (12) years of age or older, upon payment of the sum of five dollars ($5) to any agent of the fish and game commission authorized to issue fishing and hunting licenses shall be entitled to a Class D-2 license, which shall entitle the holder thereof to pursue, hunt, shoot, kill and possess mountain lion as authorized by the rules and regulations of the commission.

(21) Special elk or deer licenses. (a) Any person who is the holder of a valid resident elk license or a Class B-10 nonresident big game combination license may apply for a special elk license upon payment of a fee of one dollar ($1).

(b) Any person who is the holder of a valid resident deer license or any nonresident who holds a Class B-2 license and a valid deer tag may apply for a special deer license upon payment of a fee of one dollar ($1).

(c) The commission shall have the authority to promulgate such rules and regulations as are necessary to implement this subsection."

Section 3. Section 26-301, R.C.M. 1947, is amended to read as follows:

"**26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.** (1) It shall be unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot or kill, any game animal, or game bird from any self propelled or drawn vehicle, or on, or from any public highway in the state of Montana, or by the aid or with the use of any set gun, jack-light, or other artificial light, trap, snare, salt lick, nor shall any such set gun, jack-light or other artificial light, trap, snare, salt lick or other device to entrap or entice game animals or game birds be used, made or set, nor may rifles be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission; provided, however, that this does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number ten (10) gauge fired from the shoulder, nor shall any game fish be caught, captured, or taken, or attempted to be caught, captured or taken by the aid or with the use of any gun, or trap, nor shall any such set gun, or trap or other device to entrap game fish be used, made, or set.

(2) (a) No game birds or game or fur-bearing animals shall be killed, taken or shot at from any aircraft, nor shall any aircraft be used for the purpose of concentrating, pursuing, driving, rallying or stirring up any game or migratory birds, game or fur-bearing animals, nor shall any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving or stirring up any upland game birds, or game or fur-bearing animals.

(b) No person in an aircraft in the air shall spot or locate any game, or migratory bird, game or fur-bearing animals and communicate the loca-

HeinOnline -- 1977 Vol. I 722 1977

tion or approximate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person or persons then on the ground.

(3) No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence, or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) No person may use a shotgun to hunt, kill or shoot deer except with loads as specified by the commission.

(5) No person shall chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners, employees of the state fish and game commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, stock-killing mountain lions, *and stock-killing bobcats* or other means of taking stock-killing bears, stock-killing mountain lions, *and stock-killing bobcats* except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be 12 hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

(6) The state fish and game commission shall have the power to designate certain waters where set lines may be used to fish for certain species of game or nongame fish, and the commission may designate the number of hooks and lines and the length of line or lines which may be used as set lines.

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission shall declare an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging, the taking of paddlefish with long bow and arrow when the commission shall declare an open season when paddlefish may be taken by long bow and arrow, the taking of walleyed pike, sauger, northern pike and nongame fish with spear or gig when the commission shall declare an open season for taking walleyed pike, sauger, northern pike and nongame fish with spear or gig, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed 12 feet in length and 4 feet in width, in such waters as may be designated by the commission.

(8) No person, while hunting game animals or game birds shall use a motor-driven vehicle on any other than an established road or trail, unless he has reduced a big game animal to possession and cannot easily retrieve said big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted such

HeinOnline -- 1977 Vol. I 723 1977

permission, provided that after such retrieval, such motor-driven vehicle is again returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting game animals or game birds, shall drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game animal or game bird with the use or aid of any motor-driven vehicle. No person, while hunting game animals or game birds shall drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the land owner and in possession of the hunter. The restrictions in this subsection on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.

(9) Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

(10) The provisions of this section relating to methods of herding, driving, capturing, taking, locating or concentrating of fish, game animals, game birds or fur-bearing animals do not apply to the department of fish and game, or any employee thereof, while acting within the scope and course of the powers and duties of the department.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law."

Section 4. Section 26-303.5, R.C.M. 1947, is amended to read as follows:

"**26-303.5. Use of dogs for hunting mountain lion and bobcat.** The Montana fish and game commission shall have authority to allow and regulate the use of dogs for hunting mountain lion *and bobcat.*"

Section 5. Section 46-1902, R.C.M. 1947, is amended to read as follows:

"**46-1902. Meaning of term "wild animal."** For the purpose of this act the term "wild animal" shall include coyote, lynx, and any other animal causing depredations upon livestock."

Section 6. Section 46-1903, R.C.M. 1947, is amended to read as follows:

"**46-1903. Department to supervise destruction of predatory animals — co-operation with other agencies — administration of moneys.** (1) The department of livestock shall conduct the destruction, extermination, and control of wild animals including coyote, lynx, and other wild animals predatory in nature and capable of killing, destroying, maiming, or injuring domestic livestock or domestic poultry; and the pro-

HeinOnline -- 1977 Vol. I 724 1977

tection and safeguarding of livestock and poultry in this state, against depredations from these animals. The department shall formulate the practical programs for accomplishing these objectives in this state, and for carrying out the programs in an efficient and practical manner, responsive to the need for control in each area of this state. The department shall adopt rules applicable to predatory animal control, which are necessary and proper for the systematic destruction of the wild animals by hunting, trapping, and poisoning operations, and payments of bounties. The department shall make field, area, range, or other orders and instructions, including orders and instructions to hunter and trapper personnel and others, which are appropriate in the various areas, at different seasons of the year, taking into consideration the habits, presence, migrations, or movements of the animals, and their attacks on livestock and poultry, either singly or in packs or bands. The department shall cooperate with authorized representatives of the federal government, including the Biological Survey and the Fish and Wild Life Service, the state fish and game commission, boards of county commissioners, voluntary associations of stockgrowers, sheepgrowers, ranchers, farmers, and sportsmen, and corporations and individuals, in the systematic destruction of wild animals by hunting, trapping, and poisoning operations.

(2) The department shall administer and expend for predatory animal extermination and control all money which is made available to it, including the money from the levy under 84-5214, and all money which is made available to the department by appropriations made by the legislature for predatory animal control by the department. The department shall expend the funds for predatory animal control by all effective means, including employment of hunters, trappers, and other personnel, procurement of traps, poisons, equipment, and supplies, and payment of bounties in the discretion of the department, responsive to the necessities of control in various areas of the state.

(3) This section does not interfere with or impair the power and duties of the fish and game commission in the control of predatory animals by the commission, as authorized by law, nor the obligation of the commission to expend its funds in cooperation with the department, for predatory animal control, as required by law. Funds of the fish and game commission for the cooperative predatory animal control shall be administered and expended by the fish and game commission."

Approved April 4, 1977.

CHAPTER NO. 236

AN ACT TO EXEMPT PASSENGER AUTOMOBILES FROM THE REQUIREMENTS FOR A SPECIAL FUEL DEALERS' LICENSE; AMENDING SECTION 84-1833, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1833, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 725 1977

"84-1833. **Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.** (a) Required: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncanceled fuel dealers' license issued to him by the department.

Every special fuel user shall obtain from the department, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any authorized employee of the department of revenue, or any other law enforcement officer.

A special fuel user's license or permit is not required of any person whose sole use of special fuel is for the propulsion of a privately operated passenger automobile provided the person purchases special fuel, tax paid, from a licensed special fuel dealer in this state. For purposes of this exemption, a privately operated passenger vehicle does not include a motor vehicle used for the transportation of persons for hire or for compensation or designed, used, or maintained primarily for transportation of property.

Any out of state user who operates a recreational passenger car, pickup truck or family motor coach powered by special fuels shall secure a special fuel user's "Courtesy" vehicle permit. The permit shall not be transferable and shall be valid for ninety (90) days. Permits will be issued at no cost to the user by the department of revenue, scale house personnel and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of thirty (30) gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(b) Application: Application for a special fuel dealer's license, a special fuel user's license, or a special fuel vehicle permit shall be made to the board unless otherwise provided herein.

(c) Form of application: The application shall be filed upon a form prepared and furnished by the department. The application shall contain such information as the department deems necessary.

(d) Bond: Except as herein provided, no special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in section 84-1831(i) and in such form as the department may require to secure its compliance with this act, and the payment of any and all taxes, interest and penalties due and to become due hereunder. Upon application, the department may waive the bond requirement of any resident special fuel user who establishes to the reasonable satisfaction of the board that the tax as herein provided is not delinquent or that interest or penalties are not accrued under the provisions of this act.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to twice his estimated

HeinOnline -- 1977 Vol. I 726 1977

monthly tax payments as hereinafter provided, determined in such manner as the department may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than five thousand dollars ($5,000) for any special fuel user awarded a contract in accordance with section 84-1832.1, nor less than five hundred dollars ($500) for any other special fuel user; and not less than one thousand dollars ($1,000) for a special fuel dealer.

(e) Issuance: Upon receipt of the application and bond in proper form, the department shall issue to the applicant a license to act as a special fuel dealer or special fuel user or a special fuel vehicle permit; provided, however, the department may refuse to issue a special fuel dealer's license, a special fuel user's license or a special fuel vehicle permit to any person: (1) who formerly held either type of license or permit which, prior to the time of filing application has been revoked for cause; or (2) who is not the real party in interest and where the license or permit of the real party in interest has been revoked for cause prior to the time of filing such application; or (3) upon other sufficient cause being shown. Before such refusal, the department shall grant the applicant a hearing and shall grant him at least ten (10) days' written notice of the time and place thereof.

(f) Expiration of license or permit: Each special fuel dealer's license, special fuel user's license and special fuel vehicle permit shall be valid until suspended or revoked for cause or otherwise canceled.

(g) Assignment forbidden: No special fuel dealer's license, special fuel user's license or special fuel vehicle permit shall be transferable.

(h) Revocation, suspension, cancellation and surrender of license and permit: The department may revoke the license of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the department shall notify the licensee or permittee of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the department, requiring him to appear before the department on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them, should not be revoked; provided, however, that at any time prior to and pending such hearing the department may, in the exercise of reasonable discretion, suspend such license or permit.

Upon revocation by the department of any such license or permit, the holder thereof shall immediately surrender the same to the department for cancellation; and the holder of any such permit, having permanently discontinued the use of any vehicle for which the permit was issued, for whatever reason, shall immediately surrender the same to the department for cancellation.

The department shall cancel any license to act as a special fuel dealer or a special fuel user or any special fuel vehicle permit immediately upon surrender thereof by the holder.

(i) Release of surety: Any surety on a bond furnished by a special fuel

HeinOnline -- 1977 Vol. I 727 1977

dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty (30) day period. The department shall promptly upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the thirty (30) day period, file a new bond, in accordance with the requirements of this section, or make a deposit in lieu thereof as provided in section 84-1831(i), the department forthwith shall cancel the special fuel dealer's or special fuel user's license.

(j) Additional bond or deposit: The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in section 84-1831(i), if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate; and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within thirty (30) days after being requested so to do by the department, said department forthwith shall cancel his license.

(k) All special fuel taxes due from any dealer or user under the provisions of this act, together with all penalties and interest thereon shall be a lien upon any and all property of such dealer, user or other person upon the filing by the state department of revenue of a duplicate copy of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law."

Section 2. **Effective date.** This act is effective upon its passage and approval.

Approved April 4, 1977.

CHAPTER NO. 237

AN ACT TO REPEAL THE REQUIREMENT FOR MOTOR VEHICLE INSPECTION IN MONTANA; REPEALING SECTIONS 53-1101 THROUGH 53-1115, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 53-1101 through 53-1115, R.C.M. 1947, are repealed.

Approved April 4, 1977.

HeinOnline -- 1977 Vol. I 728 1977

CHAPTER NO. 238

AN ACT TO AUTHORIZE COUNTY SUPERINTENDENTS OF SCHOOLS TO REQUEST, ACCEPT, AND DISBURSE MONEYS AVAILABLE FROM FEDERAL, STATE, AND PRIVATE SOURCES FOR PURPOSES OF PUBLIC EDUCATION IN THOSE DISTRICTS WHICH DO NOT EMPLOY A DISTRICT SUPERINTENDENT OR OTHER DISTRICTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-5808.1 that reads as follows:

75-5808.1. County superintendent authorized to request, accept, and disburse federal, state, and private moneys. (1) A county superintendent may, with the advice and consent of the appropriate school boards, request and accept moneys made available from federal, state, or private sources for purposes of public education in those districts which do not employ a district superintendent or other districts.

(2) Subject to applicable federal and state guidelines and, in the case of moneys received from private sources, subject to any guidelines fixed by the donor, a county superintendent may, in his discretion, disburse moneys received under this section to one or more of the public elementary and high school districts, which do not employ a district superintendent, according to their needs. The county superintendent shall supervise the utilization of such moneys with the approval of the appropriate school boards.

(3) The county superintendent may establish a fund, for which the county treasurer shall maintain a separate accounting, for the deposit of moneys received under this section.

Approved April 4, 1977.

CHAPTER NO. 239

AN ACT TO AMEND SECTION 32-1124, R.C.M. 1947, TO REVISE THE MANNER IN WHICH EXCESS WEIGHT PENALTIES ARE COMPUTED WHEN THE OPERATOR IS FOUND TO BE DRIVING AN OVERWEIGHT VEHICLE AT THE FIRST OPEN STATE SCALE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1124, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 729 1977

"**32-1124. Violation a misdemeanor.** (1) It is a misdemeanor for a person, firm, or corporation to violate any provision of 32-1123.1 through 32-1123.11.

(2) However, the operator of a vehicle or combination of vehicles may move over the highways to the first open state scale, permanent or portable, without incurring the excess weight penalties set forth in 32-1125 if the total gross weight of the vehicle or combination of vehicles does not exceed allowable weight limitations by more than 7%. In the event the vehicle or combination of vehicles is not in excess of the allowable weight limitations by more than 7%, the department may issue a single trip permit for the fee of $10 for allowing said vehicle or combination of vehicles to move over the highways to the first facility where its load can be safely adjusted or to its destination. Violations in excess of 7% are subject to the fines provided in 32-1125, and all loads in excess of 7% must be adjusted or reduced to conform to the size and weight limitations before the vehicle or combination of vehicles is moved from the point of weighing."

Approved April 4, 1977.

CHAPTER NO. 240

AN ACT TO GENERALLY REVISE THE ADMINISTRATIVE AND CRIMINAL PENALTIES FOR MAKING FALSE STATEMENTS OR REPRESENTATIONS OR FAILURE TO DISCLOSE A MATERIAL FACT IN ORDER TO OBTAIN OR INCREASE UNEMPLOYMENT COMPENSATION BENEFITS AND TO PROVIDE FOR CRIMINAL PROSECUTION FOR THE FRAUDULENT RECEIPT OF UNEMPLOYMENT COMPENSATION BENEFITS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-145, R.C.M. 1947, is amended to read as follows:

"**87-145. Penalties — falsity or willful nondisclosure — violations by employer or agent — violation of act or regulations — wrongfully collecting benefits.** *(1) A person who* makes a false statement or representation knowing it to be false or knowingly fails to disclose a material fact *in order* to obtain or increase any benefit or other payment under this *chapter*, or under an employment security law of any other state or territory or the federal government, either for himself or for any other person, *is*:

(a) disqualified for benefits thereafter *for a* period of not more than fifty-two (52) weeks, *beginning with the first compensable week following* the date of such determination by the division, the length of time of the disqualification as herein described to be determined by the division in accordance with the severity of each case; *and*

(b) required to repay to the division either directly or as authorized by the division, by offset of future benefits to which he may be entitled or by a combination of both such methods, a sum equal to the amount wrong-

HeinOnline -- 1977 Vol. I 730 1977

fully received by him. However, he is not required to repay any amount wrongfully obtained more than 5 years prior to the date of the division's determination that he made false statements, willful nondisclosure, or misrepresentation.

(2) A person who, in order to obtain or increase for himself or for any other person benefits under this chapter or under an employment security law of any other state or territory or the federal government, knowingly makes a false statement or representation or knowingly fails to disclose a material fact is guilty of a crime under 94-7-204, and the division may cause criminal proceedings to be initiated against him.

(3) A person who, through deception or other fraudulent means, obtains benefits which he is not entitled to under this chapter or under an employment security law of any other state or territory or the federal government or a person legally accountable for such conduct under 94-2-107 is guilty of a crime under 94-6-302, and a county attorney may initiate criminal proceedings against him.

(4) Any employing unit or any officer or agent of an employing unit or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any individual entitled thereto, or to avoid becoming or remaining subject hereto or to avoid or reduce any contribution or other payment required from an employing unit under this *chapter*, or under the employment security law of any other state, or territory or the federal government or who willfully fails or refuses to make any such contributions or other payment or to furnish any reports required hereunder or to produce or permit the inspection or copying of records as required hereunder, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or by imprisonment for not less than three (3) days nor more than thirty (30) days in the county jail or by both such fine and imprisonment; and each such false statement or representation or failure to disclose a material fact, and each day of such failure or refusal shall constitute a separate offense.

(5) Any person who shall willfully violate any provision of this *chapter* or any order, rule or regulation thereunder, the violation of which is made unlawful or the observance of which is required under the terms of this *chapter*, and for which a penalty is neither prescribed herein nor provided by any other applicable statute, shall be punished by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) or by imprisonment for not less than three (3) days nor more than thirty (30) days in the county jail or by both such fine and imprisonment, and each day such violation continues shall be deemed to be a separate offense.

(6) Any person who, by reason of the nondisclosure or misrepresentation by him or by another, of a material fact (irrespective of whether such nondisclosure or misrepresentation was known or fraudulent) has received any sum as benefits under this *chapter* while any conditions for the receipt of benefits imposed by this *chapter* were not fulfilled in his case, or while he was disqualified from receiving benefits, shall, in the discretion of the division, either be liable to have such sum deducted from

HeinOnline -- 1977 Vol. I 731 1977

any future benefits payable to him under this *chapter* or shall be liable to repay to the division for the unemployment compensation fund, a sum equal to the amount so received by him, and such sum shall be collectible in the manner provided in this *chapter* for the collection of past due contributions. Action for collection of overpaid benefits shall be brought within five (5) years after the date of such overpayment, otherwise to be barred as provided in section 93-2604."

Approved April 4, 1977.

CHAPTER NO. 241

AN ACT TO PROVIDE A COST-OF-LIVING INCREASE AND TO CHANGE CERTAIN ALLOWANCE PROVISIONS IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM; AMENDING SECTIONS 68-2003, 68-2101, 68-2103, 68-2104, 68-2203, AND 68-2304, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 68-2513.1 that reads as follows:

68-2513.1. Cost-of-living increase. (1) "Index" for the purpose of this section means, for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-59=100) compiled by the bureau of labor statistics, United States department of labor or a successor agency.

(2) Effective July 1, 1977, every service or disability retirement allowance then payable to a retired member or to his beneficiary shall be increased by a percentage equal to the lesser of 75% of the percentage increase in the index for 1976 from the index for 1974 or the index 1976 from the index for the calendar year preceding the effective date of retirement of the member.

(3) Effective July 1, 1977, every survivorship allowance then payable to a member's beneficiary shall be increased by a percentage equal to the lesser of 75% of the percentage increase in the index for 1976 from the index for the calendar year 1974 or for the index for 1976 from the index for the calendar year preceding the date of death of the deceased member.

Section 2. Section 68-2003, R.C.M. 1947, is amended to read as follows:

"**68-2003. Annual amount of retirement allowance payable.** *(1)* The annual amount of retirement allowance payable to a member following his service retirement is the sum of *(a)*, *(b)* and *(c)* as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) one sixtieth (1/60) of his final compensation multiplied by the number of years of his creditable service;

HeinOnline -- 1977 Vol. I 732 1977

(c) any retirement allowance payable under section 68-2004.

(2) If a member dies after retirement and has not elected an optional retirement allowance prescribed in 68-2203, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member."

Section 3. Section 68-2101, R.C.M. 1947, is amended to read as follows:

"68-2101. Disability retirement eligibility — definitions — medical examinations — hearings — waiver. *(1)* A member who is not eligible for service or early retirement but has completed five (5) years of creditable service and has become disabled while in active service, as defined in *subsection (2)* of this section, is eligible for disability retirement.

(2) "Disabled" means unable to perform his duties by reason of physical or mental incapacity.

(3) The board shall determine whether a member has become disabled. In the discharge of its duty regarding such determinations, the board, any member thereof or any duly authorized representative of the board shall have power to order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda and other records deemed necessary as evidence in connection with a claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this section and of sections 68-2201 and 68-2202 and shall pay for those medical services and advice compensation the board deems reasonable.

(4) A member eligible for early retirement may conditionally waive such eligibility by written application, such waiver to be effective only upon approval by the board of his application for disability retirement."

Section 4. Section 68-2103, R.C.M. 1947, is amended to read as follows:

"68-2103. Annual allowance for duty-related disability — reduction for workmen's compensation. *(1)* The annual amount of retirement allowance payable to a member eligible for disability retirement for duty-related reasons *and granted prior to July 1, 1977,* is fifty percent (50%) of his final compensation; provided, however, that the annual amount of retirement allowance shall be twenty-five percent (25%) of final compensation for any period during which the member has been awarded compensation by the workmen's compensation division, whether or not such compensation is received in periodic payments or in a lump sum; provided further, that the annual amount of retirement allowance shall revert to fifty percent (50%) of final compensation at the end of such period.

(2) Any retired member receiving a retirement allowance on July 1,

HeinOnline -- 1977 Vol. I 733 1977

1977, who has previously been granted a duty-related disability under provisions in effect on June 30, 1977, will be subject to the provisions of this section after July 1, 1977."

Section 5. Section 68-2104, R.C.M. 1947, is amended to read as follows:

"68-2104. Annual allowance for nonduty-related disability — reduction for misconduct. The annual amount of retirement allowance payable to a member eligible for disability retirement for other than duty-related reasons is the sum of (1), (2) and (3) as follows:

(1) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(2) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(3) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct or violation of law on the part of the member, a pension which is the *greater* of (a) or (b) as follows:

(a) a pension which, together with the annuity provided under (2), shall make the retirement allowance equal to ninety percent (90%) of *one-sixtieth* of his final compensation multiplied by his years of creditable service;

(b) a *retirement allowance* equal to twenty-five percent (25%) of his final compensation."

Section 6. Section 68-2203, R.C.M. 1947, is amended to read as follows:

"68-2203. Optional retirement allowance. (1) The retirement allowance of a member who so elects shall be converted, in lieu of all other benefits under this act, into an optional retirement allowance which is the actuarial equivalent of such other allowance. The optional retirement allowance is a reduced amount payable during the member's lifetime with a subsequent benefit as follows:

(a) Option 2—a continuation of the reduced retirement allowance during the lifetime of his named contingent annuitant.

(b) Option 3—a continuation of one-half (½) of the reduced retirement allowance during the lifetime of his named contingent annuitant.

(c) Option 4—such other actuarially equivalent benefit as shall be approved by the board.

(2) Election of any optional retirement allowance shall be by written application filed prior to the first payment of the regular retirement allowance. The contingent annuitant named by the member must have an insurable interest in the life of the member.

(3) If either the member or his contingent annuitant should die before the member has received the first payment under option 2 or 3, the election of such option shall automatically be canceled.

HeinOnline -- 1977 Vol. I 734 1977

(4) If a member dies after retirement and within thirty (30) days from the date his election or changed election of an optional retirement allowance is received by the board, then said election is void and of no effect, and the death shall be considered as that of a member before retirement."

Section 7. Section 68-2304, R.C.M. 1947, is amended to read as follows:

"**68-2304. Survivorship allowance elected by beneficiary.** A beneficiary eligible to receive a death benefit may elect a survivorship allowance instead if all of the following conditions are met:

(1) the member on behalf of whom the death benefit is payable had completed *5* years of creditable service;

(2) the beneficiary is a natural person of legal age with an insurable interest in the deceased at the time of his death;

(3) the beneficiary elects the survivorship allowance within ninety (90) days of receipt of notice from the board that he is eligible to receive the death benefit. Election shall be by written application."

Approved April 4, 1977.

CHAPTER NO. 242

AN ACT TO AMEND SECTION 15-2016, R.C.M. 1947, TO INCREASE THE FEES FOR REGISTRATION OF BROKER-DEALERS, INVESTMENT ADVISORS, AND SALESMEN; ALLOWING THE COMMISSIONER TO RETAIN ALL FEES EVEN IF APPLICATION IS WITHDRAWN OR DENIED; CREATING A FEE FOR REQUESTS FOR EXEMPTIONS OR EXCEPTIONS TO THE SECURITIES ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2016, R.C.M. 1947, is amended to read as follows:

"**15-2016. Fees.** The following fees shall be paid in advance under the provisions of this act:

(1) For the registration of securities by notification or co-ordination or qualification, there shall be paid to the commissioner for the first year of registration a registration fee of one hundred dollars ($100.00) for the first one hundred thousand dollars ($100,000.00) of initial issue, or portion thereof in this state, based on offering price; plus one-twentieth (1/20th) of one per cent (1%) for any excess over one hundred thousand dollars ($100,000.00), with a maximum of one thousand dollars ($1,000.00).

Each year thereafter that a registration remains in effect for securities with respect to which reports are required to be filed under subsection (4)(a) of section 15-2011, an additional registration fee shall be paid to the commissioner to be computed at one-twentieth (1/20th) of one per cent

HeinOnline -- 1977 Vol. I 735 1977

(1%) of the aggregate offering price of such securities which are to be offered in this state during that year, even though the maximum fee was paid the preceding year. In no event shall the additional registration fee be less than one hundred dollars ($100.00) nor more than one thousand dollars ($1,000.00). The registration statement for such securities may be amended to increase the amount of securities to be offered. When an application for registration of securities is denied or withdrawn the commissioner shall retain the fee.

(2) For filing an annual statement, the fee shall be ten dollars ($10.00).

(3) For registration of a broker-dealer or investment adviser, the fee shall be *$200* for original registration and *$200* for each annual renewal thereof. When an application is denied or withdrawn the commissioner shall retain the fee.

(4) For registration of a salesman, the fee shall be *$25* for original registration with each employer *and $25* for each annual renewal. When an application is denied or withdrawn the commissioner shall retain the fee.

(5) For certified copies of any documents filed with the commissioner, the fee shall be the cost to the department.

(6) For a request for an exemption or exception to the provisions of this chapter, the fee shall be $25."

Approved April 4, 1977.

CHAPTER NO. 243

AN ACT TO PROVIDE THAT REGISTRATION FEES AND THE REFLECTORIZATION FEE ASSESSED UPON MOTOR VEHICLES BEING REGISTERED OR REREGISTERED DO NOT APPLY IN THE EVENT A NUMBER PLATE IS TRANSFERRED TO A REPLACEMENT VEHICLE; AMENDING SECTIONS 53-106, 53-122, 53-146, AND 53-147, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-106, R.C.M. 1947, is amended to read as follows:

"53-106. Number plates. (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER," one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including trucks and trailers) which shall bear the distinctive letter "D" or the word

HeinOnline -- 1977 Vol. I 736 1977

"DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semi-trailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be issued for a minimum period of four years, provided that number plates shall next be issued in the year 1976 and as often thereafter as is consistent with the provisions of this section, shall bear a distinctive marking, and shall be furnished by the state. In years when number plates are not issued, the registrar shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(2) In the case of motor cars and trucks, number plates shall be of metal six inches wide and twelve inches in length, the number plates issued in the year 1976 to be of a graphic design commemorating the bicentennial of the founding of the United States of America, and the word "Montana" with the year placed on the plate. For number plates issued after 1976, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the registrar. *When a new plate is issued, an* additional fee of one dollar ($1.00) per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar. The distinctive registration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registration number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be replaced by the registrar of motor vehicles at such time when the physical condition of numbered

HeinOnline -- 1977 Vol. I 737 1977

plates requires same. For vehicles owned by the counties, municipalities and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers, and housetrailers, and the letters "MC" or the word "CYCLE" for plates assigned to vehicles of the motorcycle type.

Number plates issued to a passenger car, truck, trailer or vehicle of the motorcycle type may be transferred only to a replacement passenger car, truck, trailer or motorcycle type vehicle. *No registration or license fee may be assessed upon a transfer of a number plate under 53-146 and 53-147.*

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone, 41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57."

Section 2. Section 53-122, R.C.M. 1947, is amended to read as follows:

"53-122. Registration fees of motor vehicles — registration and transfer thereof — public owned vehicles exempt from license or registration fees — license or registration fees for trailers, house trailers, semitrailers and tractors providing for disposition of all fees. Registration or license fees shall be paid upon registration or reregistration of motor vehicles, trailers, house trailers, semitrailers and dealers in motor vehicles or trailers in accordance with this act, as follows:

All dealers in motor vehicles, a fee of thirty dollars ($30.00): which shall entitle such dealer to two (2) sets of number plates, and five dollars ($5.00) additional fee for each additional set of number plates up to six (6) sets, and two dollars ($2.00) additional fee for each additional set of number plates, as may be applied for;

HeinOnline -- 1977 Vol. I 738 1977

Dealers in motorcycles, trailers including house trailers, thirty dollars ($30);

Motor vehicles, weighing twenty-eight hundred and fifty (2850) pounds, or under, other than motor trucks, five dollars ($5.00);

Motor vehicles, weighing over twenty-eight hundred and fifty (2850) pounds, other than motor trucks ten dollars ($10.00);

Electrically driven passenger vehicles, ten dollars ($10.00);

All motorcycles, two dollars ($2.00);

Tractors and/or trucks, ten dollars ($10.00);

Buses shall be classed as motor trucks and licensed accordingly;

Trailers and semitrailers less than two thousand five hundred (2,500) pounds maximum gross loaded weight and house trailers of all weights, two dollars ($2.00);

Trailers and semitrailers over two thousand five hundred (2,500) up to six thousand (6,000) pounds maximum gross loaded weight, except house trailers, five dollars ($5.00);

Trailers and semitrailers over six thousand (6,000) pounds maximum gross loaded weight, ten dollars ($10.00);

Trailers used exclusively in the transportation of logs in the forest or in the transportation of oil and gas well machinery, road machinery and bridge material exclusively, new and secondhand, and trailers used exclusively for the transportation of road machinery and bridge materials, shall pay a fee of fifteen dollars ($15.00) annually, regardless of size or capacity.

All rates to be twenty-five per cent (25%) higher for motor vehicles, trailers and semitrailers, when not equipped with pneumatic tires.

Bicycles with motor attachment, one dollar ($1.00);

Tractors, as specified in this section, shall mean any motor vehicle, except passenger cars used for towing a trailer or semitrailer.

If any dealer, or motor vehicle, house trailer, trailer, or semitrailer is originally registered six (6) months after the time of registration as set by law, the registration or license fee for the remainder of such year shall be one-half (½) of the regular fee above given.

A dealer in motor vehicles or trailers who shall maintain more than one (1) place of business or who shall maintain any branch establishment or establishments, must register and pay a registration or license fee for each such place of business or establishment.

A registered dealer, who may sell or dispose of his entire business to any other person, may have his certificate of registration transferred to such purchaser upon filing with the registrar of motor vehicles a statement containing the name of the registered dealer, the number under which such dealer is registered, the name of the purchaser, and the loca-

HeinOnline -- 1977 Vol. I 739 1977

tion of the place of business so sold. Upon the filing of such statement, accompanied by a filing fee of two dollars ($2.00), the registrar of motor vehicles shall note upon the registration record of such dealer the change of ownership. But no certificate of registration can be transferred unless the entire business of the dealer holding such certificate of registration be sold and disposed of, and no such certificate of registration can be transferred to any person other than the purchasers of such business.

The provisions of this act with respect to the payment of registration fees shall not apply to or be binding upon motor vehicles, trailers or semitrailers or tractors owned or controlled by the United States of America or any state, county or city, but in all other respects the provisions of this act shall be applicable to and binding upon motor vehicles, tractors, trailers, and semitrailers.

The provisions of this section relating to the payment of registration fees do not apply when number plates are transferred to a replacement vehicle under 53-106(4), 53-146, and 53-147.

All fees, other than license fees, unless otherwise specifically provided, shall hereafter be deposited in, and paid into, the earmarked revenue fund and shall be used to pay all salaries, operating expenses, and all other expenses of the department of the registrar of motor vehicles, including the manufacturer and delivery of license plates. Any reference in this code to the motor vehicle recording fund or the motor vehicle administration fund shall be taken to mean the motor vehicle recording account in the earmarked revenue fund."

Section 3. Section 53-146, R.C.M. 1947, is amended to read as follows:

"**53-146. Transfer of license plates to another motor vehicle.** Should the transferor make application for the registration of another motor vehicle at any time during the remainder of the current registration year *as shown on the original certificate of registration*, he may file an application, in the office of the county treasurer where the motor vehicle is taxable, upon a form to be prepared and furnished by the registrar of motor vehicles, accompanied by the original certificate of registration, for the transfer of the license plates. The application for transfer of the license plates from the motor vehicle for which originally issued to a motor vehicle acquired by the same person in whose name the original license plates were issued shall be made within ten (10) days from date of acquiring the vehicle. The use of the license plates shall not be legalized until proper transfer of license plates has been made."

Section 4. Section 53-147, R.C.M. 1947, is amended to read as follows:

"**53-147. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase.** Except as otherwise provided herein, the new owner of the transferred motor vehicle shall have the grace period of ten (10) days from the date of purchase to make application and pay the taxes as provided by section 53-114, as if the same was being registered for the first time in that registration year, and, provided the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it shall not be a violation of this chapter or any other law for the purchaser to operate

HeinOnline -- 1977 Vol. I 740 1977

the vehicle upon the streets and highways of this state without a certificate of registration during the ten (10) day period; provided, however, that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase shall be clearly displayed in the rear window of the motor vehicle at all times. *Registration and license fees collected under 53-122 are not required to be paid when a license plate is transferred under this section and 53-146.* Failure to make application within the time provided herein shall subject the purchaser to a penalty of ten dollars ($10), plus one dollar ($1) for each additional day in which the vehicle remains unregistered, not to exceed twenty-five dollars ($25). The penalty shall be collected by the county treasurer at the time of registration, and shall be in addition to the fees otherwise provided by law."

Approved April 4, 1977.

CHAPTER NO. 244

AN ACT TO CLARIFY STOPPING AND LIGHTING REQUIREMENTS FOR SCHOOL BUSES; AMENDING SECTIONS 32-2193 AND 32-2197, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2193, R.C.M. 1947, is amended to read as follows:

"**32-2193. Certain vehicles must stop at all railroad grade crossings.** (a) The driver of any motor vehicle carrying passengers for hire or of any school bus or of any vehicle carrying explosive substances or flammable liquids as a cargo or part of a cargo, before crossing at grade any track or tracks of a railroad, shall stop such vehicle within 50 feet but not less than 15 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train, and for signals indicating the approach of a train, except as hereinafter provided, and shall not proceed until he can do so safely. After stopping as required herein and upon proceeding when it is safe to do so the driver of any said vehicle shall cross only in such gear of the vehicle that there will be no necessity for changing gears while traversing such crossings and the driver shall not shift gears while crossing the track or tracks.

(b) No stop need be made at any such crossing where a police officer or highway patrolman or traffic-control signal directs traffic to proceed.

(c) This section shall not apply at street-railway grade crossings within a business or residence district."

Section 2. Section 32-2197, R.C.M. 1947, is amended to read as follows:

"**32-2197. Overtaking and passing school bus.** (a) The driver of a vehicle upon a highway outside the corporate limits of any city or town upon meeting or overtaking from either direction any school bus which

has stopped on the highway for the purpose of receiving or discharging any school children shall stop the vehicle before reaching such school bus when there is in operation on said bus a visual flashing red signal as specified in section 32-21-132 and said driver shall not proceed until such school bus resumes motion, and in addition the driver of a vehicle must slow and proceed with caution when meeting or overtaking from either direction any school bus which is preparing to stop on the highway for the purpose of receiving or discharging any school children as indicated by flashing amber lights as specified in section 32-21-132.

(b) Every bus used for the transportation of school children shall bear upon the front and rear thereof plainly visible signs containing the words "SCHOOL BUS" in letters not less than 8 inches in height, and in addition shall be equipped with visual signals meeting the requirements of section 32-21-132. Amber flashing lights shall be actuated by the driver approximately 500 feet before the bus is stopped to receive or discharge school children *on the highway.* Red lights shall be actuated by the driver of said school bus whenever but only whenever such vehicle is stopped on the highway for the purpose of receiving or discharging school children.

(c) When a school bus is being operated upon a highway for purposes other than the actual transportation of children either to or from school all markings thereon indicating "SCHOOL BUS" shall be covered or concealed.

(d) The driver of a vehicle upon a highway with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled access highway and the school bus is stopped in a loading zone which is a part of or adjacent to such highway and where pedestrians are not permitted to cross the roadway."

Approved April 4, 1977.

CHAPTER NO. 245

AN ACT TO REQUIRE TESTING OF MILK BY THE DEPARTMENT OF BUSINESS REGULATION TO DETERMINE THE VALUE OF RAW MILK.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 27-430 that reads as follows:

27-430. Testing of milk. (1) For the purpose of determining the value of milk supplied by producers during routine audits of milk processing plants which receive raw milk directly from producers, the department of business regulation shall establish a program of testing such raw milk.

(2) The department of business regulation may levy an assessment on licensed producers to secure the necessary funds to administer this program. This assessment is in addition to those provided in 27-409.

HeinOnline -- 1977 Vol. I 742 1977

(3) All personnel employed in the sampling and testing program shall be licensed by the animal health division of the department of livestock.

(4) The department may conduct all types of sampling, grading, and testing techniques which it considers necessary to carry out the intent of this section.

Approved April 4, 1977.

CHAPTER NO. 246

AN ACT TO ESTABLISH A JOINT UNDERWRITING ASSOCIATION FOR MEDICAL LIABILITY INSURANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 40-6001 that reads as follows:

40-6001. Purpose. The legislature finds that a crisis exists because of the high cost and impending unavailability of medical liability insurance. The purpose of this act is to provide an interim solution to the unavailability of such insurance. This legislation will not resolve the underlying causes of the unavailability and high cost, which extend beyond the insurance mechanism. It is anticipated that future legislation will deal on a more permanent basis with the root causes of the current crisis. Accordingly, this act is enacted for a limited period of time.

Section 2. There is a new R.C.M. section numbered 40-6002 that reads as follows:

40-6002. Definitions. As used in this act the following definitions apply:

(1) "Medical liability insurance" means insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering professional service by a licensed physician or a hospital, hospital-related facility, or long-term care facility, as defined by 69-5201.

(2) "Association" means the joint underwriting association established pursuant to the provisions of this act.

(3) "Net direct premiums" mean gross direct premiums on personal injury liability insurance written pursuant to the provisions of the insurance laws of Montana, including the liability component of multiple peril package policies as computed by the commissioner of insurance, less return premiums or the unused or unabsorbed portions of premium deposits.

Section 3. There is a new R.C.M. section numbered 40-6003 that reads as follows:

HeinOnline -- 1977 Vol. I 743 1977

40-6003. Joint underwriting association. (1) A joint underwriting association is hereby created, consisting of all insurers authorized to write and engaged in writing within this state on a direct basis insurance against legal liability for the death, injury, or disability of any person pursuant to the provisions of Title 40, including insurers covering the perils in multiple peril package policies. Each of these insurers shall be a member of the association and shall remain a member as a condition of its authority to continue to transact this kind of insurance in this state. The purpose of the association is to provide medical liability insurance on a self-supporting basis.

(2) The association may not commence underwriting operations for physicians until the commissioner of insurance, after due hearing and investigation, has determined that medical liability insurance cannot be made available for physicians in the voluntary market. Upon that determination the association is the exclusive agency through which medical liability insurance may be written in this state on a primary basis for physicians.

(3) The association may not commence underwriting operations for hospitals, hospital-related facilities, or long-term care facilities until the commissioner of insurance, after due hearing and investigation, has determined that medical liability insurance is not readily available for these facilities in the voluntary market. Upon that determination the association is authorized to issue policies of medical liability insurance to hospitals, hospital-related facilities, or long-term care facilities but need not be the exclusive agency through which this insurance may be written on a primary basis in this state.

(4) If the commissioner of insurance determines at any time that medical liability insurance can be made available in the voluntary market for either physicians or hospitals, hospital-related facilities, or long-term care facilities, the association shall thereby cease its underwriting operations for the medical liability insurance which the commissioner has determined can be made available in the voluntary market.

(5) The association has, pursuant to the provisions of this act and the plan of operation with respect to medical liability insurance, the power on behalf of its members to:

(a) subject to limits as specified in the plan of operation but not to exceed $1 million for each claimant under one policy and $3 million for all claimants under one policy in any 1 year, issue or cause to be issued policies of insurance to applicants, including incidental coverages;

(b) underwrite the insurance and assume reinsurance from its members; and

(c) cede reinsurance.

(6) (a) Within 45 days following the creation of the association, the directors of the association shall submit to the commissioner of insurance for his review a proposed plan of operation consistent with the provisions of this act to be fully effective and operative upon order of the commissioner of insurance.

HeinOnline -- 1977 Vol. I 744 1977

(b) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical liability insurance and shall contain other provisions including but not limited to preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members to defray losses and expenses, commission arrangements, reasonable and objective underwriting standards, acceptance and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association.

(c) The plan of operation shall provide that any profit achieved by the association be added to the reserves of the association or returned to the policyholders as a dividend.

(d) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the commissioner of insurance, or shall be made at the direction of the commissioner.

Section 4. There is a new R.C.M. section numbered 40-6004 that reads as follows:

40-6004. Procedures. (1) (a) A licensed physician or hospital, on or after the effective date of the plan of operation, is entitled to apply to the association for coverage. The application may be made on behalf of an applicant by a broker or agent authorized by the applicant.

(b) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior insurance, as shown by the insured having failed to make written objections to the premium charges within 30 days after billing, then the association, upon receipt of the premium or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of professional liability insurance for a term of 1 year.

(2) (a) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto are subject to the insurance laws of Montana, giving due consideration to the past and prospective loss and expense experience for medical liability insurance of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the commissioner of insurance may require.

(b) Within such time as the commissioner of insurance directs, the association shall submit for the approval of the commissioner an initial filing, in proper form, of policy forms, classifications, rates, rating plans, and rating rules applicable to medical liability insurance to be written by the association. In the event the commissioner disapproves the initial filing, in whole or in part, the association shall amend it in accordance with the direction of the commissioner. If the commissioner is unable to approve the filing or amended filing within the time specified, he shall promulgate the policy forms, classifications, rates, rating plans, and rules to be used by the association in writing such insurance.

HeinOnline -- 1977 Vol. I 745 1977

(c) Any deficit sustained by the association in any 1 year shall be recouped pursuant to the plan of operation and the rating plan then in effect by one or both of the following procedures:

(i) an assessment upon the policyholders; or

(ii) a rate increase applicable prospectively.

(d) Effective after the initial year of operation, rates, rating plans, rating rules, and any provision for recoupment through policyholder assessment or premium rate increase shall be based upon the association's loss and expense experience, together with such other information based upon that experience as the commissioner of insurance considers appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.

(e) In the event that sufficient funds are not available for the sound financial operation of the association, pending recoupment as provided in subsection (2)(d) of this section, all members shall on a temporary basis contribute to the financial requirements of the association in the manner provided for in this section. Contributions shall be reimbursed to the members following recoupment as provided in subsection (2)(d) of this section.

(f) The commissioner of insurance shall consider requiring the association to offer policies on both a claims made and occurrence basis so that applicants may select either policy at their option. However, the premium rate charged for both claims made and occurrence policies shall be at rates established on an actuarially sound basis and which are calculated to be self-supporting.

Section 5. There is a new R.C.M. section numbered 40-6005 that reads as follows:

40-6005. Participation. All insurers which are members of the association shall participate in its writings, expenses, profits, and losses in the proportion that the net direct premiums of each member written during the preceding calendar year, after excluding that portion of premiums attributable to the operation of the association, bears to the aggregate net direct premiums written in this state by all members of the association. Each insurer's participation in the association shall be determined annually on the basis of the net direct premiums written during the preceding calendar year as reported in the annual statements and other reports filed by the insurer with the commissioner of insurance. No member is obligated in any 1 year to reimburse the association on account of its proportionate share in the deficit from operations of the association in that year in excess of 1% of its surplus to policyholders, and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this section after excluding from the computation the total net direct premiums of all members not sharing in the excess deficit. In the event that the deficit from operations allocated to all members of the association in any calendar year exceeds 1% of their respective surplus to policyholders, the amount of the deficit shall be allocated to each

HeinOnline -- 1977 Vol. I 746 1977

member in accordance with the method of determining participation prescribed in this section.

Section 6. There is a new R.C.M. section numbered 40-6006 that reads as follows:

40-6006. Directors. The association shall be governed by a board of directors, to be elected annually. Eight directors shall be elected by cumulative voting of members of the association, whose votes shall be weighted in accordance with each member's net direct premiums written during the preceding calendar year. Three directors shall be appointed by the commissioner of insurance as representatives of the medical profession, the appointments being made at or before each annual meeting. The eight directors serving on the first board who are to be elected by members of the association shall be elected at a meeting of the members held at a time and place designated by the commissioner.

Section 7. There is a new R.C.M. section numbered 40-6007 that reads as follows:

40-6007. Appeals and judicial review. (1) With respect to those items the plan of operation defines as appealable matters, an applicant to the association, a person insured pursuant to this act, his representative, or an affected insurer may appeal to the commissioner of insurance within 30 days after a ruling action or decision by or on behalf of the association.

(2) All orders of the commissioner of insurance made pursuant to this act are subject to judicial review as provided in Title 40.

Section 8. There is a new R.C.M. section numbered 40-6008 that reads as follows:

40-6008. Privileged communications. There is no liability on the part of and no cause of action of any nature may arise against the association, its agents or employees, an insurer, a licensed agent or broker, or the commissioner of insurance or his authorized representatives for any statements made in good faith by them in any reports or communications concerning risks insured or to be insured by the association or at any administrative hearings conducted in connection therewith.

Section 9. There is a new R.C.M. section numbered 40-6009 that reads as follows:

40-6009. Annual statements. The association shall file in the office of the commissioner of insurance annually on or before March 1 a statement containing information with respect to its transactions, condition, operations, and affairs during the preceding year. The statement shall contain the matters and information prescribed and shall be in a form approved by the commissioner. The commissioner may at any time require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

Section 10. There is a new R.C.M. section numbered 40-6010 that reads as follows:

HeinOnline -- 1977 Vol. I 747 1977

40-6010. Examinations of association's affairs. The commissioner of insurance shall make an examination into the affairs of the association at least annually. The examination shall be conducted and the report thereon filed in the manner provided by law. The expenses of every examination shall be borne and paid by the association in the manner prescribed by law.

Section 11. **Effective date.** This act is effective on its passage and approval and expires on December 31, 1979, after which no new policies may be issued by the association. However, all issued policies continue in force until their expiration date.

Approved April 4, 1977.

CHAPTER NO. 247

AN ACT TO EXCLUDE INCOME DERIVED FROM THE PURCHASE OF OR PARTICIPATION IN LOANS SECURED BY MORTGAGES, TRUST INDENTURES, OR OTHER SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY FROM THE APPLICATION OF THE CORPORATION INCOME TAX; AMENDING SECTION 84-6903, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-6903, R.C.M. 1947, is amended to read as follows:

"**84-6903. Rate of tax imposed — income from sources within state defined — alternative tax.** (1) There is hereby imposed upon every corporation for each taxable year an income tax at the rate specified in 84-1501 upon its net income derived from sources within this state for taxable years beginning after December 31, 1970, other than income for any period for which the corporation is subject to taxation under *Title 84, chapter 15,* according to or measured by its net income.

(2) Income from sources within this state includes income from tangible or intangible property located in or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, interstate, or foreign commerce, *but does not include interest paid on loans held by out-of-state financial institutions recognized as such in the state of their domicile, secured by mortgages, trust indentures, or other security interests on real or personal property located within the state if the loan is originated by a lender doing business in Montana and assigned out-of-state and there is no activity conducted by the out-of-state lender in Montana except periodic inspection of the security.*

(3) Pursuant to *Article* III, section 2, of the *Multistate Tax Compact* (Title 84, chapter 67), any corporation required to file a return under this act and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property

HeinOnline -- 1977 Vol. I 748 1977

within Montana and whose annual gross volume of sales made in Montana does not exceed $100,000 may elect to pay a tax of *½ of 1%* of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to *Article* IV, sections 16 and 17, of the *Multistate Tax Compact.*"

Section 2. **Application.** The amendments made in section 1 apply to taxable years ending after September 12, 1976.

Approved April 4, 1977.

CHAPTER NO. 248

AN ACT TO PERMIT THE DEPARTMENT OF REVENUE TO CONTRACT WITH COMMERCIAL COLLECTION AGENCIES FOR THE COLLECTION OF DEBTS OWED THE STATE BY DEBTORS RESIDING OUTSIDE THE STATE AND REQUIRING THE TRANSFER RATHER THAN ASSIGNMENT OF DEBTS FROM STATE AGENCIES TO THE DEPARTMENT OF REVENUE FOR COLLECTION; AMENDING SECTIONS 84-7104 THROUGH 84-7107, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-7104, R.C.M. 1947, is amended to read as follows:

"**84-7104. Circumstances where department must assist.** Subject to and in accordance with rules adopted by the department, the department shall render assistance in the collection of accounts owing to any state agency if all of the following procedures have been completed to the satisfaction of the department:

(1) A state agency must make all reasonable efforts to collect money owed to it and must determine that the money and any interest or penalties therefor are uncollectible in accordance with criteria for uncollectibility formulated by that agency.

(2) Once a state agency has determined an account owed to it uncollectible, it shall certify to the department the amount of the money, interest, and penalties, as accurately as can be determined. The department may require submission by the agency of all relevant evidence and other information regarding the debt and may examine the records of any other state agency which may be pertinent in determining the uncollectibility of the debt unless examination is specifically prohibited by law.

(3) If the department finds that the debt is uncollectible in accordance with the criteria for uncollectibility of money due that state agency, the department shall direct the agency to write off the debt on its accounts and *transfer* the debt to the department."

Section 2. Section 84-7105, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 749 1977

"**84-7105. Authority of department to collect debt.** Once a debt of a state agency has been *transferred* to the department of revenue, the department shall have the authority to collect it, including the power to offset tax refunds due to individuals against the debt *transferred* by the state agency to the department of revenue, provided the department may not exercise this right of offset until the debtor has first been notified by the department and given an opportunity for a hearing. *The department of revenue may contract with commercial collection agencies for recovery of debts owed the state of Montana by debtors residing outside the boundaries of the state of Montana.*"

Section 3. Section 84-7106, R.C.M. 1947, is amended to read as follows:

"**84-7106. Agency owed debt to receive all moneys collected.** All moneys collected by the department of revenue on debts *transferred* to it by the various state agencies shall be deposited to the account or fund of the agency to which the debt was originally owing."

Section 4. Section 84-7107, R.C.M. 1947, is amended to read as follows:

"**84-7107. Write-off procedures.** The department may establish procedures for canceling and writing off accounts receivable carried on the books of the various state agencies, which have been *transferred* to the department of revenue pursuant to 84-7104, *and* which are uncollectible or the continued pursuance of the collection thereof would cost the state more than the amount collected. Such procedures shall be established in accordance with 82-110."

Approved April 4, 1977.

CHAPTER NO. 249

AN ACT TO AMEND SECTION 84-709, R.C.M. 1947, RELATING TO APPEAL TO THE STATE TAX APPEAL BOARD AND HEARING BY REQUIRING THE COUNTY TAX APPEAL BOARDS TO MAIL COPIES OF THEIR DECISIONS TO THE PROPERTY ASSESSMENT DIVISION OF THE DEPARTMENT OF REVENUE; LENGTHENING THE TIME FOR APPEAL OF COUNTY TAX APPEAL BOARD DECISIONS AND LENGTHENING THE TIME FOR NOTICE OF HEARING; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-709, R.C.M. 1947, is amended to read as follows:

"**84-709. Appeal to state tax appeal board — hearing.** Any person, firm, or corporation or the department of revenue in behalf of the state or any municipal corporation aggrieved by the action of any county tax appeal board may appeal to the state board by filing with the county tax appeal board a notice of appeal and a duplicate thereof with the state

HeinOnline -- 1977 Vol. I 750 1977

board, within *20 calendar* days after the receipt of the decision of the county board, which notice shall specify the action complained of and the reasons assigned for such complaint. *The county tax appeal boards shall mail their decisions to the property assessment division of the department of revenue. Receipt for purposes of appeal by the department of revenue is when the county tax appeal board decision is received by the property assessment division of the department of revenue.* The state board shall set such appeal for hearing either in its office in the capitol or such county seat as the board shall deem advisable to facilitate the performance of its duties or to accommodate parties in interest and shall give to the appellant and to the county board at least *15 calendar* days' notice of the time and place of such hearing; at the time of giving such notice the state board may require the county board to certify to it the minutes of the proceedings resulting in such action and all testimony taken in connection therewith, and the state board may, in its discretion, determine the appeal on such record if all parties receive a copy of the transcript and are permitted to submit additional sworn statements or may hear further testimony. For the purpose of expediting its work, the state board may refer any such appeal to one of its members and the person so designated shall have and exercise all the powers of the board in conducting such hearings and shall, as soon as possible thereafter, report the proceedings, together with a transcript of the testimony received, to the board and the state board shall determine such appeal on the record so made. On all hearings at county seats throughout the state, the state board or the member designated to conduct a hearing may employ the local court reporter or other competent stenographer to take and transcribe the testimony received, and the cost thereof may be paid out of the general appropriation for the board. In connection with any appeal, the state board shall have the authority to affirm, reverse, or modify any decision appealable to the state tax appeal board; the decision of the state tax appeal board shall be final and binding upon all interested parties unless reversed or modified by judicial review. To the extent this section is in conflict with the Montana Administrative Procedure Act, this section shall supersede the Montana Administrative Procedure Act. The state tax appeal board shall not have authority to amend or repeal any administrative rule or regulation. The state tax appeal board must give an administrative rule or regulation full effect unless the board finds any such rule or regulation arbitrary, capricious, or otherwise unlawful."

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved April 4, 1977.

CHAPTER NO. 250

AN ACT TO PROVIDE FOR A PENALTY FOR PERSONS, BUSINESSES, OR CORPORATIONS MOVING MOBILE HOMES ON WHICH PROPERTY TAXES ARE DELINQUENT.

HeinOnline -- 1977 Vol. I 751 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-6608 that reads as follows:

84-6608. Penalty for moving mobile home on which taxes due. Any person, business, or corporation that moves a mobile home on which property taxes are unpaid is guilty of a misdemeanor.

Approved April 4, 1977.

CHAPTER NO. 251

AN ACT TO AMEND AND REVISE THE LAWS RELATING TO MOTOR VEHICLE WRECKING FACILITIES; AMENDING SECTIONS 69-6801 AND 69-6805, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-6801, R.C.M. 1947, is amended to read as follows:

"**69-6801. Definitions.** Unless the context requires otherwise, in this act *the following definitions apply*:

(1) "Motor vehicle wrecking facility" means a facility buying, selling, or dealing in four (4) or more vehicles per year of a type required to be licensed, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle, or which buys or sells integral second-hand parts or component material thereof, in whole or in part, and deals in second-hand motor vehicle parts. *A facility which buys or sells integral secondhand parts or component material of a motor vehicle, in whole or in part, is a motor vehicle wrecking facility whether or not the buying or selling price is based upon weight or any other type of classification.* The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(2) "Motor vehicle graveyard" means a collection point for junk motor vehicles prior to their disposal.

(3) "Junk vehicle" means either a discarded, ruined, wrecked, or dismantled vehicle, or vehicle substantially changed in form by removal of parts or component materials, and in either case that remains in public view which is not lawfully and validly licensed and remains inoperative or incapable of being driven excluding antique vintage and classic vehicles.

(4) "Person" means any individual, firm, partnership, association, corporation, or any other entity whether organized for profit or not.

(5) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6."

Section 2. Section 69-6805, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 752 1977

"**69-6805. County to provide motor vehicle graveyards — consolidation — budget.** (1) (a) Each county shall acquire, develop, and maintain property for free motor vehicle graveyards. The property may be acquired by purchase, lease, or otherwise.

(b) As an alternative, the county may contract for the maintenance and operation of a motor vehicle graveyard or graveyards, *but any such contract may be entered into only with a motor vehicle wrecking facility licensed under the provisions of this chapter.*

(c) Two (2) or more counties may join to form a district for the purpose stated in this section. If a district is formed, all provisions of this act pertaining to a county also apply to a district formed under this subsection.

(d) When there is an accumulation of at least two hundred (200) junk vehicles in the graveyard, the county shall notify the department for disposal purposes.

(2) (a) A county shall submit to the department for approval a plan for the collection of junk vehicles and the establishment and operation of the motor vehicle graveyard.

(b) Prior to June 15, the county shall submit to the department for approval a proposed budget for the succeeding fiscal year.

(c) Any proposed change in the budget or plan must be approved by the department.

(d) The budget shall be for the amounts required by the county for collection costs and acquisition, maintenance, and operation of the graveyard."

Approved April 4, 1977.

CHAPTER NO. 252

AN ACT TO REVISE TITLE 69, CHAPTER 68, R.C.M. 1947; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO INITIATE AND MAINTAIN ACTIONS TO COLLECT A CIVIL PENALTY; CLARIFYING THE AUTHORITY OF THE DEPARTMENT TO REQUIRE THE SHIELDING OF MOTOR VEHICLE WRECKING FACILITIES AND MOTOR VEHICLE GRAVEYARDS; CLARIFYING AND COORDINATING THE RESPONSIBILITIES OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AND THE DEPARTMENT OF HIGHWAYS UNDER TITLE 32, CHAPTER 45, R.C.M. 1947; AND AMENDING SECTIONS 32-4516, 32-4519, 69-6801, 69-6802, 69-6803, 69-6806, 69-6807, 69-6808, 69-6810, AND 69-6812, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-6801, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 753 1977

"**69-6801. Definitions.** Unless the context requires otherwise, in this *chapter the following definitions apply*:

(1) "Motor vehicle wrecking facility" means a facility buying, selling, or dealing in four or more vehicles per year of a type required to be licensed for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of the motor vehicle or *a facility* which buys or sells integral second-hand parts or component material thereof, in whole or in part, and deals in second-hand motor vehicle parts. The term does not include a garage where wrecked or disabled motor vehicles are temporarily stored for a reasonable period of time for inspection, repairs, or subsequent removal to a junkyard.

(2) "Motor vehicle graveyard" means a collection point *established by a county* for junk motor vehicles prior to their disposal.

(3) "Junk vehicle" means a discarded, ruined, wrecked, or dismantled vehicle, *including component parts,* or *a* vehicle substantially changed in form by removal of parts or component materials and which is not lawfully and validly licensed and remains inoperative or incapable of being driven.

(4) "Person" means any individual, firm, partnership, *company,* association, corporation, *city, town, local governmental entity,* or any other *governmental or private* entity whether organized for profit or not.

(5) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6.

(6) "Board" means the board of health and environmental sciences, provided for in 82A-605.

(7) "Shielding" means the construction or use of fencing or man-made or natural barriers to conceal junk vehicles from public view.

(8) "Public view" means any point 6 feet above the surface of the center of a public road from which junk vehicles can be seen."

Section 2. Section 69-6802, R.C.M. 1947, is amended to read as follows:

"**69-6802. Motor vehicle wrecking facility and motor vehicle graveyard license — application — fee — display — term — not transferable.** A person may not conduct, maintain, or operate a motor vehicle wrecking facility *or motor vehicle graveyard* without a license issued by the department.

(1) Application for the license shall be made on forms furnished by the department.

(2) An annual fee of $50 shall be paid to the department for the license, or quarterly prorated for new facilities.

(3) A motor vehicle graveyard is excluded from paying the annual license fee but must meet all other requirements of the chapter.

(4) A license shall be displayed in a prominent place in the licensed facility *or graveyard.*

HeinOnline -- 1977 Vol. I 754 1977

(5) The license expires on December 31 of the year issued.

(6) If a motor vehicle wrecking facility ceases to do business, the license shall be surrendered to the department. The license is not transferable.

(7) A decision by the department to issue, deny, or revoke a motor vehicle wrecking facility or graveyard license may be appealed to the board within 30 days after receipt of official notice of the department's decision."

Section 3. Section 69-6803, R.C.M. 1947, is amended to read as follows:

"69-6803. Possession of junk vehicles as prima facie evidence of motor vehicle wrecking facility. Possession at a single location of four or more junk vehicles of a type required to be licensed is prima facie evidence that the possessor is operating a motor vehicle wrecking facility."

Section 4. Section 69-6806, R.C.M. 1947, is amended to read as follows:

"69-6806. Crushing and recycling of junk vehicles. (1) The department shall contract for final disposition of junk vehicles accumulated in motor vehicle graveyards and shall provide for crushing and recycling the material from the vehicles.

(2) The department may also contract to dispose of, by crushing and recycling, junk vehicles accumulated in the yard of a motor vehicle wrecking facility. The department may so contract only upon the request of the facility and only if there is an accumulation of at least 200 vehicles at the facility.

(3) All moneys received from the sale of the junk vehicles or from recycling of the material shall be deposited with the state treasurer to be utilized for *the* control, collection, *recycling,* and disposal of junk vehicles and *component parts.*

(4) *An* individual may dispose of a junk vehicle by delivering the vehicle to a motor vehicle graveyard and by delivering to the department the certificate or evidence of title to the vehicle or a written release of the vehicle."

Section 5. Section 69-6807, R.C.M. 1947, is amended to read as follows:

"69-6807. Deposit of fees — special junk vehicle assessment fee. (1) All motor vehicle wrecking facility license fees and fees collected as motor vehicle disposal fees shall be deposited with the state treasurer to be utilized for *the* control, collection, *recycling,* and disposal of junk vehicles and *component parts.*

(2) There is assessed a special junk vehicle disposal fee on each new application for a motor vehicle title and on each transfer of *a* motor vehicle title in the amount of *$1.50* on passenger cars and trucks under 8001 pounds GVW, which shall be collected by the county treasurer and, commencing with the year 1974, there shall be assessed an additional special

HeinOnline -- 1977 Vol. I 755 1977

junk vehicle disposal fee in the amount of *50 cents* on each passenger car and truck under 8001 pounds GVW registered for licensing. The *50 cent* fee shall be collected by the county treasurer. However, the following are exempt from payment of the fees:

(a) vehicles leased or owned by the state or by a county or municipality;

(b) vehicles used for transportation by nonresident, migratory workers temporarily employed in agricultural work in this state;

(c) vehicles displaying dealers' license plates, as provided in 53-122, while owned by a dealer; *and*

(d) house trailers or equipment which are not self-propelled or which require towing upon a highway of this state.

(3) The department shall report to each legislature the amount collected under this *chapter* and the cost of administration of *this chapter* to date so that any necessary adjustment of the amount of the fee may be made to assure that no more than the actual cost of operation of the program is collected.

(4) The department shall pay to a county the amount of the approved budget of the county. The yearly payment may not exceed $1 for each motor vehicle under 8001 pounds GVW that is licensed in that county. However, for those counties that have fewer than 5,000 such motor vehicles, the department may pay up to $5,000, providing the county can justify this payment."

Section 6. Section 69-6808, R.C.M. 1947, is amended to read as follows:

"**69-6808. Adoption of rules.** The department shall adopt rules necessary *for the administration of this chapter*, including but not limited to rules pertaining to:

(1) the *establishment*, control, operation, and licensing of motor vehicle wrecking *facilities and graveyards*;

(2) the control of junk vehicles in locations other than motor vehicle wrecking *facilities and graveyards*;

(3) the inspection and evaluation of premises and records subject to or required by this *chapter*;

(4) the development of budget and fiscal forms and procedures for counties;

(5) the review, approval, and control procedures for county motor vehicle graveyards developed under this *chapter; and*

(6) the shielding of a junk vehicle and motor vehicle wrecking facility and graveyard from public view. The department may not adopt a rule which requires the construction of a fence or man-made barrier which would be in excess of 12 feet in height. A new motor vehicle wrecking facility or graveyard site may not be approved for use or licensed if the proposed facility cannot be shielded from public view. The prohibition concerning

HeinOnline -- 1977 Vol. I 756 1977

approval of a new motor vehicle wrecking facility site does not apply to a facility site that has been used as such within the preceding 18 months."

Section 7. Section 69-6810, R.C.M. 1947, is amended to read as follows:

"69-6810. Injunction to enforce chapter — action to collect civil penalty. (1) The department, through the attorney general or the county attorney of the county in which a facility is located, may sue to enjoin the operation or maintenance of *a* motor vehicle wrecking facility *or graveyard* either permanently or until compliance with this *chapter*, the rules of the department, *or an order issued pursuant to this chapter* has been demonstrated.

(2) *The department, through the attorney general or the county attorney of the county in which a motor vehicle wrecking facility or graveyard is located, may sue in district court to collect a civil penalty as provided in 69-6812."*

Section 8. Section 69-6812, R.C.M. 1947, is amended to read as follows:

"69-6812. Penalties. *(1)* A person who *willfully* violates this *chapter* is guilty of a misdemeanor and upon conviction shall be fined not to exceed $250, imprisoned in the county jail for a term not to exceed 30 days, or both.

(2) A person who violates this chapter, a rule of the department, or an order issued as provided in this chapter shall be subject to a civil penalty of not more than $50. Each day upon which a violation of this chapter or a rule or order occurs is a separate violation."

Section 9. Section 32-4516, R.C.M. 1947, is amended to read as follows:

"32-4516. Issuance of license. *(1)* The department of health and environmental sciences *may* issue licenses for the establishment, maintenance, and operation of *motor vehicle wrecking facilities and graveyards as provided in Title 69, chapter 68. The issuance, denial, or revocation of a license under the provisions of Title 69, chapter 68, may, on the basis of 32-4520, be appealed to the board of health and environmental sciences.*

(2) The department of highways may object to and participate as a party in all decisions concerning the issuance, denial, or revocation of a license under the provisions of Title 69, chapter 68, if the facility in question is within 1,000 feet of the nearest edge of the right-of-way of any interstate or primary highway. If the department of highways objects to the licensing of a facility pursuant to this subsection, it shall proceed under the provisions of section 32-4520(2).

(3) The department of highways may issue a license for a junkyard that is not a motor vehicle wrecking facility as defined in Title 69, chapter 68.

(4) Nothing in this section prohibits the department of highways from acquiring an interest in land for screening purposes or paying for screening installation and materials as authorized by this chapter."

HeinOnline -- 1977 Vol. I 757 1977

Section 10. Section 32-4519, R.C.M. 1947, is amended to read as follows:

"**32-4519. Rules governing screening.** *(1) The department of health and environmental sciences shall adopt rules governing the screening or shielding of motor vehicle wrecking facilities as provided in Title 69, chapter 68.*

(2) The department *of highways* may adopt rules governing the materials to be used in and the location, planting, construction, and maintenance of screening or fencing required by this *chapter.*"

Approved April 4, 1977.

CHAPTER NO. 253

AN ACT TO ENABLE WATER USERS' ASSOCIATIONS TO HAVE INPUT INTO AND APPEAL FROM DECISIONS OF THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION RELATING TO REPAIR AND MAINTENANCE IN EXCESS OF $25,000 ON WATER PROJECTS INVOLVING AN ASSOCIATION AND TO REQUIRE LEGISLATIVE APPROVAL FOR ABANDONMENT OF PROJECTS WHENEVER THERE IS SUFFICIENT PROTEST BY AN ASSOCIATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 89-1107 that reads as follows:

89-1107. Operation of projects with water users' association. (1) As used in this section, "department" means the department of natural resources and conservation provided for in Title 82A, chapter 15 and "association" means a water users' association.

(2) Whenever the department proposes a program of maintenance, repair, operation, or alteration of a project in excess of $25,000, the cost of which will be borne by an association pursuant to the terms of a water marketing contract, the association shall be informed of the program and given an opportunity to comment. The department shall notify the association of its decision. If the association believes the program to be unnecessary or excessive in cost, it may appeal the department decision to the board of natural resources and conservation as provided for in 89-115(4). The board shall notify the association of its decision. If the board's decision is adverse to the association, the association may file within 30 days of receipt of notice of the board's decision a complaint to review the board's decision in the district court in any county where all or part of the project works are located or in Lewis and Clark County.

(3) If a complaint is filed under subsection (2), the court shall hold a trial de novo on the question of necessity of the department program and the question of excessive costs. If the association prevails, the court

HeinOnline -- 1977 Vol. I 758 1977

may award costs to the association. The court may specify an acceptable program of maintenance, repair, operation, or alteration or may order the department and the association to develop a program, subject to court approval.

(4) Whenever a program of maintenance, repair, operation, or alteration is proposed, the department shall assist the association in attempting to secure sources of financing, including federal funds.

(5) Whenever the department proposes to abandon a project which involves an association, the department shall notify the association. If, within 30 days of receipt of the notice of abandonment, stockholders of the association representing 15% or more of the issued and outstanding stock of the association file a petition of protest with the department, the project may not be abandoned without the consent of the legislature.

Approved April 4, 1977.

CHAPTER NO. 254

AN ACT TO AMEND SECTION 60-145, R.C.M. 1947, TO PROVIDE FOR CREDITING INTEREST AND INCOME FROM OIL PRODUCERS LICENSE TAX TO THE BOARD OF OIL AND GAS CONSERVATION ACCOUNT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-145, R.C.M. 1947, is amended to read as follows:

"**60-145. Privilege and license tax — quarterly statements — penalties — drilling permit fees — oil and gas conservation moneys.** (1) For the purpose of providing funds for defraying the expenses of the operation and enforcement of this chapter, and expenses of the board, the operators and producers of oil and gas shall pay an assessment not to exceed the amounts set forth in the following schedule on each barrel of crude petroleum originally produced, saved and marketed or stored within the state, or exported from the state, and on each ten thousand (10,000) cubic feet of natural gas produced, saved and marketed or stored within the state, or exported therefrom:

(a) On leases on which wells are producing an average of twenty-five (25) barrels of crude petroleum per day, or less, an assessment not to exceed three-eighths of one cent (⅜¢) per barrel;

(b) On leases on which wells are producing an average of more than twenty-five (25) barrels of crude petroleum per day, an assessment not to exceed three-fourths of one cent (¾¢) per barrel; and,

(c) On wells producing, saving and marketing, storing, or exporting, natural gas, the operators and producers shall pay an assessment not to exceed two and one-half (2 ½) mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for less than fifteen cents (15¢) per thousand (1,000) cubic feet and an assessment not to exceed five (5)

HeinOnline -- 1977 Vol. I 759 1977

mills per ten thousand (10,000) cubic feet of natural gas where said gas is marketed for fifteen cents (15¢) or more per thousand (1,000) cubic feet.

(2) The board shall by order, without prior notice, or hearing, fix the amount of the assessments and may, from time to time, without prior notice or hearing, reduce or increase the amount thereof as, in its judgment, the expenses chargeable against the oil and gas conservation fund may require; however, the assessments fixed by the board may not exceed the limits prescribed in this section. The amounts of the assessments shall be a percentage factor (not to exceed one hundred percent (100%)) of the rates set forth in subsections (a), (b), and (c) above, and the same percentage factor shall be applied by the board in fixing the amount of the assessment on each barrel of crude production and each ten thousand (10,000) cubic feet of natural gas mentioned in those subsections. The producers of the crude petroleum and natural gas shall pay the assessments on each barrel of crude petroleum and each ten thousand (10,000) cubic feet of natural gas produced for themselves, as well as for others, including royalty holders, and the producers shall be reimbursed for the payments made on crude oil and natural gas produced for others in the same manner as they are reimbursed for net proceeds tax paid on crude petroleum or natural gas produced for others under section 84-6208.

(3) For the purposes of this section, a "lease" means that particularly described tract of land contained in a contract in writing whereby a person having a legal estate in the land so described conveys a portion of his interest to another, in consideration of a certain rental or other recompense or consideration. Further, for the purposes of this section, leases owned or operated by one (1) lessee which in whole or in part cover or affect an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both, or which are encompassed within or affected by one (1) particular unit agreement shall be considered as one (1) lease relative to payments to be made under this section.

(4) In addition to the above-mentioned privilege and license tax, a person, before commencing the drilling of an oil or gas well or stratigraphic test well or core hole, shall secure from the board a drilling permit and shall pay to the board therefor the following amounts: for each well whose estimated depth is thirty-five hundred (3500) feet or less, twenty-five dollars ($25); from thirty-five hundred and one (3501) feet to seven thousand (7,000) feet, seventy-five dollars ($75); seven thousand (7,000) feet and deeper, one hundred fifty dollars ($150).

(5) Each producer of crude petroleum in the state shall, not later than the last day of each of the calendar months of February, May, August and November, of each calendar year, render a true statement to the state treasurer of the state, and a duplicate thereof to the board, duly signed and sworn to, of all crude petroleum produced and marketed by him in this state during the preceding quarter, and containing such other information as the board may require, and shall accompany the statement with the payment to the state treasurer of the assessment provided for in subsection (1) of this section, for the period covered by the statement. Each producer of natural gas in the state shall render like statements to the state treasurer of all natural gas produced and marketed by him in this state, and shall make payment of the assessment provided for in

HeinOnline -- 1977 Vol. I 760 1977

subsection (1) of this section, at such times and for such periods as may be prescribed by rule of the board. Any producer carrying on business at more than one (1) place or location in this state may include all those places of business in one (1) statement. The assessment imposed herein shall be due at the time the oil or natural gas is marketed. Oil or natural gas shall be deemed marketed when it is removed from the property from which it was produced.

(6) An assessment not paid within the time specified is delinquent, and a penalty of twenty-five percent (25%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one percent (1%) per month from the date of delinquency until paid. Upon request of the board the attorney general shall commence and prosecute to final determination in any court of competent jurisdiction an action at law to collect the same.

(7) All money collected under this chapter shall be deposited in the earmarked revenue fund by the state treasurer of the state, and shall be used for the purpose of paying all expenses of the board and for no other purpose; all these moneys shall be used by the board subject to the approval of the department of administration and biennial appropriations by the legislature. *Income and interest from investment of the board's moneys in the earmarked revenue fund shall be credited to the board.*"

Approved April 4, 1977.

CHAPTER NO. 255

AN ACT TO ALLOW BUSINESS INVENTORIES TO BE REPORTED FOR PROPERTY TAX PURPOSES AS THEY ARE REPORTED TO THE INTERNAL REVENUE SERVICE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-422.2 that reads as follows:

84-422.2. Statement of purpose. The purpose of 84-422.2 and 84-422.3 is to reduce the paperwork burden imposed by government on the businessman by permitting the use of federal tax inventory reporting forms for the Montana property tax business inventory reports. The report to the assessor shall continue to be made as of each January 1. Thus, if the taxpayer is an individual proprietor filing on a calendar year basis, the schedule C form attached to his form 1040 will also be his property tax inventory report. However, if the taxpayer's taxable year ends on a date other than December 31, he will send the assessor a copy of the last preceding federal schedule he filed.

Section 2. There is a new R.C.M. section numbered 84-422.3 that reads as follows:

84-422.3. Business inventory reporting — copy of federal schedule. For the purposes of 84-409, a person required to report his business inventory as of January 1 to the department of revenue may satisfy this

HeinOnline -- 1977 Vol. I 761 1977

requirement by submitting a copy of the schedule he filed with the internal revenue service as of that day if the person reports his federal income taxes on a calendar year basis or a copy of the schedule he filed with the internal revenue service as of a date within the preceding year if the person reports his federal income taxes on other than a calendar year basis. In the latter instance, the business inventory indicated on the federal schedule shall be presumed to be the business inventory in the possession on January 1 of the person reporting it.

Approved April 4, 1977.

CHAPTER NO. 256

AN ACT TO ENCOURAGE EXPLORATION FOR NATURAL GAS BY EXEMPTING NEW GAS PRODUCTION CONSUMED IN MONTANA FROM ONE-HALF OF THE NET PROCEEDS TAX AND ALL THE SEVERANCE TAX FOR A 3-YEAR PERIOD; AMENDING SECTIONS 84-2202, 84-2207, 84-6204, AND 84-6208, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-2212 that reads as follows:

84-2212. Policy. It is the public policy of this state to promote a sufficient supply of natural gas to provide for the residents of this state and to lessen Montana's dependence on imported natural gas.

Section 2. There is a new R.C.M. section numbered 84-2213 that reads as follows:

84-2213. Exemption from net proceeds and severance tax. (1) Natural gas produced from a well 5000 feet deep or deeper on which drilling was commenced after December 31, 1976, but before December 31, 1980, is exempt from one-half the net proceeds tax imposed by chapter 62, Title 84 and all of the severance tax imposed by 84-2202 for 3 years if the gas produced from the well is

(a) placed into a natural gas distribution system for delivery to consumers after diligent completion of the well, and

(b) distributed by a natural gas distribution system serving only natural gas consumers a majority of which are within Montana, or at least 10,000 natural gas consumers within Montana. The 3 year exemption provided by this section shall begin when natural gas from a qualifying well is first placed into a natural gas distribution system.

(2) Notwithstanding the provisions of subsection (1), all reporting requirements under the net proceeds and severance taxes remain in effect.

Section 3. Section 84-2202, R.C.M. 1947, is amended to read as follows:

"84-2202. Oil or gas producers' severance tax — amount —

HeinOnline -- 1977 Vol. I 762 1977

exceptions. Every person engaging in or carrying on the business of producing, within this state, petroleum, or other mineral or crude oil, or natural gas or engaging in or carrying on the business of owning, controlling, managing, leasing or operating within this state any well or wells from which any merchantable or marketable petroleum or other mineral or crude oil or natural gas is extracted or produced, sufficient in quantity to justify the marketing of the same, must, *except as provided in 84-2213,* each year when engaged in or carrying on any such business in this state, pay to the state department of revenue, for the exclusive use and benefit of the state of Montana, a severance tax, computed at the following rates:

(a) Two and one-tenth per cent 2.1% of the total gross value of that portion of all the petroleum and other mineral or crude oil produced by such person from each lease or unit in the calendar quarter not in excess of an amount obtained by multiplying the number of producing wells on such lease or unit by four hundred fifty 450 barrels.

(b) Two and sixty-five hundredths per cent 2.65% of the total gross value of that portion of all the production of such person from each lease or unit in each calendar quarter in excess of 450 barrels multiplied by the number of producing wells on such lease or unit; but in determining the amount of such tax there shall be excluded from consideration all petroleum, or other crude or mineral oil produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such petroleum, crude or mineral oil; provided, however, that nothing in this act shall be construed as requiring laborers or employees, hired or employed by any person, to drill any oil well, or to work in or about any oil well, or prospect or explore for, or do any work for the purpose of developing any petroleum or other mineral or crude oil to pay such severance tax, nor shall any work be done, or the drilling of any well or wells, for the purpose of prospecting or exploring for petroleum or other mineral or crude oils, or for the purpose of developing same, be deemed to be engaging in or carrying on of any such business; provided, further, that in the doing of any such work, or in the drilling of any oil well, or in such prospecting, exploring or development work, any merchantable or marketable petroleum or other mineral or crude oil in excess of the quantity required by such person for carrying on such operation shall be produced sufficient in quantity to justify the marketing of the same, then such work, drilling, prospecting, exploring or development work shall be deemed to be the engaging in and carrying on of such business within this state within the meaning of this section.

(c) Two and sixty-five hundredths percent 2.65% of the total gross value of natural gas produced from each lease or unit, but in determining the amount of such tax there shall be excluded from consideration all gas produced and used by such person during such year in connection with his operations in prospecting for, developing and producing such gas, or petroleum, crude or mineral oil; and there shall also be excluded from consideration all gas recycled or reinjected into the ground.

(d) Every person required to pay such tax hereunder shall pay the same in full for his own account and for the account of each of the other owner or owners of the gross proceeds in value or in kind of all the marketable petroleum or other mineral or crude oil or natural gas

HeinOnline -- 1977 Vol. I 763 1977

extracted and produced, including owner or owners of working interest, royalty interest, overriding royalty interest, carried working interest, net proceeds interest, production payments and all other interest or interests owned or carved out of the total gross proceeds in value or in kind of such extracted marketable petroleum or other mineral or crude oil or natural gas, except that any of the aforesaid interests that are owned by the federal, state, county or municipal governments shall be exempt from taxation under this chapter. Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners will be deducted from any settlements under said lease or leases or division of proceeds orders or other contracts."

Section 4. Section 84-2207, R.C.M. 1947, is amended to read as follows:

"**84-2207. Statement to accompany payment — records — collection of tax — refunds.** (1) Each and every person must, within 60 days after the end of each following quarter, make out on forms prescribed by the department of revenue a statement showing the total number of barrels of merchantable or marketable petroleum, and other mineral or crude oil or cubic feet of natural gas produced or extracted by such person in the state of Montana during each month of such quarter and during the whole quarter, the average value thereof during each month and the total value thereof for the whole quarter, together with the total amount due to the state as severance taxes for such quarter; and must, within such 60 days deliver such statement and, *except as provided in 84-2213,* pay to the department of revenue the amount of the taxes shown by such statement to be due to the state of Montana for the quarter for which such statement is made. Such statement must be signed and verified by the oath of the individual or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this state of the association, corporation, joint-stock company or syndicate making the same. Any such person engaged in carrying on such business at more than one place in this state, or owning, leasing, controlling, or operating more than one oil or gas well in this state, may include all thereof in one statement. The department of revenue shall receive and file all such statements and collect and receive from such person making and filing a statement the amount of tax payable by such person, if any, as the same shall appear from the face of the statement.

(2) It shall be the duty of the department of revenue to examine each of such statements and compute the taxes thereon, and the amount so computed by the department of revenue shall be the taxes imposed, assessed against and payable by the taxpayer making the statement for the quarter for which the statement is filed. If the tax found to be due shall be greater than the amount paid, the excess shall be paid by the taxpayer to the department of revenue within 10 days after written notice of the amount of the deficiency shall be mailed by the department of revenue to such taxpayer. Provided, that if the tax imposed shall be less than the amount paid, the difference must be applied as a credit against tax liability for subsequent quarters, or refunded if there is no subsequent tax liability."

Section 5. Section 84-6204, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 764 1977

"**84-6204. Deduction of drilling costs and capital expenditures.** The state department of revenue in computing the deductions allowable for cost of drilling wells completed during the period and for other capital expenditures shall allow 10% of such cost each year for a period of 10 years, *beginning after the 3 year exemption period allowed in 84-2213 for qualified wells;* provided, however, the operator or producer may elect to amortize the cost over a period of 2 years if the well is less than 3,000 feet deep.

The department shall also compute and allow deductions for any capital expenditures made during the year 1953, where the same have not been previously allowed in computing such net proceeds under the laws of the state of Montana."

Section 6. Section 84-6208, R.C.M. 1947, is amended to read as follows:

"**84-6208. County assessors to compute taxes.** Immediately after the county board of commissioners has fixed tax levies on the second Monday in August, the county assessor shall compute the taxes on such net proceeds, *except as provided in 84-2213,* and royalty assessments, and shall deliver the book to the county treasurer on or before the fifteenth day of September. The county treasurer shall proceed to give full notice thereof to such operator and to collect the same in manner provided by law.

The operator or producer shall be liable for the payment of said taxes and same shall be payable by and shall be collected from such operators in the same manner and under the same penalties as provided for the collection of taxes upon net proceeds of mines; provided, however, that the operator may, at his option, withhold from the proceeds of royalty interest, either in kind or in money, an estimated amount of the tax to be paid by him upon such royalty or royalty interest, after such withholding any deviation between the estimated tax and the actual tax may be accounted for by adjusting subsequent withholdings from the proceeds of royalty interests."

Section 7. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 4, 1977.

CHAPTER NO. 257

AN ACT TO CLARIFY THE ACCRUAL CHARACTERISTICS OF THE CORPORATION LICENSE TAX; AMENDING SECTION 84-1501, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1501, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 765 1977

"84-1501. **Corporation license tax — organizations exempt therefrom — alternative tax based on gross sales.** The term corporation includes associations, joint-stock companies, common-law trusts and business trusts which do business in an organized capacity, and all other corporations whether created, organized or existing under and pursuant to the laws, agreements, or declarations of trust of any state, country, or the United States. Every corporation, except as hereinafter provided and except as provided in section 40-2821(5), R.C.M. 1947, engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state such percentage or percentages of its total net income for the preceding *taxable* year at the rate hereinafter set forth. In the case of corporations having income from business activity which is taxable both within and without this state, the license fee shall be measured by the net income derived from or attributable to Montana sources as determined under section 84-1503. *This tax is due and payable on the 15th day of the fifth month following the close of the taxable year of the corporation; however, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.*

The percentage of net income to be paid under this section shall be six and three-quarters per cent (6 ¾%) of all net income for the taxable period. The rate set forth in this act shall be effective for all taxable years ending on or after February 28, 1971. This rate is retroactive to and effective for all taxable years ending on or after February 28, 1971. Every corporation subject to taxation under this act shall, in any event, pay a minimum tax of not less than fifty dollars ($50).

Pursuant to the provisions of article III, section 2, of the Multistate Tax Compact (Title 84, chapter 67, R.C.M. 1947) every corporation deriving income from sources both within and without the state of Montana and required to file a return and whose only activity in Montana consists of making sales and which does not own or rent real estate or tangible personal property within Montana and whose annual gross volume of sales made in Montana during the taxable year does not exceed one hundred thousand dollars ($100,000), may elect to pay a tax of one-half of one percent (0.5%) of gross sales made in Montana during the taxable year. Such tax shall be in lieu of the tax otherwise imposed under this section. The gross volume of sales made in Montana during the taxable year shall be determined according to the provisions of article IV, sections 16 and 17, of the Multistate Tax Compact.

There shall not be taxed under this title any income received by any:

(a) Labor, agricultural or horticultural organization;

(b) Fraternal beneficiary, society, order or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system, and providing for the payment of life, sick, accident or other benefits to the members of such society, order or association or their dependents;

HeinOnline -- 1977 Vol. I 766 1977

(c) Cemetery company owned and operated exclusively for the benefit of its members;

(d) Corporation or association organized and operated exclusively for religious, charitable, scientific or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

(e) Business league, chamber of commerce, or board of trade, not organized for profit, and no part of the net income of which inures to the benefit of any private stockholder or individual;

(f) Civic league or organization not organized for profit, but operated exclusively for the promotion of social welfare;

(g) Club organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

(h) Farmers' or other mutual hail, cyclone or fire insurance company, mutual ditch or irrigation company, mutual or co-operative telephone company, or like organization of a purely local character, the income of which consists solely of assessments, dues and fees collected from members for the sole purpose of meeting its expenses;

(i) Any co-operative association or corporation engaged in the business of operating a rural electrification system or systems for the transmission or distribution of electrical energy on a co-operative basis;

(j) Corporations or associations organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is exempt from the tax imposed by this title;

(k) In determining the license fee to be paid under this act, there shall not be included any earnings derived from any public utility managed or operated by any subdivision of the state, or from the exercise of any governmental function."

Approved April 4, 1977.

CHAPTER NO. 258

AN ACT AMENDING SECTION 84-1835, R.C.M. 1947, TO PROVIDE FOR A 1% CREDIT TO SPECIAL FUEL DEALERS FOR SHRINKAGE, SPILLAGE, AND LEAKAGE OF SPECIAL FUELS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1835, R.C.M. 1947, is amended to read as follows:

"**84-1835. Returns and payments.** (a) Returns: For the purpose of determining the amount of his liability for the tax herein imposed, each

HeinOnline -- 1977 Vol. I 767 1977

special fuel dealer and each special fuel user shall file with the department, on forms prescribed by said department, a monthly tax return.

Upon annual application the department shall waive the filing of a monthly tax return of any special fuel user who establishes that such user's monthly tax liability is or will be ten dollars ($10) or less.

Such user shall make an annual report and return to the department, on forms prescribed by said department on or before the 25th day of January of each year hereafter. Should the department determine that a user filing annual returns as herein provided is delinquent in making reports and payments, it shall require such person to file monthly returns as herein provided. Such return, annual or monthly, shall contain a declaration by the person making the same, to the effect that the statements contained are true and are made under penalties of perjury, which declarations shall have the same force and effect as a verification. The return shall show such information as the department may reasonably require for the proper administration and enforcement of this act; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the department need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. The special fuel dealer or special fuel user shall file the return on or before the twenty-fifth (25th) day of the next succeeding calendar month following the monthly period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing, but not to exceed thirty (30) days.

Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail, shall be deemed filed and received by this state on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted, shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within thirty (30) days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

If any claim, statement, remittance or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States Post Office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was mailed to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

HeinOnline -- 1977 Vol. I 768 1977

If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date or as provided in this chapter.

(b) Computation: The tax imposed by this act shall be computed as follows: (1) with respect to special fuel used by the seller thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this act by the number of gallons of special fuel delivered or placed by him into the supply tank or tanks of a motor vehicle, (2) with respect to special fuel as to which the tax has not been paid to a special fuel dealer in this state and which has been consumed by the purchaser thereof as a special fuel user, by multiplying the tax rate per gallon provided in this act by the number of gallons of special fuel consumed by him in the propulsion of motor vehicles on the highways of this state.

(c) Payments: The monthly tax return shall be accompanied by remittance covering the tax due hereunder on account of the use as defined in 84-1831(f) of special fuels during the preceding month. *A licensed special fuel dealer is allowed a deduction equal to 1% of the first 6 cents per gallon of the taxes paid by the dealer under 84-1832.1 as an allowance for shrinkage, spillage, and evaporation of special fuels and other losses beyond the dealer's control.*

(d) Refusal or failure to file return or pay tax when due: In case of any special fuel dealer or special fuel user who refuses or fails to file a return required by this act within the time prescribed by subsection (a) of this section, there is hereby imposed a penalty of twenty-five dollars ($25) or a sum equal to twenty-five per cent (25%) of the tax due, whichever is greater, together with interest at the rate of one per cent (1%) on the tax due, for each calendar month or fraction thereof during which such refusal or failure continues; provided, however, that if any such special fuel dealer or special fuel user shall establish to the satisfaction of the department that his failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this subsection.

(e) Failure to pay tax: Where a special fuel dealer or a special fuel user files a return, but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid, interest at the rate of one per cent (1%) per month or fraction thereof, from the date such tax was due to the date of payment in full thereof.

(f) Deficiency: If it be determined by the department that the tax reported by any special fuel dealer or special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of one per cent (1%) per month or fraction thereof from the date the return was due.

(g) Determination if no return made: If any special fuel dealer or special fuel user, whether or not he is licensed as such, fails, neglects, or refuses to file a special fuel tax return when due, the department shall, on the basis of information available, to it, determine the tax liability

HeinOnline -- 1977 Vol. I 769 1977

of the special fuel dealer or special fuel user for the period during which no return was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (d) above.

An assessment made by the department pursuant to this subsection or to subsection (f) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(h) Fraudulent return: If any special fuel dealer or special fuel user shall file a false or fraudulent return with intent to evade the tax imposed by this act, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five per cent (25%) of the deficiency together with interest at one per cent (1%) per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment, in addition to all other penalties prescribed by law.

(i) Limitation: Except in the case of a fraudulent return or of neglect, or refusal to make a return, every deficiency shall be assessed under subsection (f) above within five (5) years after the twenty-fifth day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within five (5) years after the return is filed, whichever period expires the later."

Approved April 4, 1977.

CHAPTER NO. 259

AN ACT TO PROVIDE GROUP HEALTH INSURANCE COVERAGE FOR RETIRED PUBLIC EMPLOYEES AND THEIR SURVIVING SPOUSES AND CHILDREN; AMENDING SECTION 11-1024, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1024, R.C.M. 1947, is amended to read as follows:

"**11-1024. Group insurance for public employees and officers.** (1) All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities and towns shall upon approval by two-thirds vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents.

(2) The respective administrative and governing bodies shall *contribute $10 a month towards the insurance premium of* each officer, employee, and legislator. *For* employees defined in subsection *(5)* of this section and for members of the legislature, *the employer contribution* for insurance

may be an amount equal to 12 times the monthly rate, but may not exceed $120 a year. For employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but shall not be less than the amount specified in this section.

(3) An insurance contract or plan issued after June 30, 1977, under this section must contain provisions that:

(a) permit the member of a group who retires from active service under the appropriate retirement provisions provided by law to remain a member of the group until he becomes eligible for medicare under the federal Health Insurance for the Aged Act, 42 U.S.C. 1395, as amended, unless he is a participant in another group plan with substantially the same or greater benefits at an equivalent cost or unless he is employed and, by virtue of that employment, is eligible to participate in another group plan with substantially the same or greater benefits at an equivalent cost;

(b) permit the surviving spouse of a member to remain a member of the group as long as the spouse is eligible for retirement benefits accrued by the deceased member as provided by law unless the spouse is eligible for medicare under the federal Health Insurance for the Aged Act or unless the spouse has or is eligible for equivalent insurance coverage as provided in subsection (3)(a);

(c) permit the surviving children of a member to remain members of the group as long as they are eligible for retirement benefits accrued by the deceased member as provided by law unless they have equivalent coverage as provided in subsection (3)(a) or are eligible for insurance coverage by virtue of the employment of a surviving parent or legal guardian.

(4) A person electing to remain a member of the group under subsection (3) must pay the full premium for his coverage and for that of his covered dependents.

(5) In this section, as it applies to a person employed in the executive or legislative branches of state government, "employee" means:

(a) a permanent full-time employee defined in 59-1007.1;

(b) a part-time employee defined in 59-1007.1 who is scheduled to work at least twenty (20) hours per week;

(c) a person employed in a seasonal position defined in 59-1007.1 who is employed on a regular basis at least 8 months of the fiscal year."

Approved April 4, 1977.

CHAPTER NO. 260

AN ACT REVISING THE LAWS RELATING TO THE ASSESSMENT OF LIVESTOCK; AMENDING SECTIONS 84-406, 84-5201.1, 84-6010, 84-6011, 84-6013, AND 84-6014, R.C.M. 1947.

HeinOnline -- 1977 Vol. I 771 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-5201.3 that reads as follows:

84-5201.3. Definition. "Livestock" means cattle, sheep, horses, and mules.

Section 2. There is a new R.C.M. section numbered 84-5201.4 that reads as follows:

84-5201.4. Computation of estimated value of livestock. (1) The estimated value of livestock in a county on assessment day is computed by adding the assessed value of all livestock more than 9 months of age owned by the taxpayer in the county on the last day of each month since the last assessment day and dividing the sum by 12.

(2) On the last day of the year in which the estimate is made, the taxpayer must file a current statement setting forth the number of all livestock more than 9 months of age owned by him in each county on the last day of each month during the current tax year.

(3) The taxpayer is entitled to an adjustment of the estimated assessed value of livestock and recomputation of any tax levied and a refund of taxes paid if the amount paid is higher than the estimate.

(4) All remedies available to the taxpayer who owned livestock are available to him notwithstanding the fact that an estimated assessed value of livestock is submitted on or after the tax assessment day, subject to the end of the year adjustment.

Section 3. There is a new R.C.M. section numbered 84-5201.5 that reads as follows:

84-5201.5. Taxpayer not owning livestock on assessment day. (1) If a taxpayer does not own livestock on assessment day but owned livestock during the preceding tax year, he is not subject to taxes for the current tax year if he files a statement with the appropriate county assessor stating that he does not intend to own or acquire livestock during the tax year.

(2) If the taxpayer does acquire livestock during the year, he must file a current statement on the last day of the year and be subject to the provisions of 84-5201.4.

Section 4. There is a new R.C.M. section numbered 84-5201.6 that reads as follows:

84-5201.6. Procedure for correcting assessed value and receiving refunds for overpayments. (1) If the taxpayer owning livestock has filed an estimate pursuant to 84-5201.4(1) and a current statement pursuant to 84-5201.4(2) which shows that the number of livestock actually owned differs from the estimated number of livestock, the county assessor must, within 30 days, correct the assessed value of the livestock or provide the taxpayer with a written statement setting forth his reasons for not making the correction.

(2) If the taxpayer has already paid the tax levied or any portion, the

HeinOnline -- 1977 Vol. I 772 1977

county treasurer must, within 30 days, make a refund to the taxpayer of that portion of the tax improperly levied or provide the taxpayer with a written statement setting forth his reasons for not making the refund.

(3) Within 60 days of receipt of the written statement from the county assessor, the taxpayer may commence a lawsuit to correct the assessment or recover the tax paid in a court of competent jurisdiction against the county treasurer, the county or municipality on whose behalf the tax was levied or collected, or the state department of revenue which must be served with summons and a copy of the complaint.

(4) When a tax is paid in installments, the first installment, or a portion, may be the basis of the lawsuit, and if any subsequent installment becomes due before the lawsuit is finally determined, the subsequent installment, or portion, may be paid under protest and incorporated into the pending lawsuit with all rights, duties, and obligations determined by the result of the lawsuit.

(5) Payments and disposition of taxes paid under protest are governed by the provisions of 84-4502.

Section 5. Section 84-406, R.C.M. 1947, is amended to read as follows:

"84-406. Time of assessment — motor vehicles — mobile homes — livestock — snowmobiles. (1) The department of revenue or its agent must, between the first day of January and the second Monday of July in each year, ascertain the names of all taxable inhabitants, and assess all property in each county subject to taxation, except such as is required to be assessed by the state department of revenue, and must assess such property to the persons by whom it was owned or claimed, or in whose possession or control it was at 12 midnight of the first day of January next preceding. It must also ascertain and assess all mobile homes arriving in the county after 12 midnight of the first day of January next preceding. The procedure provided by this section shall not apply to:

(a) Motor vehicles which are required by subdivision (2) hereof to be assessed as of the first day of January, or upon their anniversary registration date; but no mistake in the name of the owner or supposed owner of real property renders the assessment thereof invalid.

(b) Livestock which are required by *84-5201.4* to be assessed on an average inventory basis in each county. Credits must be assessed as provided in section 84-101, subdivision 6.

(c) Property defined in section 53-642 as "special mobile equipment" which is subject to assessment of personal property taxes on the date that application is made for a special mobile equipment plate.

(d) Mobile homes held by a distributor or dealer of mobile homes as a part of his stock in trade.

(e) Campers which are required by subdivision 4 hereof to be assessed as of the first day of January.

(f) Snowmobiles which are required by subdivision 5 hereof to be assessed as of the first day of July.

HeinOnline -- 1977 Vol. I 773 1977

(2) The department or its agent must ascertain and assess all motor vehicles, except mobile homes, in each county subject to taxation as of January 1, or as of the anniversary registration date of those vehicles subject to sections 53-154 through 53-162, in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such vehicle was at 12 midnight of the first day of January or the anniversary registration date thereof, whichever is applicable, in each year. Provided that such tax shall not be assessed against motor vehicles which constitute inventory of motor vehicle dealers as of January 1, but said vehicles, and all other motor vehicles brought into the state subsequent to January 1, as motor vehicle dealer's inventory, shall be assessed to their respective purchasers as of the dates said vehicles are registered by said purchasers, and purchasers means and includes dealers who apply for registration or re-registration of motor vehicles, except as otherwise provided by section 32-3315. Goods, wares and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at full and true value as of the first day of January.

Except that this paragraph shall not apply to an applicant for registration or re-registration of a mobile home, nothing herein contained shall relieve the applicant for registration or re-registration of any other motor vehicle so assessed or subject to assessment of the duty of paying taxes thereon as a condition precedent to registration or re-registration in the event said taxes have not been paid by any prior applicant or owner in all cases where required to be paid.

(3) The department of revenue or its agent must ascertain and assess all campers in each county subject to taxation as of January 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such camper was, including dealers, at 12 midnight of the first day of January in each year.

(4) The department of revenue or its agent must ascertain and assess all snowmobiles in each county subject to taxation as of July 1 in each year, and the same shall be assessed to the persons by whom owned or claimed, or in whose possession or control such snowmobile was at 12 midnight on the first day of July in each year; provided, however, that snowmobiles which constitute inventory of snowmobile dealers shall be assessed to the dealers as of 12 midnight of the first day of January in each year; and further provided that all snowmobiles that have been assessed and for which taxes have been paid for the period of January 1, 1975 through December 31, 1975, shall be assessed for only six (6) months during the period July 1, 1975 through June 30, 1976."

Section 6. Section 84-5201.1, R.C.M. 1947, is amended to read as follows:

"**84-5201.1. Duty of owner to assist in assessment.** The owner of livestock as defined in *84-5201.3*, or his agent, at the time of assessment shall make and deliver to the state department of revenue or its agent in the county or counties where his livestock were located since the last assessment date a written statement, under oath, showing the different

HeinOnline -- 1977 Vol. I 774 1977

kinds of his livestock within the county or counties belonging to him or under his charge, with their marks and brands and showing the times during that period that his livestock were within the county or counties."

Section 7. Section 84-6010, R.C.M. 1947, is amended to read as follows:

"**84-6010. Law governing assessment, levy and collection.** All property mentioned in the preceding section shall be assessed at the same value as property of like kind and character and in the assessment, levy and collection of the tax shall be governed by the provisions of sections 84-4201 to 84-4211, inclusive, as the same exist or are amended, *except livestock taxation which is governed by Title 84, chapter 52.*"

Section 8. Section 84-6011, R.C.M. 1947, is amended to read as follows:

"**84-6011. Proration of tax on personal property coming into state after April first.** If such personal property is brought or driven or comes into any county before *the assessment date,* the tax shall be the full amount of the tax computed as provided above, but if brought, driven or coming into the county after *the assessment date,* the tax shall be prorated according to the ratio which the number of months *the property has its taxable situs in the county* bears to the total number of months in said year."

Section 9. Section 84-6013, R.C.M. 1947, is amended to read as follows:

"**84-6013. Collection of tax on livestock.** The department of revenue or its agent upon receipt of such letter or other information, that livestock has been brought into his county from outside of the state, after the first day of January in any year, shall immediately proceed under the provisions of *chapter 52.*"

Section 10. Section 84-6014, R.C.M. 1947, is amended to read as follows:

"**84-6014. Intention to move livestock from one county to another — notice — proration of tax.** If any owner of livestock driven into the state as hereinbefore provided intends to move said livestock from the county of entry to another county of this state for grazing purposes, he shall file with the department of revenue *and* its agent in the initial county *and in the county to which the livestock is to be moved* a notice to that effect, giving the number and kind of livestock and the brand thereon, and the time he intends to graze such livestock in the second county, and the department or its agent shall prorate the tax on such livestock in conformity with *84-6011.*"

Section 11. **Legislative intent as to transition.** When livestock are next assessed on January 1, 1978, the words "last assessment day" in 84-5201.4 mean January 1, 1977. 1977 taxes shall be computed on the average monthly inventory for the twelve months ending December 31, 1976.

Approved April 4, 1977.

HeinOnline -- 1977 Vol. I 775 1977

CHAPTER NO. 261

AN ACT TO RAISE THE PER CAPITA LICENSE FEE ON SHEEP; AMENDING SECTIONS 46-2102 AND 46-2104, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-2102, R.C.M. 1947, is amended to read as follows:

"**46-2102. County commissioners may require per capita license fee on sheep.** To defray the expense of such protection the board of county commissioners of any county shall have the power to require all owners or persons in possession of any sheep, coming one year old or over, in the county on the regular assessment date of each year to pay a license fee of not exceeding *50¢* per head of sheep so owned or possessed by him in the county; provided that all owners or persons in possession of any sheep, coming one year old or over, coming into the county after the regular assessment date and subject to taxation under the provisions of section 84-6008 shall also be subject to payment of the license fee herein prescribed. Upon the order of the board of county commissioners such license fees may be imposed by the entry thereof in the name of the licensee upon the property tax rolls of the county by the county assessor. Said license fees shall be payable to and collected by the county treasurer, and when so levied, shall be a lien upon the property, both real and personal of the licensee. In case the person against whom said license fee is levied owns no real estate against which said license fee is or may become a lien, then said license fee shall be payable immediately upon its levy and the treasurer shall collect the same in the manner provided by law for the collection of personal property taxes which are not a lien upon real estate. When collected, said fees shall be placed by the treasurer in the predatory animal control fund and the moneys in said fund shall be expended on order of the board of county commissioners of the county for predatory animal control only. The word "owners" or "persons" shall include natural persons, copartnerships, corporations, trusts and estates."

Section 2. Section 46-2104, R.C.M. 1947, is amended to read as follows:

"**46-2104. Duty of county commissioners — petition of sheep owners.** In conducting a predatory animal control program, the board of county commissioners shall give preference to recommendations for such program and its incidents as made by organized associations of sheep growers in the county. Upon petition of the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last preceding assessment, which petition shall be filed with the board of county commissioners on or before the first Monday in December in any year, such board shall establish the predatory animal control program, and cause said licenses to be secured and issued and the fees collected for the following year in such amount, not exceeding the limits of *50¢* per head of sheep as shown by said assessment rolls, as will defray

HeinOnline -- 1977 Vol. I 776 1977

the cost of administering the program so established. The license fee determined and set by the board, within said limits, shall remain in full force and effect from year to year without change, unless there is filed with the board a petition subscribed by the resident owners of at least 51% of the sheep in the county, as shown by the assessment rolls of the last assessment preceding the filing of the petition, for termination of the program and repeal of the license fee, in which event the program shall by order of the board of county commissioners be disestablished and the license fee shall not be further levied. If the resident owners of at least 51% of the sheep in the county either (a) petition for an increase in the license fee, subject always to the maximum limitation of 50¢ per head of sheep, or (b) petition for a decrease in the license fee then in force, the board of county commissioners shall upon receipt of any such petition fix a new license fee to continue from year to year and the program shall thereupon continue within the limits of the aggregate amount of the license fee as collected from year to year."

Approved April 4, 1977.

CHAPTER NO. 262

AN ACT TO AMEND SECTION 89-3504, R.C.M. 1947, TO CLEARLY AUTHORIZE A POLITICAL SUBDIVISION TO ADOPT LOCAL LAND-USE REGULATIONS IN DESIGNATED FLOODPLAINS AND FLOODWAYS AFTER THE STATUTORY 6-MONTH DEADLINE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-3504, R.C.M. 1947, is amended to read as follows:

"**89-3504. Program for delineation of floodplains and floodways — land-use regulations.** (1) (a) The department shall initiate a comprehensive program for the delineation of designated floodplains and designated floodways for every watercourse and drainway in the state. It shall make a study relating to the acquiring of flood data and may enter into arrangements with the United States geological survey, the United States army corps of engineers, or any other state or federal agency for such acquisition.

(b) Before the board establishes by order a designated floodplain or a designated floodway, the department shall consult with the affected political subdivisions. Consultation shall include but not be limited to the following:

(i) specifically requesting that the political subdivisions submit pertinent data concerning flood hazards, including flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as considered appropriate;

(ii) notifying local officials, including members of the county commis-

HeinOnline -- 1977 Vol. I 777 1977

sion, city council, and planning board of the progress of surveys, studies, and investigations and of proposed findings, along with information concerning data and methods employed in reaching such conclusions; and

(iii) encouraging local dissemination of information concerning surveys, studies, and investigations so that interested persons will have an opportunity to bring relevant data to the attention of the department.

(2) When sufficient data have been acquired by the department, the board shall establish, by order, after a public hearing, the designated floodplain within which a political subdivision may establish land-use regulation. When sufficient data have been acquired, the board shall establish, by order, after a public hearing, the designated floodway within which a political subdivision may establish land-use regulation. These designations shall be based upon reasonable hydrological certainty. When the designated floodplain or the designated floodway has been established, the department shall furnish this data to officials of the political subdivision having jurisdiction over those areas together with a map outlining the areas involved, a copy of this act, adopted rules of the board, and suggested minimum standards adopted by the board. These standards and rules shall reflect gradations in flood hazard based on criteria as outlined in 89-3507(2). In adopting these standards *and* rules, the board shall consider local input from the affected political subdivisions. The department shall record all designated floodplains or designated floodways established by the board in the office of the county clerk and recorder of each county in which those floodplains or floodways are found. The board may alter the floodplains or floodways at any later time, by order, after a public hearing if a *reevaluation* of the then available flood data *warrant* it. Notice of a hearing or order of the board establishing or altering the floodplains or floodways shall be given by publishing the notice once each week for 3 consecutive weeks in a legal newspaper published or of general circulation in the area involved, the last publication of which shall be not less than 10 days prior to the date set for the hearing or the effective date of the order.

(3) Upon transmittal of the floodplain information to officials of a political subdivision, the political subdivision has 6 months from the date of transmittal to adopt land-use regulations which meet or exceed the minimum standards of the board. If within the *6-month* period the political subdivision has failed to adopt the land-use regulations, the department shall enforce the minimum standards within the designated floodplain or the designated floodway as established by the board under subsection (2) of this section, and no artificial obstruction or nonconforming use *may* be established by any person within the designated floodplain or the designated floodway, unless specifically authorized by the board.

(4) A political subdivision which has failed to adopt land-use regulations which meet or exceed the minimum standards of the board within the 6-month period may subsequently adopt such regulations and, if approved by the board, they shall be effective within the designated floodplain or floodway and administered and enforced by the political subdivision.

(5) When necessary for compliance with federal flood insurance

HeinOnline -- 1977 Vol. I 778 1977

requirements, the board may shorten the *6-month* period upon notification to the political subdivision and publication of a notice thereof in a newspaper of general circulation in the affected area once a week for 3 consecutive weeks."

Approved April 4, 1977.

CHAPTER NO. 263

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO AUCTION SALES; RENUMBERING AND AMENDING SECTIONS 66-201 THROUGH 66-203, 66-203.1, 66-204 THROUGH 66-207, 66-211, 66-213, 66-216, 66-219, AND 66-230, R.C.M. 1947; AMENDING SECTION 87A-2-328, R.C.M. 1947; AND REPEALING SECTIONS 66-208, 66-209, 66-210, 66-212, 66-214, 66-215, 66-217, 66-218, AND 66-220 THROUGH 66-229, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-213, R.C.M. 1947, is renumbered 74-701 and is amended to read as follows:

"74-701. Sale by auction defined. A sale by auction is a sale by public outcry to the highest bidder on the spot."

Section 2. Section 87A-2-328, R.C.M. 1947, is renumbered 74-702 and is amended to read as follows:

"74-702. Sale by auction. (1) In a sale by auction *of* goods *by lot,* each lot is the subject of a separate sale.

(2) A sale by auction is complete when the auctioneer so announces by the fall of the hammer or other customary manner. Where a bid is made while the hammer is falling in acceptance of a prior bid the auctioneer may in his discretion reopen the bidding or declare the goods sold under the bid on which the hammer was falling.

(3) Such a sale is with reserve unless the goods are in explicit terms put up without reserve. In an auction with reserve the auctioneer may withdraw the goods at any time until he announces completion of the sale. In an auction without reserve, after the auctioneer calls for bids on an article or lot, that article or lot cannot be withdrawn unless no bid is made within a reasonable time. In either case a bidder may retract his bid until the auctioneer's announcement of completion of the sale, but a bidder's retraction does not revive any previous bid.

(4) If the auctioneer knowingly receives a bid on the seller's behalf or the seller makes or procures such a bid, and notice has not been given that liberty for such bidding is reserved, the buyer may at his option avoid the sale or take the goods at the price of the last good faith bid prior to the completion of the sale. This subsection *does* not apply to any bid at a forced sale."

HeinOnline -- 1977 Vol. I 779 1977

Section 3. Section 66-216, R.C.M. 1947, is renumbered 74-703 and is amended to read as follows:

"**74-703. Sale under written conditions.** When a sale by auction is made upon written or printed conditions, *those* conditions cannot be modified by any oral declaration of the auctioneer except *those* for his own protection."

Section 4. Section 66-219, R.C.M. 1947, is renumbered 74-704 and is amended to read as follows:

"**74-704. Auctioneer's memorandum of sale.** When property is sold by auction, an entry made by the auctioneer in his sale book, at the time of the sale, specifying the name of the person for whom he sells, the thing sold, the price, the terms of sale, and the name of the buyer, binds both the parties in the same manner as if made by themselves."

Section 5. Section 66-211, R.C.M. 1947, is renumbered 74-705 and is amended to read as follows:

"**74-705. Book of sales.** *(1)* Each auctioneer must keep a book *and* enter all sales showing the name of the owner of the goods sold, to whom sold, the amount paid, and the date of each sale.

(2) The book must be open for inspection *by* interested *persons during normal business hours.*"

Section 6. Section 66-201, R.C.M. 1947, is renumbered 74-706 and is amended to read as follows:

"**74-706. Auctioneer's authority from the seller.** An auctioneer, in the absence of special authority or usage, has authority from the seller only as follows:

1. *to* sell by public auction to the highest bidder;

2. *to* sell for cash only, except *for* articles usually sold on credit at auction;

3. *to* warrant *as an agent pursuant* to 2-130;

4. *to* prescribe reasonable rules and terms of sale;

5. *to* deliver the thing sold, upon payment of the price;

6. *to* collect the price; and

7. *to* do whatever else is necessary, proper, and usual, in the ordinary course of business, for effecting these purposes."

Section 7. Section 66-202, R.C.M. 1947, is renumbered 74-707 and is amended to read as follows:

"**74-707. Auctioneer's authority from the bidder.** An auctioneer has authority from a bidder at the auction, as well as from the seller, to bind both by a memorandum of *sale* as prescribed in *74-704.*"

Section 8. Section 66-203, R.C.M. 1947, is renumbered 74-708 and is amended to read as follows:

HeinOnline -- 1977 Vol. I 780 1977

"**74-708. Auctioneer — authority and bond.** Any citizen of this state may become an auctioneer and be authorized to sell real or personal property at public auction in any county in this state *after* giving a bond in accordance with the provisions of this chapter for the faithful performance of his duties."

Section 9. Section 66-203.1, R.C.M. 1947, is renumbered 74-709 and is amended to read as follows:

"**74-709. Reciprocal privileges to nonresident auctioneers.** The *residency* requirements required by *this* state for an auctioneer are waived for the citizens of any *other* state to the same extent that the home state of the applicant waives *residency* requirements for the citizens of *this* state."

Section 10. Section 66-204, R.C.M. 1947, is renumbered 74-710 and is amended to read as follows:

"**74-710. The bond — sureties, approval and filing.** *(1) Bond* must be *payable* to the state, with one or more sureties, in the sum of *$5,000,* and approved by the county clerk of the county in which the auctioneer resides, and filed in his office.

(2) If the auctioneer is not a resident, *the* bond shall be filed with the county clerk of the county of this state in which he carries on his principal auction business."

Section 11. Section 66-205, R.C.M. 1947, is renumbered 74-711 and is amended to read as follows:

"**74-711. Auctioneers ex efficio.** *(1)* In any county *without an* auctioneer, the sheriff or a constable thereof is ex officio auctioneer, and is permitted to sell any property at public auction.

(2) He is liable on his official bond *for any delinquency as the ex officio auctioneer.*"

Section 12. Section 66-206, R.C.M. 1947, is renumbered 74-712 and is amended to read as follows:

"**74-712. Assistant — who may act and when.** *(1) An* auctioneer, in *the event* of inability to attend an auction by reason of sickness, the performance of *a* duty imposed upon him by law, or during a temporary absence from the city or county within which he is auctioneer, may employ *an agent or employee* to hold *the* auction in his name and behalf.

(2) The employee *shall* file with the county clerk of the county an affidavit *swearing to* faithfully perform the duties of auctioneer.

(3) An auctioneer may employ a crier at any sale, for whose acts he shall be responsible."

Section 13. Section 66-207, R.C.M. 1947, is renumbered 74-713 and is amended to read as follows:

"**74-713. Auctioneers to designate one place of business — partners.** *(1) An auctioneer shall designate in writing with the county clerk one place at which he will conduct auctions within any city.*

HeinOnline -- 1977 Vol. I 781 1977

(2) He shall designate, in the same document, his partners, if any, in the business.

(3) He may not offer goods for sale at a place other than that designated unless the goods are in their original packages, are bulky and usually sold in warehouses, or are usually sold on public streets."

Section 14. There is a new R.C.M. section numbered 74-714 that reads as follows:

74-714. Penalty. A person convicted of violating a provision of this act shall be fined no more than $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. In addition he shall be liable for damages incurred by any aggrieved party by reason of such violation.

Section 15. There is a new R.C.M. section numbered 74-715 that reads as follows:

74-715. Enforcement. The provisions of this act shall be enforced by the department of business regulation and the county attorney of the county in which the violation occurred.

Section 16. Section 66-230, R.C.M. 1947, is renumbered 74-716 and is amended to read as follows:

"**74-716. Powers of cities and towns.** *Towns* and cities *may* tax, license, and regulate persons, firms, associations, corporations, *or other legal entities* engaging in or desiring to engage in public auctions and may require a license and charge a fee therefor. *Towns* and cities may provide penalties for violations of *the requirements.*"

Section 17. **Repealer.** Sections 66-208, 66-209, 66-210, 66-212, 66-214, 66-215, 66-217, 66-218, and 66-220 through 66-229, R.C.M. 1947, are repealed.

Approved April 4, 1977.

CHAPTER NO. 264

AN ACT TO AMEND SECTIONS 4-6-104, 94-5-609, AND 94-5-610, R.C.M. 1947, TO RAISE THE LEGAL AGE FOR CONSUMING OR POSSESSING ALCOHOLIC BEVERAGES TO NINETEEN AND PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE ELECTORS OF THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4-6-104, R.C.M. 1947, is amended to read as follows:

"**4-6-104. Age limit for sale of alcoholic beverages.** Except in the case of an alcoholic beverage given to a person under the age of *19* years by his parent or guardian for beverage or medicinal purposes or administered to him by his physician or dentist for medicinal purposes or sold to him by a vendor or druggist upon the prescription of a physician, no

HeinOnline -- 1977 Vol. I 782 1977

person shall sell, give, or otherwise supply an alcoholic beverage to any person under the age of *19* years or permit any person under that age to consume an alcoholic beverage."

Section 2. Section 94-5-609, R.C.M. 1947, is amended to read as follows:

"**94-5-609. Unlawful transactions with children.** (1) A person commits the offense of unlawful transactions with children if he knowingly:

(a) sells or gives explosives to a child under the age of majority except as authorized under appropriate city ordinances;

(b) sells or gives intoxicating substances *other than alcoholic beverages* to a child under the age of majority;

(c) sells or gives alcoholic beverages to a person under 19 years of age; or

(d) being a junk dealer, pawnbroker, or secondhand dealer he receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.

(2) A person convicted of the offense of unlawful transactions with children shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of unlawful transactions with children shall be fined not to exceed $1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 3. Section 94-5-610, R.C.M. 1947, is amended to read as follows:

"**94-5-610. Unlawful possession of intoxicating substance by children.** (1) A person *under* the age of *18 years* commits the offense of possession of intoxicating substance if he knowingly has in his possession an intoxicating substance *other than an alcoholic beverage. A* person *under* the age of *19 commits the offense of possession of an intoxicating substance if he knowingly has in his possession an alcoholic beverage, except that he* does not commit the offense when in the course of his employment *it is necessary to possess alcoholic beverages.*

(2) A person convicted of the offense of possessing an intoxicating substance shall be fined not to exceed $50 or be imprisoned in the county jail for any term not to exceed 10 days, or both."

Section 4. **Effective date.** Sections 1, 2, and 3 of this act, if approved by the electors of the state of Montana, are effective January 1, 1979.

Section 5. **Submission to electors.** The question of whether this act will become effective shall be submitted to the electors of the state of Montana at the general election to be held November 7, 1978, by printing on the ballot the full title, and the following:

☐ FOR raising the legal drinking age to 19.

☐ AGAINST raising the legal drinking age to 19.

Approved (Constitutional Amendment).

HeinOnline -- 1977 Vol. I 783 1977

CHAPTER NO. 265

AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO TRADE AND COMMERCE; AMENDING SECTIONS 15-2006, 66-209, 66-212, 66-221, 66-229, 84-2412, 85-105, 85-107, 85-407, 85-408, 85-409, 85-410, 87A-1-101, 87A-9-302, 87A-9-302.2, 87A-9-401, 87A-9-405, 87A-9-406, AND 93-2830, R.C.M. 1947; AND REPEALING SECTIONS 66-214, 66-215, 66-217, AND 66-218, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2006, R.C.M. 1947, is amended to read as follows:

"15-2006. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under 15-2014, unless he is registered under this *chapter.* It is unlawful for any person to transact business in this state as an investment adviser unless:

(a) he is so registered under this *chapter;*

(b) he is registered as a broker-dealer under this *chapter;* or

(c) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(2) A broker-dealer *or a* salesman, acting as *an agent* for an issuer, or acting as *an agent* for a broker-dealer in the *offer or* sale of securities for an issuer, or *an* investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner *prescribes* and payment of the fee prescribed in 15-2016. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least 1 year next prior to the date of application for registration. Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. *The* bond *shall* be in the sum of $5,000, payable to the state of Montana and conditioned upon the faithful compliance with the provisions of this *chapter*, and shall provide that upon failure to so comply, the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information the commissioner requires.

(4) If no denial order is in effect and no proceeding is pending under *subsection* (8) of this section, registration becomes effective at noon of the

HeinOnline -- 1977 Vol. I 784 1977

30th day after an application is filed. The commissioner may specify an earlier effective date, and he may by order defer the effective date for an additional 60 days. *The* effective day after the filing of any amendment shall be noon of the 30th day thereafter unless otherwise accelerated by the commissioner.

(5) Registration of a broker-dealer, salesman, or investment adviser shall be effective until March *1* following such registration and may be renewed. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(6) Registration of a broker-dealer, salesman, or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman, or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within 90 days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under 15-2013(1), as may be prescribed by the commissioner. All records so required shall be preserved for 3 years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special, or other examinations, within or without this state, by representatives of the commissioner, as the commissioner *considers* necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of this *chapter* or a predecessor *law* or any rule or order under this *chapter* or a predecessor *law*;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business or any felony;

HeinOnline -- 1977 Vol. I 785 1977

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past 5 years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman or the substantial equivalent of those terms as defined in this *chapter* or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but:

(i) the commissioner may not institute a revocation or suspension proceeding under this *subsection (f)* more than 1 year from the date of the order relied on; and

(ii) he may not enter any order under this *subsection (f)* on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this *subsection (h)* without a finding of insolvency as to the broker-dealer or investment adviser;

(i) has not complied with a condition imposed by the commissioner under *subsection* (8) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this *subsection (j)*, and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(9) Upon the entry of the order under *subsection* (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within 15 days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within 15 days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the

HeinOnline -- 1977 Vol. I 786 1977

commissioner, after notice of and opportunity for hearing, may affirm, modify, or vacate the order.

(10) If the commissioner finds that any registrant or applicant for registration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser, or salesman, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Section 2. Section 66-209, R.C.M. 1947, is amended to read as follows:

"**66-209. Power of city authorities.** The city council or other corresponding authority of each city may designate such place or places therein for *auction sales* as *it considers* expedient."

Section 3. Section 66-212, R.C.M. 1947, is amended to read as follows:

"**66-212. Commissions and penalty for overcharge.** No auctioneer *may* demand or receive a higher compensation for his services than a commission of *1%* on the amount of any sales, public or private, made by him, unless by virtue of a previous agreement in writing between him and the owner or consignee. Every auctioneer who violates this section forfeits to the party aggrieved *$250*, and must refund the excess of charge."

Section 4. Section 66-221, R.C.M. 1947, is amended to read as follows:

"**66-221. Definitions.** *(1)* The words "public auction sales" when used in this act, mean the offering for sale or selling of new goods, wares, or merchandise to the highest bidder or offering for sale or selling of new goods, wares, or merchandise at a high price and then offering the same at successive lower prices until a buyer is secured, in the manner defined and set out in 66-213 and *87A-2-328*.

(2) The words "new goods, wares, and merchandise", when used in this act, mean all goods, wares, and merchandise not previously sold at retail."

Section 5. Section 66-229, R.C.M. 1947, is amended to read as follows:

"**66-229. Exemptions.** The provisions of this act *do* not extend to:

(1) the sale at public auction of livestock, farm machinery, farm produce, or other items commonly sold at farm sales;

(2) auction sales *of new merchandise* by individuals who maintain an established retail sales place of business and inventory of goods in the county in which the sale is to be held;

(3) auction sales under the direction of any court or court officers as may be required by law;

(4) sales made to dealers by commercial travelers or selling agents in the usual course of business;

(5) a bona fide sale of goods, wares, and merchandise by sample for future delivery or by sales made by sheriffs, constables, or other public officers selling goods, wares, and merchandise according to law; *or*

HeinOnline -- 1977 Vol. I 787 1977

(6) bona fide assignees or receivers appointed in this state selling goods, wares, and merchandise for the benefit of creditors."

Section 6. Section 85-105, R.C.M. 1947, is amended to read as follows:

"**85-105. Penalties.** The penalty for forging, counterfeiting, or unlawful using of trade-marks is *as provided in 94-6-308 or 94-6-310, whichever is applicable.*"

Section 7. Section 85-107, R.C.M. 1947, is amended to read as follows:

"**85-107. Penalties.** Every person who violates the provisions of *85-106* is punishable as provided in *94-6-308 and 94-6-310.*"

Section 8. Section 85-407, R.C.M. 1947, is amended to read as follows:

"**85-407. Powers of receiver — proof of damages — jurisdiction.** *(1)* When a receiver is appointed by the court pursuant to this act, he has the power to sue for, collect, receive, and take into his possession all goods and chattels, rights and credits, moneys and effects, lands and tenements, books, records, documents, papers, choses in action, bills, notes, and property of every description derived by means of any practice declared to be illegal and prohibited by this act, including property with which such property has been mingled if it cannot be identified in kind because of such commingling, and to sell, convey, and assign the same and hold and dispose of the proceeds thereof under the direction of the court.

(2) Any person who has suffered damages as a result of the use *or* employment of any unlawful *practice* and submits proof to the satisfaction of the court that he has in fact been damaged may participate with general creditors in the distribution of the assets to the extent he has sustained out-of-pocket losses.

(3) In the case of a partnership or business entity, the receiver shall settle the estate and distribute the assets under the direction of the court.

(4) The court has jurisdiction of all questions arising in the proceedings and may make orders and judgments as may be required."

Section 9. Section 85-408, R.C.M. 1947, is amended to read as follows:

"**85-408. Damages — notice to public agencies — attorney fees — prior judgment as evidence.** (1) Any person who purchases or leases goods or services primarily for personal, family, or household purposes and thereby suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice declared unlawful by 85-402 may bring an individual but not a class action under *the* rules *of* civil procedure in the district court *of the county* in which the seller or lessor resides or has his principal place of business or is doing business to recover actual damages or $200, whichever is greater. The court may, in its discretion, award up to three times the actual damages sustained and may provide such equitable relief as it *considers* necessary or proper.

(2) Upon commencement of any action brought under subsection (1)

HeinOnline -- 1977 Vol. I 788 1977

of this section, the clerk of court shall mail a copy of the complaint or initial pleading to the department and the appropriate county attorney and, upon entry of any judgment or decree in the action, shall mail a copy of such judgment or decree to the department and the appropriate county attorney.

(3) In any action brought under this section, the court may award the prevailing party reasonable attorney fees incurred in prosecuting or defending the action.

(4) Any permanent injunction, judgment, or order of the court made under 85-405 shall be prima facie evidence in an action brought under this section that the respondent used or employed a method, act, or practice declared unlawful by 85-402."

Section 10. Section 85-409, R.C.M. 1947, is amended to read as follows:

"**85-409. Assurance of voluntary compliance.** In the administration of this act, the department may accept an assurance of voluntary compliance with respect to any method, act, or practice *considered* to be violative of the act from any person who has engaged or was about to engage in any such method, act, or practice. Any such assurance shall be in writing and be filed with and subject to the approval of *the* district court *of the county* in which the alleged violator resides or has his principal place of business or the district court of Lewis and Clark *County*. Assurance of voluntary compliance is not an admission of violation for any purpose. Matters thus closed may at any time be reopened by the department for further proceedings in the public interest, pursuant to 85-405."

Section 11. Section 85-410, R.C.M. 1947, is amended to read as follows:

"**85-410. Investigative demand on unlawful practices.** (1) When it appears to the department that the person has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, or when the department believes it to be in the public interest that an investigation should be made to ascertain whether a person in fact has engaged in, is engaging in, or is about to engage in any act or practice declared to be unlawful by this act, the department may execute in writing and cause to be served upon any person who is believed to have information, documentary material, or physical evidence relevant to the alleged or suspected violation, an investigative demand requiring such person to furnish, under oath or otherwise, a report in writing setting forth the relevant facts and circumstances of which he has knowledge, or to appear and testify or produce relevant documentary material or physical evidence for examination, at such reasonable time and place as may be stated in the investigative demand, concerning the advertisement, sale, or offering for sale of any goods or services or the conduct of any trade or commerce that is the subject matter of the investigation.

(2) At any time before the return date specified in an investigative demand or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date or to modify or set aside the demand, stating good cause, may be filed in the district court

HeinOnline -- 1977 Vol. I 789 1977

of the county in which the person served with the demand resides or has his principal place of business or in the district court of Lewis and Clark *County.*"

Section 12. Section 87A-1-101, R.C.M. 1947, is amended to read as follows:

"**87A-1-101. Short title.** *(1)* This act shall be known and may be cited as Uniform Commercial Code.

(2) As used in chapters 1 through 9 of this title "code" means "Uniform Commercial Code" unless the context indicates otherwise."

Section 13. Section 87A-9-302, R.C.M. 1947, is amended to read as follows:

"**87A-9-302. When filing is required to perfect security interest — security interests to which filing provisions of this chapter do not apply.** (1) A financing statement must be filed to perfect all security interests except the following:

(a) a security interest in collateral in possession of the secured party under 87A-9-305;

(b) a security interest temporarily perfected in instruments or documents without delivery under 87A-9-304 or in proceeds for a 10-day period under 87A-9-306;

(c) a purchase money security interest in farm equipment having a purchase price not in excess of $2,500; but filing is required for a fixture under 87A-9-313 or for a motor vehicle required to be licensed;

(d) a purchase money security interest in consumer goods; but filing is required for a fixture under 87A-9-313 or for a motor vehicle required to be licensed;

(e) an assignment of accounts or contract rights which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts or contract rights of the assignor;

(f) a security interest of a collecting bank (87A-4-208) or arising under the *chapter* on *sales* or covered in subsection (3) of this section.

(2) If a secured party assigns a perfected security interest, no filing under this chapter is required in order to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

(3) *Except for financing statements filed pursuant to 87A-9-302.2, the* filing provisions of this chapter do not apply to a security interest in property subject to a statute*:*

(a) of the United States which provides for a national registration or filing of all security interests in such property; or

(b) of this state which provides for central filing of, or which requires indication on a certificate of title of, such security interests in such property.

HeinOnline -- 1977 Vol. I 790 1977

(4) *Except for financing statements filed pursuant to 87A-9-302.2, a* security interest in property covered by a statute described in subsection (3) can be perfected only by registration or filing under that statute or by indication of the security interest on a certificate of title or a duplicate thereof by a public official."

Section 14. Section 87A-9-302.2, R.C.M. 1947, is amended to read as follows:

"**87A-9-302.2. Utility financing statement — place of filing — contents — perfection of security interest.** *(1)* If filing is required under the Uniform Commercial Code, the proper place to file in order to perfect a security interest in personal property or fixtures of a transmitting utility or other corporation covered hereby is in the office of the secretary of state.

(2) When the financing statement covers goods of a transmitting utility which are or are to become fixtures, no description of the real estate concerned is required.

(3) A security interest in rolling stock of a transmitting utility may be perfected either as provided in section 20(c) of the Interstate Commerce Act or by filing a financing statement pursuant to subsection *(1)*."

Section 15. Section 87A-9-401, R.C.M. 1947, is amended to read as follows:

"**87A-9-401. Place of filing — erroneous filing — removal of collateral.** (1) *Except for financing statements filed pursuant to 87A-9-302.2, the* proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts, contract rights, or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the county clerk and recorder in the county of the debtor's residence or if the debtor is not a resident of this state then in the office of the county clerk and recorder in the county where the goods are kept, and in addition when the collateral is crops in the office of the county clerk and recorder in the county where the land on which the crops are growing or to be grown is located;

(b) when the collateral is goods which at the time the security interest attaches are or are to become fixtures, then in the office where a mortgage on the real estate concerned would be filed or recorded;

(c) in all other cases, in the office of the secretary of state.

(2) A filing which is made in good faith in an improper place or not in all of the places required by this section is nevertheless effective with regard to any collateral as to which the filing complied with the requirements of this chapter and is also effective with regard to collateral covered by the financing statement against any person who has knowledge of the contents of such financing statement.

(3) A filing which is made in the proper place in this state continues

HeinOnline -- 1977 Vol. I 791 1977

effective even though the debtor's residence or place of business or the location of the collateral or its use, whichever controlled the original filing, is thereafter changed.

(4) If collateral is brought into this state from another jurisdiction, the rules stated in 87A-9-103 determine whether filing is necessary in this state."

Section 16. Section 87A-9-405, R.C.M. 1947, is amended to read as follows:

"**87A-9-405. Assignment of security interest — duties of filing officer — fees.** (1) A financing statement may disclose an assignment of a security interest in the collateral described in the statement by indication in the statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the statement. Either the original secured party or the assignee may sign this statement as the secured party. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in 87A-9-403(4). If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be $15. In all other cases the uniform fee for filing, indexing, and furnishing filing data for a financing statement so indicating an assignment shall be $2.

(2) A secured party may assign of record all or a part of his rights under a financing statement by the filing of a separate written statement of assignment signed by the secured party of record and setting forth the name of the secured party of record and the debtor, the file number and the date of filing of the financing statement, the name and address of the assignee, *and except as provided in 87A-9-302.2(b),* a description of the collateral assigned. A copy of the assignment is sufficient as a separate statement if it complies with the preceding sentence. On presentation to the filing officer of such a separate statement, the filing officer shall mark such separate statement with the date and hour of the filing. He shall note the assignment on the index of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of assignment must contain a reference to the document number of such original or continuation statement and must be indexed in accordance with the requirements applicable to assignments of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing, indexing, and furnishing filing data about such a separate statement of assignment shall be $15. In all other cases the uniform fee for filing, indexing, and furnishing filing data about such a separate statement of assignment shall be $2.

(3) After the disclosure or filing of an assignment under this section, the assignee is the secured party of record."

Section 17. Section 87A-9-406, R.C.M. 1947, is amended to read as follows:

"**87A-9-406. Release of collateral — duties of filing officer — fees.** A secured party of record may by his signed statement release all or a

HeinOnline -- 1977 Vol. I 792 1977

part of any collateral described in a filed financing statement. The statement of release is sufficient if it contains *a* description of the collateral being released *(except as provided in 87A-9-302.2(b))*, the name and address of the debtor, the name and address of the secured party, and the file number of the financing statement. Upon presentation of such a statement to the filing officer he shall mark the statement with the hour and date of filing and shall note the same upon the margin of the index of the filing of the financing statement. If the original financing statement or any continuation statement has been indexed in the records relating to real estate mortgages, the statement of release must contain a reference to the document number of such original or continuation statement, and must be indexed in accordance with the requirement applicable to release of mortgages. If the collateral is equipment or rolling stock of railroads or street railways, the fee for filing and noting such a statement of release shall be $15. In all other cases the uniform fee for filing and noting such a statement of release shall be $2."

Section 18. Section 93-2830, R.C.M. 1947, is amended to read as follows:

"**93-2830. Who may be sued on overdue negotiable instruments — transfer.** A holder of overdue bills of exchange and promissory notes, *as described in 87A-3-104* may sue all the parties thereto collectively or severally, but if any of the parties thereto who are not primarily liable for the payment tender the amount of principal, interest, and costs thereon, *the holder* shall transfer the paper. *If* a judgment be rendered thereon, *the holder* shall assign the judgment to such party so making the tender, and in case of refusal he may be compelled to do so by summary proceedings *instituted* for that purpose in the district court of the district in which he *resides*."

Section 19. Section 84-2412, R.C.M. 1947, is amended to read as follows:

"**84-2412. Employment of help — disposal of license money.** The department of revenue *may* employ such clerical and field assistance as may be found necessary to carry out and administer the provisions of this act. All money collected under the provisions of this act shall be paid into the state treasury, with $5 of the fee collected from each store license sold credited to an earmarked revenue fund for administration of *Title 51, chapter 1,* by the department of business regulation and the rest to the credit of the general fund."

Section 20. **Repealer.** Sections 66-214, 66-215, 66-217, and 66-218, R.C.M. 1947, are repealed.

Approved April 5, 1977.

CHAPTER NO. 266

AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF LAWS RELATING TO EDUCATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5607, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 793 1977

"**75-5607. Board of public education — powers and duties.** The board of *public* education shall:

(1) effect an orderly and uniform system *for* teacher certification and for the issuance of an emergency authorization of employment by adopting the policies prescribed by 75-6002 and 75-6011;

(2) consider the suspension or revocation of teacher certificates and appeals from the denial of teacher certification in accordance with the provisions of 75-6010;

(3) administer and order the distribution of state equalization aid in accordance with the provisions of 75-6917;

(4) adopt and enforce policies to provide uniform standards and regulations for the design, construction, and operation of school buses in accordance with the provisions of 75-7004;

(5) approve or disapprove a reduction of the number of hours in a district's school day in accordance with the provisions of 75-7403;

(6) adopt policies prescribing the conditions when school may be conducted on Saturday and the types of pupil-instruction-related days and approval procedure for such days in accordance with the provisions of 75-7404 and 75-7405;

(7) adopt standards of accreditation and establish the accreditation status of every school in accordance with the provisions of 75-7501 and 75-7502;

(8) approve or disapprove educational media selected by the superintendent of public instruction for the educational media library in accordance with the provisions of 75-7511;

(9) as the governing board of the state of Montana for vocational education, adopt the policies prescribed by and in accordance with the provisions of 75-7702;

(10) consider applications for *postsecondary* vocational-technical center designation in accordance with the provisions of 75-7707;

(11) for the purposes of *postsecondary* vocational-technical centers, approve or disapprove programs and budgets, direct the distribution of moneys in support of such budgets, determine tuition rates and fees, *and* enter into lease agreements or real property purchases in accordance with the *postsecondary* vocational-technical center provisions of the vocational education chapter of this *title*;

(12) adopt policies for the conduct of special education in accordance with the provisions of 75-7802;

(13) perform any other duty prescribed from time to time by this *title* or any other act of the legislature."

HeinOnline -- 1977 Vol. I 794 1977

Section 2. There is a new R.C.M. section numbered 75-5607.1 that reads as follows:

75-5607.1. Regents to supervise community college districts. The board of regents of higher education shall:

(1) supervise community college districts in accordance with the provisions of 75-8103 and 75-8119; and

(2) call an election, determine the results of the election, and order and implement the organization of a community college district in accordance with the community college districts chapter of this title.

Section 3. Section 75-5707, R.C.M. 1947, is amended to read as follows:

"**75-5707. Supervision of schools.** The superintendent of public instruction *has* the general supervision of the public schools and districts of the state, and he shall perform the following duties or acts in implementing and enforcing the provisions of this *title*:

(1) resolve any controversy resulting from the proration of joint costs by a joint board of trustees under the provisions of 75-5929;

(2) issue, renew, or deny teacher certification and emergency authorizations of employment and give notice of teacher certification suspension or revocation proceedings to be conducted by the board of *public* education in accordance with the provisions of the teacher certification chapter of this *title*;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of 75-6318;

(4) serve on the teachers' retirement board in accordance with the provisions of *82A-212*;

(5) prescribe absentee voting forms and rules in accordance with the provisions of 75-6416;

(6) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of 75-6528;

(7) approve or disapprove the opening or reopening of a school in accordance with the provisions of 75-6602, 75-6603, 75-6604, or 75-6605;

(8) approve or disapprove school isolation within the limitations prescribed by 75-6608;

(9) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of 75-6702 and prescribe the school budget format in accordance with the provisions of 75-6704 and 75-7209;

(10) establish a system of communication for calculating joint district revenues in accordance with the provisions of 75-6721;

(11) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in 75-6725 and publish rules for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of 75-6729;

HeinOnline -- 1977 Vol. I 795 1977

(12) generally supervise the school financial administration provisions as prescribed by 75-6802;

(13) appoint the responsible county officials for the performance of the budgeting duties and the financial administration duties for a joint district in accordance with the provisions of 75-6720 and 75-6803;

(14) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of 75-6806*(5)* and the annual report forms to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of 75-5809;

(15) approve, disapprove, or adjust an increase of the average number belonging (ANB) in accordance with the provisions of 75-6903 and 75-6904;

(16) distribute state equalization aid in support of the foundation program in accordance with the provisions of 75-6908, 75-6918, and 75-6919;

(17) estimate the *statewide* equalization level for the foundation program in accordance with the provisions of 75-6920;

(18) distribute state impact aid in accordance with the provisions of 75-6925;

(19) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of 75-7005;

(20) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of 75-7207;

(21) request, accept, deposit, and expend federal moneys in accordance with the provisions of 75-7303;

(22) authorize the use of federal moneys for the support of an interlocal *cooperative* agreement in accordance with the provisions of 75-7306 and 75-7307;

(23) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of 75-7308;

(24) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of 75-7404 and 75-7405;

(25) recommend standards of accreditation for all schools to the board of *public* education and evaluate compliance with such standards and recommend accreditation status of every school to the board of *public* education in accordance with the provisions of 75-7501 and 75-7502;

(26) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of 75-7505 and 75-7506;

(27) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of 75-7511;

HeinOnline -- 1977 Vol. I 796 1977

(28) license textbook dealers *and* initiate prosecution of textbook dealers violating the law in accordance with the provisions of the textbooks chapter of this *title*;

(29) administer and perform the duties as the executive officer of the board of *public* education for vocational education in accordance with the provisions of 75-7703;

(30) consider applications for the designation of a *postsecondary* vocational-technical center in accordance with the provisions of 75-7707;

(31) establish a fund for the handling of *postsecondary* vocational-technical center fees in accordance with the provisions of 75-7714;

(32) supervise and *coordinate* the conduct of special education in the state in accordance with the provisions of 75-7803;

(33) administer the traffic education program in accordance with the provisions of 75-7904;

(34) administer the school food services program in accordance with the provisions of 75-8002, 75-8003, and 75-8004;

(35) review school building plans and specifications in accordance with the provisions of 75-8206;

(36) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of 75-8310; and

(37) perform any other duty prescribed from time to time by this *title*, any other act of the legislature, or the policies of the board of *public* education."

Section 4. Section 75-5805, R.C.M. 1947, is amended to read as follows:

"**75-5805. County superintendent — powers and duties.** The county superintendent *has* general supervision of the schools of the county within the limitations prescribed by this *title* and shall perform the following duties or acts:

(1) determine, establish, and *reestablish* trustee nominating districts and fill additional trustee position vacancies in accordance with the provisions of 75-5903, 75-5904, and 75-5905;

(2) administer and file the oaths of members of the *boards of* trustees of the districts in his county in accordance with the provisions of 75-5916;

(3) fill by appointment any trustee position vacancies when required under the provisions of 75-5918;

(4) register the teacher certificate or emergency authorization of employment of any person employed in the county as a teacher, principal, or district superintendent in accordance with the provisions of 75-6106;

(5) act on each tuition application submitted to him in accordance with the provisions of 75-6313, 75-6314, 75-6315, and 75-6316 and transmit the tuition information required by 75-6317;

HeinOnline -- 1977 Vol. I 797 1977

(6) file a copy of the audit report for a district in accordance with the provisions of 75-6807;

(7) classify districts in accordance with the provisions of 75-6503;

(8) keep a transcript and reconcile the district boundaries of the county in accordance with the provisions of 75-6504;

(9) fulfill all responsibilities assigned to him under the provisions of this *title* regulating the organization, alteration, or abandonment of districts;

(10) act on any unification proposition and, if approved, establish additional trustee nominating districts in accordance with 75-6538 and 75-6539;

(11) estimate the average number belonging (ANB) of an opening school in accordance with the provisions of 75-6602, 75-6603, 75-6604, or 75-6606;

(12) process and when required, act on school isolation applications in accordance with the provisions of 75-6608;

(13) complete the budgets, compute the budgeted revenues and tax levies, give notices of the budget meetings, file final and emergency budgets, and fulfill such other responsibilities assigned to him under the provisions of this *title* regulating school budgeting systems;

(14) submit an annual financial report to the superintendent of public instruction in accordance with the provisions of 75-6804;

(15) quarterly, unless otherwise provided by law, order the county treasurer to apportion state moneys, county school moneys, and any other school moneys subject to apportionment in accordance with the provisions of *75-6805,* 75-6909, 75-6914, 75-6919, 75-6921, 75-7022, *or* 75-7023;

(16) act on any request to transfer average number belonging (ANB) in accordance with the provisions of subsection (3) of 75-6903;

(17) calculate the estimated budgeted general fund sources of revenue in accordance with the provisions of 75-6911 and 75-6920 and the other general fund revenue provisions of the general fund chapter of this *title*;

(18) compute the revenues and the district and county levy requirements for each fund included on each district's final budget and report such computations to the board of county commissioners in accordance with the provisions of the general fund, transportation, bonds, and other school funds chapters of this *title*;

(19) file and forward bus driver certifications, transportation contracts, and state transportation reimbursement claims in accordance with the provisions of 75-7003, 75-7020, or 75-7022;

(20) for districts which do not employ a district superintendent or principal, recommend library book and textbook selections in accordance with the provisions of 75-7519 or 75-7603;

HeinOnline -- 1977 Vol. I 798 1977

(21) notify the superintendent of public instruction of a textbook dealer's activities when required under the provisions of 75-7607 and otherwise comply with the textbook dealer provisions of this *title*;

(22) act on district requests to allocate federal moneys for indigent children for school food services in accordance with the provisions of 75-8006; and

(23) perform any other duty prescribed from time to time by this *title*, any other act of the legislature, the policies of the board of *public* education, or the rules of the superintendent of public instruction."

Section 5. Section 75-5918, R.C.M. 1947, is amended to read as follows:

"**75-5918. Filling vacated trustee position, appointee qualification, and term of office.** *(1)* Whenever a trustee position becomes vacant in any district except a *third-class* district, the remaining members of the trustees shall declare such position vacant and they shall appoint, in writing, a competent person as a successor. The trustees shall notify the appointee and the county superintendent of such appointment.

(2) Whenever a trustee position becomes vacant in a *third-class* district, the remaining members of the trustees shall declare such position vacant and notify the county superintendent of the vacancy. The county superintendent shall appoint, in writing, a competent person as a successor and notify such person of his appointment.

(3) Any person who has been appointed to a trustee position shall qualify by completing and filing an oath of office with the county superintendent *within* 15 days after receiving notice of his appointment. Failure to file the oath of office shall constitute a continuation of the trustee position vacancy which shall be filled under the provisions of this section.

(4) Any person assuming a trustee position under the provisions of this section shall serve until the next regular school election and his successor has qualified."

Section 6. Section 75-5932, R.C.M. 1947, is amended to read as follows:

"**75-5932. General powers and duties and record of acts.** *(1)* The trustees of each district shall prescribe and enforce policies for the government of the district. In order to provide a comprehensive system of governing the district, the trustees shall:

(a) adopt the policies required by this title; and

(b) adopt policies to implement or administer the requirements of the general law, this *title*, the policies of the board of *public* education, *and* the rules of the superintendent of public instruction.

(2) The trustees shall keep a full and permanent record of all adopted policies and all other acts of the trustees. Minutes of each regular and special board meeting shall include wording of motions, voting records of each trustee present, and all other pertinent information, including a detailed statement of all expenditures of money, with the name of any

HeinOnline -- 1977 Vol. I 799 1977

person or business to whom payment is made, and showing the service rendered or goods furnished. A written copy of the minutes shall be made available within 5 working days following the approval of the minutes by the board at a cost of no more than *15* cents *a* page to be paid by those who request such a copy. One free copy of the minutes shall be provided to the local press within 5 working days following the approval of the minutes by the board. The board shall approve the minutes of each special and regular meeting no later than 1 month following the meeting. If a board does not regularly meet on a monthly basis, a meeting of the trustees shall be called no later than 1 month following each regular meeting for the purpose of approving the minutes of the previous meeting."

Section 7. Section 75-5935, R.C.M. 1947, is amended to read as follows:

"**75-5935. Clerk of the district.** As provided in 75-5927, the trustees shall employ and appoint a clerk of the district. *The* clerk of the district *shall* attend all meetings of the trustees to keep an accurate and permanent record of all the proceedings of each meeting. If the clerk is not present at a meeting, the trustees shall have one of *their* members or a district employee act as clerk for *the* meeting and such person shall supply the clerk with a certified copy of the proceedings. The clerk of the district also shall be the custodian of all documents, records, and reports of the trustees. Unless the trustees provide otherwise, the clerk shall:

(1) keep an accurate and detailed accounting record of all receipts and expenditures of the district in accordance with the financial administration provisions of this *title; and*

(2) prepare the annual trustees' report required under the provisions of subsection (5) of 75-6806."

Section 8. Section 75-6304, R.C.M. 1947, is amended to read as follows:

"**75-6304. Compulsory attendance and excuses.** Any parent, guardian, or other person who is responsible for the care of any child who is 7 years of age or older prior to the first day of school in any school fiscal year, has not yet reached his *16th* birthday, *and* has not completed the work of the eighth grade shall cause the child to attend the school in which he is enrolled for the school term and each school day therein prescribed by the trustees of the district unless:

(1) the child has been excused under one of the conditions specified in 75-6303;

(2) the child is absent because of illness, bereavement, or other reason prescribed by the policies of the trustees; or

(3) the child has been suspended or expelled under the provisions of 75-6311."

Section 9. Section 75-6313, R.C.M. 1947, is amended to read as follows:

"**75-6313. Elementary tuition with mandatory approval.** *(1)* Any

HeinOnline -- 1977 Vol. I 800 1977

child may be enrolled in and attend an elementary school outside of the elementary district in which he resides when such elementary school is located:

(a) in any other district of the county of his residence;

(b) in a county adjoining his county of residence; or

(c) in a district of another state that is adjacent to the county of his residence.

(2) When a parent or guardian of a child wishes to have his child attend a school under the provisions of this section, he shall apply to the county superintendent of the county of his residence before July 1 of the school fiscal year for which he seeks approval except in those cases when substantial changes in circumstances occurred subsequently to justify later application. *The* application shall be made on a tuition agreement form supplied by the county superintendent and shall be approved, *before permission to enroll in and attend school outside of the district under the provisions of this section may be granted,* by:

(a) the trustees of the elementary district in which the child resides;

(b) the trustees of the district where the child wishes to attend school; and

(c) the county superintendent of the child's residence.

(3) In considering the approval of a tuition application, the tuition approval agents prescribed in this section shall approve such application for a resident child when:

(a) the child resides less than 3 miles from the school which he wishes to attend and more than 3 miles from any school of his resident elementary district;

(b) the child resides more than 3 miles from any school of his resident elementary district and such district does not provide transportation under the provisions of this *title*;

(c) the child resides more than 3 miles from any school of his resident elementary district, the resident district does not provide transportation under the provisions of this *title*, and school bus transportation is furnished by the district operating the school which he wishes to attend;

(d) the child is a member of a family who must send another child outside of the elementary district to attend high school and the child of elementary age may more conveniently attend an elementary school where the high school is located, provided *the* child resides more than 3 miles from an elementary school of the resident district or the parent must move to the elementary district where the high school is located in order to enroll the other child in high school; or

(e) the child has been declared by a court *of competent jurisdiction to be an abused, neglected, or dependent* child, as defined in *10-1301*, or a delinquent *youth*, as defined in *10-1203*, and has been ordered to be placed in a licensed child care institution which is approved by the department

HeinOnline -- 1977 Vol. I 801 1977

of *social and rehabilitation services* and as a result of the order the child is required to attend elementary school outside of the district of his residence. For purposes of this subsection the prescribed geographic relationship of the receiving district to the district of residence *does* not apply.

(4) The trustees of the district where the school to be attended is located *may* disapprove a tuition agreement that satisfies any of the mandatory approval conditions specified in subsections *(3)(a), (3)(b), (3)(c), (3)(d),* or *(3)(e)* above when they find that due to insufficient room and overcrowding the accreditation of the school would be adversely affected by the acceptance of the child. In the event of disapproval, the trustees shall so notify the parent in writing within 15 days of the first receipt of the application."

Section 10. Section 75-6410, R.C.M. 1947, is amended to read as follows:

"**75-6410. Qualifications of elector.** *(1) Except as provided in subsections (2) and (3), each* person is entitled to vote at school elections if he has *all of* the following qualifications:

(a) He has registered to vote with the county registrar as a resident in the school district in which he resides and proposes to vote in the manner provided by the general state election laws except in regard to the closure of elector registration as provided in 75-6413.

(b) He is 18 years of age or older.

(c) He has been a resident of Montana for at least 30 days.

(d) He is a citizen of the United States.

(2) No person convicted of a felony has the right to vote while he is serving a sentence in a penal institution.

(3) No person adjudicated to be *mentally incompetent* has the right to vote unless he has been restored to capacity as provided by law."

Section 11. Section 75-6412, R.C.M. 1947, is amended to read as follows:

"**75-6412. Elector challenges.** *(1)* An elector may challenge the qualifications of another elector under the provisions of 23-3015. Any person offering to vote in a school election may be challenged by any elector of the district on any of the grounds for challenge established in 23-3611. *The* challenge shall be determined in the same manner, using the same oath as provided in chapter 36 of Title 23.

(2) Any person who *has* been challenged under any of the provisions of this section and who *swears* or *affirms* falsely before any school election judge *is* guilty of *false swearing* and *is punishable as provided in 94-7-203.*"

Section 12. Section 75-6523, R.C.M. 1947, is amended to read as follows:

"**75-6523. Counterproposed high school district boundaries by electors and election.** *(1)* Whenever a high school boundary commission

HeinOnline -- 1977 Vol. I 802 1977

issues an order to change high school district boundary lines, 20% or more of the electors of any elementary district with territory affected by the high school boundary change who are qualified to vote under 75-6410 may protest the boundaries established by the order of the commission within 30 days after the date of *the* order. *The* protest shall be in the form of a petition addressed to the county superintendent and shall provide a *counterproposition* to the new high school boundaries established by the order of the commission for the disposition of the territory of the elementary district for high school districting purposes. The provisions of this section shall not be used in elementary districts that have approved high school boundaries under 75-6522.

(2) When the county superintendent receives a valid petition from an elementary district, he shall, within 10 days after the receipt of *the* petition, order the trustees of *the* elementary district to call an election to consider the high school boundary *counterproposition* described in *the* petition. The trustees shall call and conduct the election in the manner prescribed in this *title* for school elections. An elector who may vote on the proposition shall be qualified to vote under 75-6410. If a majority of the electors voting at the election approve the *counterproposition*, the high school boundaries described by the *counterproposition* shall be approved and the order of the high school boundary commission shall be amended to establish such high school boundaries. If a majority of the electors voting at *the* election disapprove the *counterproposition*, the order of the high school boundary commission shall be confirmed and shall be final."

Section 13. Section 75-6606, R.C.M. 1947, is amended to read as follows:

"75-6606. Budgeting and cost-sharing when junior high school operated by elementary district and high school district operating a county high school. *(1)* Whenever the opening of a junior high school is approved for the ensuing school fiscal year under 75-6605, the county superintendent shall estimate the average number belonging (ANB) after investigating the probable enrollment for the junior high school. The ANB determined by the county superintendent and the ANB actually realized in subsequent school fiscal years shall be applied under 75-6905 to prorate the maximum-general-fund-budget-without-a-voted-levy between the elementary and high school districts. Each district shall adopt its general fund budget on the basis of *the* prorated amount and shall finance its proportionate share of the cost of operating the junior high school.

(2) The cost of operating the junior high school shall be prorated between the elementary district and the high school district on the basis of the ratio that the number of pupils of their district is to the total enrollment of the junior high school."

Section 14. Section 75-6701, R.C.M. 1947, is amended to read as follows:

"75-6701. Application of budget system for districts. The school budgeting procedure and provisions of this *title* apply to elementary, high school and community college districts and to all funds requiring the adoption of a budget. Each district shall separately propose and adopt a budget in accordance with the requirements of this *title*."

HeinOnline -- 1977 Vol. I 803 1977

Section 15. Section 75-6702, R.C.M. 1947, is amended to read as follows:

"**75-6702. General supervision of school budgeting system.** The superintendent of public instruction *has* general supervision over the school budgeting procedure and provisions, *as they relate to elementary and high school districts,* prescribed by law and shall establish such *rules* as are necessary to secure compliance with the school budgeting laws."

Section 16. Section 75-6802, R.C.M. 1947, is amended to read as follows:

"**75-6802. Application of law and superintendent of public instruction supervision.** The school financial administration provisions of this *title* apply to all moneys of any *elementary or high school* district or any community college district, *except* the *extracurricular* moneys realized from pupil activities. The superintendent of public instruction *has* general *supervisory authority* over the school financial administration provisions, *as they relate to elementary and high school districts,* as prescribed by law and shall establish such rules as are necessary to secure compliance with the law."

Section 17. Section 75-6807, R.C.M. 1947, is amended to read as follows:

"**75-6807. Examination of district accounting records.** *(1)* The accounting records of all *districts* shall be audited annually by the *department of community affairs* in accordance with *82-4516.*

(2) Annually and at such other times as directed by the board of county commissioners or trustees, the county auditor, or the county treasurer if there is no county auditor, shall audit the accounting records of each third-class district that does not maintain a high school. Such district shall deliver all accounting records to the auditing county official no later than July *15* for the audit of the financial activity of the last completed school fiscal year. The auditing county official shall examine the accounting records, prepare an audit report, and shall:

(a) return the accounting records to the district no later than August *15;*

(b) send a copy of the audit report to the chairman of the trustees; and

(c) file copies of the audit report with the county superintendent and the county clerk and recorder."

Section 18. Section 75-6808, R.C.M. 1947, is amended to read as follows:

"**75-6808. Pecuniary interests, letting contracts, and calling for bids under certain circumstances.** *(1)* It *is* unlawful for any trustee to*:*

(a) have any pecuniary interest, either directly or indirectly, in *any contract for* the erection of any school building or for warming, ventilating, furnishing, or repairing the same*;* or

HeinOnline -- 1977 Vol. I 804 1977

(b) be in any manner connected with the furnishing of supplies for the maintenance and operation of the schools; or

(c) be employed in any capacity by the school district of which he is trustee.

(2) Whenever the estimated cost of any building, furnishing, repairing, or other work for the benefit of the district or purchasing of supplies for the district exceeds the sum of $4,000, the work done or the purchase made shall be by contract. Each such contract must be let to the lowest responsible bidder after advertisement for bids. Such advertisement shall be published in the newspaper which will give notice to the largest number of people of the district as determined by the trustees. Such advertisement shall be made once each week for 2 consecutive weeks and the second publication shall be made not less than 5 days or more than 12 days before consideration of bids. A contract not let pursuant to this section shall be void.

(3) Whenever bidding is required, the trustees shall award the contract to the lowest responsible bidder, except that the trustees may reject any or all bids.

(4) With regard to contracting for work or supplies, the board of trustees of a community college district are subject to 75-8118."

Section 19. Section 75-6914, R.C.M. 1947, is amended to read as follows:

"**75-6914. Apportionment of county equalization moneys by county superintendent.** The county superintendent shall separately apportion the revenues deposited in the basic county tax account and the revenues deposited in the basic special tax for high schools account to the several districts of the county on a quarterly basis. The apportionments shall be known as "county equalization moneys". Before the county superintendent makes the quarterly apportionments, he shall:

(1) deduct from the revenues available in the basic county tax account the amount required for the quarter to pay the county's obligation for elementary transportation reimbursements; and

(2) deduct from the revenues available in the basic special tax for high schools account the amount required for the quarter to pay the county's obligation for high school out-of-county tuition."

Section 20. Section 75-7016, R.C.M. 1947, is amended to read as follows:

"**75-7016. Determining residence.** When the residence of an eligible transportee is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, the residence shall be established on the basis of the general state residence law as provided in 83-303. Whenever any district or county is determined to be responsible for paying tuition for any pupil in accordance with 75-6313, 75-6314, or 75-6316, the residence of the pupil for tuition purposes is the residence of the pupil for transportation purposes."

HeinOnline -- 1977 Vol. I 805 1977

Section 21. Section 75-7017, R.C.M. 1947, is amended to read as follows:

"**75-7017. Determination of mileage distances.** When the mileage *distance* that transportation services are to be provided is a matter of controversy and is an issue before a board of trustees, a county transportation committee, or the superintendent of public instruction, *the* mileage shall be established on the following basis:

(1) The distance in mileage shall be measured by a vehicle equipped with an accurate odometer.

(2) A representative of the applicable district and a parent or guardian of the child to be transported shall be present when the distance is measured.

(3) The measurement shall begin 6 yards from the family home and *end* 6 yards from the entrance of the school grounds closest to the route.

(4) The route traversed for the measurement shall be the route designated by the trustees, except that *the* route shall be reasonably passable during the entire school fiscal year by the vehicle that provides the child's transportation. In determining reasonable passage, a route *may* not be disqualified because it is impassable during temporary, extreme weather conditions such as rains, snow, or floods."

Section 22. Section 75-7018, R.C.M. 1947, is amended to read as follows:

"**75-7018. Schedule of maximum reimbursement by bus mileage rates.** *(1)* The following bus mileage rates for school bus transportation constitute the maximum reimbursement to districts for school bus transportation from state and county sources of transportation revenue under the provisions of 75-7022 and 75-7023. These rates shall not limit the amount which a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school bus transportation during the ensuing school fiscal year. *Any vehicle, the operation of which is* reimbursed under the rate provisions of this schedule, shall be a school bus, as defined by this *title,* driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(2) The rate per bus mile traveled shall be determined in accordance with the following schedule when the number of eligible transportees boarding such school bus on an approved route is not less than 75% of its rated capacity:

(a) *35* cents per bus mile for a school bus with a rated capacity of not less than 12 but not more than 50 children; and

(b) when the rated capacity is more than 50 children, an additional *2* cents per bus mile for each additional child in the rated capacity in excess of 50 shall be added to a base rate of *35* cents per bus mile.

(3) When the number of eligible transportees boarding a school bus on an approved route is less than 75% of its rated capacity, the rate per bus mile traveled shall be computed as follows:

HeinOnline -- 1977 Vol. I 806 1977

(a) determine the number of eligible transportees boarding the school bus on such route;

(b) multiply the number determined in subsection *(3)*(a) by 25% and round-off to the nearest whole number;

(c) add the amount calculated in subsection *(3)*(b) to the number determined in subsection *(3)*(a) to determine the adjusted rated capacity for the bus; and

(d) use the adjusted rated capacity determined in subsection *(3)*(c) as the rated capacity of such bus to determine the rate per bus mile traveled from the rate schedule in subsection *(2)* above.

(4) The rated capacity shall be the number of riding positions of a school bus as determined under the policy adopted by the board of *public* education."

Section 23. Section 75-7119, R.C.M. 1947, is amended to read as follows:

"**75-7119. Notice of sale of school district bonds.** The trustees shall cause the notice of the sale of the bonds to be given. The notice shall state the purpose for which the bonds are to be issued and the amount proposed to be issued, and shall be substantially in the following form:

NOTICE OF SALE OF SCHOOL DISTRICT BONDS

Notice is hereby given by the trustees of School District No..... of .... County, state of Montana, that the trustees will on the.... day of...., 19.., at the hour of.... o'clock....m. at...., in the school district, sell to the highest and best bidder for cash, either amortization or serial bonds of the school district in the total amount of.... dollars ($....), for the purpose of.....

Amortization bonds will be the first choice and serial bonds will be the second choice of the trustees.

If amortization bonds are sold and issued, the entire issue may be put into one single bond or divided into several bonds, as the trustees may determine upon at the time of sale, both principal and interest to be payable in semiannual installments during a period of.... years from the date of issue.

If serial bonds are issued and sold they will be in the amount of .... dollars ($....) each, the sum of.... dollars ($....) of the serial bonds will become payable on the.... day of...., 19.., and the sum of.... dollars ($....) will become payable on the same day each year thereafter until all of *the* bonds are paid.

The bonds, whether amortization or serial bonds, will bear date of ...., 19.., and will bear interest at a rate not exceeding 7% per annum, payable semiannually, on the.... day of.... (month) and.... (month) in each year, and will be redeemable in full. (Here insert optional provisions, if any, to be recited on the bonds.)

The bonds will be sold for not less than their par value with accrued interest, and all bidders must state the lowest rate of interest at which

HeinOnline -- 1977 Vol. I 807 1977

they will purchase the bonds at par. *The* bonds shall be sold in open competition bidding, by written bids, or by sealed bids. The trustees reserve the right to reject any and all bids and to sell the bonds at private sale.

All bids other than by or on behalf of the state board of land commissioners must be accompanied by money, a certified check, cashier's check, bank money order, or bank draft drawn and issued by a national banking association located in Montana or by any banking corporation incorporated under the laws of Montana, in the sum of.... dollars ($....) payable to the order of the district, which will be forfeited by the successful bidder in the event that he shall refuse to purchase the bonds.

All bids should be addressed to the undersigned district.

....
Chairman, School District No.....
of.... County
Address:....

ATTEST: Subscribed and sworn to before me this.... day of...., 19... .... Notary Public for the State Residing at...., Montana. My Commission expires....."

Section 24. Section 75-7309, R.C.M. 1947, is amended to read as follows:

"**75-7309. Gifts, legacies, devises, and administration of endowment fund.** *(1)* The trustees of any district *may* accept gifts, legacies, and devises, subject to the conditions imposed by the deed of the donor *or* the will of the testator or without any conditions imposed. Unless otherwise specified by the donor, devisor, or testator, when a district receives a gift, legacy, or devise, the trustees shall deposit such gift, legacy, devise, or the proceeds therefrom in an endowment fund. The trustees shall administer the endowment fund so as to preserve the principal from loss, and only the income from *the* fund shall be appropriated for any purpose.

(2) Unless the conditions of the endowment instrument require an immediate disbursement of *the* money, the money deposited in the endowment fund shall be invested by the trustees, notwithstanding the provisions of any other state law, in:

(a) school district bonds of the district;

(b) bonds of other school districts within the state;

(c) first mortgage bonds, debentures, notes, and other evidences of indebtedness *issued*, assumed, or guaranteed by any solvent and operating public utility corporation existing under the laws of the United States of America or any state thereof which bonds, debentures, notes, and other evidences of indebtedness are, at the time of such investment, within the three highest quality grades for the rating of such bonds, debentures, notes, and other evidences of indebtedness by any nationally recognized investment rating agency;

(d) certificates of deposit of Montana banks insured by the *federal deposit insurance corporation*; or

HeinOnline -- 1977 Vol. I 808 1977

(e) direct obligations of the United States government.

(3) All interest collected on *the* deposits or investments shall be credited to the endowment fund. No portion of the endowment fund *may* be loaned to the district nor *may* any money of *the* fund be invested in warrants of the district.

(4) Whenever any district has been abandoned, the endowment fund of *the* abandoned district shall be transferred and placed in the endowment fund in the district to which the territory is attached.

(5) As the custodian of the endowment fund, the county treasurer *is* liable on his official bond for the endowment fund of any district of the county. No later than July *1* each school fiscal year, the county treasurer shall account to the trustees of each district on the condition of its endowment fund including the status of the investments that have been made with the money of the fund. The county treasurer shall also include the endowment fund in his reports to the board of county commissioners.

(6) The trustees of any district having an endowment fund shall provide suitable memorials for all persons or associations of persons making gifts to the district which become a part of the endowment fund."

Section 25. Section 75-7607, R.C.M. 1947, is amended to read as follows:

"75-7607. Notification and processing of complaint against a licensed textbook dealer. *(1) A* district or county superintendent *shall* notify the superintendent of public instruction whenever it is ascertained that a licensed textbook dealer is:

(a) offering to sell textbooks at a higher price than the listed uniform sales price filed with the superintendent of public instruction;

(b) offering to sell textbooks at a higher shipping point price than the shipping point price of the same textbooks distributed elsewhere in the United States; or

(c) in any other way performing contrary to the laws regulating the offering of textbooks for sale or adoption to districts.

(2) Upon receipt of such notification from the district or county superintendent, the superintendent of public instruction shall notify the appropriate licensed textbook dealer of the complaint. *If* the superintendent of public instruction *finds* that the licensed textbook dealer has violated any provision of this section and *the dealer* fails to rectify his error within 30 days of the notification of the finding of a violation, he shall forfeit his surety bond. The attorney general, upon written request of the superintendent of public instruction, shall proceed to collect by legal action the full amount of the surety bond. Any amount so recovered shall be paid into the state public school equalization aid account."

Section 26. Section 75-7709, R.C.M. 1947, is amended to read as follows:

"75-7709. Sources of financing for postsecondary vocational-

HeinOnline -- 1977 Vol. I 809 1977

technical center budgets — board of public education administration. *(1)* The total of the budgets approved by the board of public education together with the budget for the cost of state administration of the *postsecondary* vocational-technical centers shall constitute the total maximum approved *statewide* budget which shall be financed as follows:

(a) The primary source of financing is to be those funds specifically designated by legislative enactment or referendum by the people for financing *postsecondary* vocational-technical education in Montana.

(b) The board of county commissioners of each county in which a designated *postsecondary* vocational-technical center is located is hereby authorized to levy a tax of not to exceed 1 mill on the dollar of all taxable property, real and personal, within the county for the support and maintenance of the *postsecondary* vocational-technical center located within the county.

(c) Designated *postsecondary* vocational-technical centers shall be eligible to receive such funds from the federal government as the board of public education may provide pursuant to applicable *acts of congress.*

(d) The board of trustees of any designated high school district or county high school district where a *postsecondary vocational-technical* center is located may be required, as a condition for the construction in *that* district of a *postsecondary vocational-technical* center, or any part thereof, to furnish up to 50% of the amount of funds required for any such construction. The percentage of construction funds to be furnished by *the* designated district shall be derived, in whole or in part, from any of the following sources:

(i) the sale of bonds issued by *that* district *(such* bonds shall be issued in conformity with the requirements of chapter 71 of *Title* 75 in the case of high school and county high school district*);*

(ii) any other funds available to *that* district which may be legally and properly applied toward such construction*;*

(iii) the reasonable value of land, buildings, fixtures, or equipment furnished by *that* district, subject to the approval of the board of public education.

(e) If the aggregate financing provided by sources of revenue in (1)*(a), (1)(b),* and *(1)(c) of this section* does not provide 100% financing of the maximum approved *statewide* budget, the remaining deficiency shall be financed from any state funds appropriated by the legislature for *postsecondary* vocational-technical education.

(2) The board of public education shall direct the distribution of the funds specified in subsections (1)*(a), (1)(c),* and *(1)(e)* of this section on the basis of the budgets approved by the board of public education. The funds earned by the mill levy specified in subsection *(1)(b)* of this section shall be credited by the county treasurer to the *postsecondary* vocational-technical center fund.

(3) The board of public education shall determine the amount of financing available from these five sources of revenue and may approve

HeinOnline -- 1977 Vol. I 810 1977

budgets for maintenance and operation, construction, and ancillary services. The aggregate amount of the budgets so approved by the board of public education for *postsecondary* vocational-technical centers shall not exceed the moneys determined to be available."

Section 27. Section 75-7801, R.C.M. 1947, is amended to read as follows:

"**75-7801. Definitions.** As used in this *title*, unless the context clearly indicates otherwise, *the following definitions apply:*

(1) "Special education" means the kind of instruction requiring special facilities or programs for mentally retarded or physically handicapped children or for educationally handicapped persons.

(2) A "mentally retarded child" means any child who is not capable of profiting from the regular instruction of a school because his mental ability is substantially below the mental ability of an average child of the same age. Mentally retarded children are classified as follows:

(a) An "educable mentally retarded child" means a child who at maturity cannot be expected to attain a level of intellectual functioning greater than that commonly expected of an *11-year old* child, but not less than that of a *7-year old* child.

(b) A "trainable mentally retarded child" means a child who at maturity cannot be expected to attain a level of intellectual functioning greater than that commonly expected of a *7-year old* child and for entrance into a training program, is capable of walking, of clean body habits, and of obedience to simple commands.

(c) A "custodial mentally retarded child" means a child who does not show a likelihood of attaining clean body habits, responsiveness to directions, or means of intelligible communication.

(3) A "physically handicapped child" means a child who is capable of profiting from the regular instruction with the assistance of special equipment, special services, or transportation to compensate for physical disabilities such as, but not limited to, cardiac impairment, cerebral palsy, chronic health problems, or inadequate speech, hearing, or vision.

(4) An "educationally handicapped person" means a child or young adult under the age of 21 years who requires special assistance to the extent that he cannot reasonably profit from the regular education program. An educationally handicapped person's learning disorders include, but are not limited to, conditions which have been referred to as visual perception handicaps, brain injury, minimal brain dysfunction, dyslexia, behavioral maladjustment, *or* emotional disturbances. An educationally handicapped person's disorders are not the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, *or* mental retardation."

Section 28. Section 75-8132, R.C.M. 1947, is amended to read as follows:

"**75-8132. Tax levy.** On the second Monday of August, the board of

HeinOnline -- 1977 Vol. I 811 1977

county commissioners of any county where a community college district is located shall fix and levy a tax on all the real and personal property within the community college district at the rate required to finance the *mandatory* mill levy prescribed by 75-8128*(2)* plus any approved additional levy. When a community college district has territory in more than one county, the board of county commissioners of each county shall fix and levy the community college district tax on all the real and personal property of the community college district situated in its county."

Section 29. Section 75-8307, R.C.M. 1947, is amended to read as follows:

"**75-8307. Penalty.** Unless otherwise specifically provided by law, any person who *violates* any *provision* of this *title is* guilty of a misdemeanor and if convicted by a court of competent jurisdiction shall be *punished by a fine of* not less than $20 or more than $200 or by imprisonment in the county jail for not less than 5 days or more than 30 days, or by both such fine and imprisonment."

Section 30. Section 75-8312, R.C.M. 1947, is amended to read as follows:

"**75-8312. Educational impact statements defined — when required.** When a county superintendent of schools finds that a person intends to construct or locate a major industrial facility, as defined in 75-7104, or intends to open a new strip mine, as defined by 50-1603, within the county, the superintendent may require such person to file with the county an educational impact statement. An educational impact statement is a report estimating the increased demands on public schools in the county as a consequence of the major industrial facility *or strip mine.* The statement shall indicate:

(1) the *number* of persons to be employed during the construction or preparation and during the operation of the major industrial facility *or strip mine and their anticipated residential distribution*;

(2) the *number* and anticipated distribution of persons employed in providing goods and services to the persons enumerated in the preceding category;

(3) the *number* of school age children anticipated to be living with the persons enumerated in the preceding categories; and

(4) the time periods covered by each preceding estimate."

Section 31. Section 75-8404, R.C.M. 1947, is amended to read as follows:

"**75-8404. Prohibition against use of name of system.** (1) The state has the exclusive right to the name "the Montana university system".

(2) No other institution of learning or corporation *may* use the name "the Montana university system" or similar name.

(3) The attorney general shall bring *an* action in the name of the state against any person, association, or corporation using the same or similar name.

HeinOnline -- 1977 Vol. I 812 1977

(4) The penalty for violation of this section shall be the dissolution of the corporation and a *fine in a* sum not exceeding $500 *or* less than $100."

Section 32. Section 75-8504, R.C.M. 1947, is amended to read as follows:

"**75-8504. Borrowing by regents.** In carrying out the above powers, the regents may:

(1) *borrow* money for any purpose or purposes stated in this chapter, including, if *considered* desirable by the regents, the payment of interest on the money borrowed for a facility during the construction thereof and for 1 year thereafter and the creation of a reserve for the payment of bond principal and interest;

(2) *make* purchases on a time or installment basis;

(3) *issue* bonds, notes, and other securities, negotiable or otherwise, secured as provided in this section, including bearer bonds with appurtenant interest coupons, which shall be fully negotiable notwithstanding any limitation on the source of payment thereof, or fully registered bonds or bonds registered as to ownership of principal only;

(4) *pledge* for the payment of the purchase price of any facility or of the principal and interest on bonds, notes, or other securities authorized in this chapter or otherwise obligate:

(a) the net income received from rents, board, or both in housing, food service, and other facilities;

(b) receipts from student building, activity, union, and other special fees prescribed by the regents for all students; and

(c) other income in the form of gifts, bequests, contributions, federal grants of funds, including the proceeds or income from grants of lands or other real or personal property; receipts from athletic and other contests, exhibitions, and performances; and collections of admissions and other charges for the use of facilities including all use by other persons, firms, and corporations for athletic and other contests, exhibitions, and performances and for the conduct of their business, educational, or governmental functions;

(5) *make* payments on loans or purchases from any other available income not obligated for *those* purposes, including receipts from sale of materials, equipment, and fixtures of *the* facilities or from sales of the facilities themselves other than land;

(6) *secure* any bonds authorized hereunder by a trust indenture between the regents and any bank or trust company within or without the state of Montana or by a resolution establishing covenants of the regents with the holders of such bonds relating to the construction, operation, use, and insurance of the facilities; the segregation, expenditure, and audit of accounts of the bond proceeds and of the income pledged; the establishment and collection of rents, charges, admissions, and fees sufficient to provide net income adequate for prompt payment of principal

HeinOnline -- 1977 Vol. I 813 1977

and interest on bonds and creation and maintenance of reserves for that purpose; and such other matters as the regents may determine to be necessary or desirable for the security and marketability of the bonds;

(7) *issue* and sell or exchange bonds, secured as provided in this section, for the refunding of any outstanding bonds or other obligations issued *before or after January 29, 1971,* by the regents, subject to the following provisions:

(a) *refunding* bonds may, with the consent of the holders of the bonds to be refunded thereby, be exchanged at par plus accrued interest for all or part of such bonds or may be sold at a price not less than par plus accrued interest. They may be secured by a pledge of the same revenue as the bonds refunded or by a pledge of different or additional revenues received at the same unit of the university. Nothing herein shall require the holder of any outstanding bond to accept payment thereof or the delivery of a refunding bond in exchange therefor, except in accordance with the terms of *the* outstanding bond. Bonds may be issued to refund interest as well as principal actually due and payable if the revenues pledged therefor are not sufficient, but not to refund any bonds or interest due which can be paid from revenues then on hand.

(b) *refunding* bonds may bear interest at a rate lower or higher than the bonds refunded thereby, if they are issued to refund matured principal or interest for the payment of which revenues on hand are not sufficient or if they are issued to refund before maturity bonds issued before January 1, 1965, for the purpose of releasing revenues required for payment of the outstanding bonds permitting the pledge thereof for the security of other bonds as well as the refunding bonds, subject to the rights of the holders of the outstanding bonds until those bonds are fully paid and redeemed. Except as authorized in the preceding sentence, refunding bonds shall not be issued unless their average annual interest rate, computed to their stated maturity dates and excluding any premium from such computation, is at least 3/8 of 1% less than the average annual interest rate on the bonds refunded thereby, computed to their respective stated maturity dates.

(c) *in* any case where refunding bonds are issued and sold 6 months or more before the earliest date on which all bonds refunded thereby mature or are prepayable in accordance with their terms, the proceeds of the refunding bonds, including any premium and accrued interest, shall be deposited in escrow with a suitable bank or trust company having its principal place of business within or without the state, which is a member of the federal reserve system and has a combined capital and surplus not less than *$1* million and shall be invested in *the* amount and in securities maturing on *the* dates and bearing interest at *the* rates *which will* be required to provide funds sufficient to pay when due the interest to accrue on each bond refunded to its maturity or, if it is prepayable, to the earliest prior date upon which *the* bond may be called for redemption from the proceeds of the refunding bonds and to pay and redeem the principal amount of each bond at maturity or, if prepayable, *on that* redemption date and any premium required for redemption on *that* date. *The* resolution or indenture authorizing the refunding bonds shall irrevocably appropriate for these purposes the escrow fund and all income therefrom and

HeinOnline -- 1977 Vol. I 814 1977

shall provide for the call of all prepayable bonds in accordance with their terms. The securities to be purchased with such escrow funds shall be limited to general obligations of the United States, securities whose principal and interest payments are guaranteed by the United States, and securities issued by the following United States government agencies: banks for *cooperatives*, federal home loan banks, federal intermediate credit banks, federal land banks, and the federal national mortgage association. *The* securities shall be purchased simultaneously with the delivery of the refunding bonds.

(d) *revenues* or other funds on hand, in excess of amount pledged by resolutions or indentures authorizing outstanding bonds for the payment of principal and interest currently due thereon and reserves securing such payment, may be used to pay the expenses incurred by the regents for the purpose of refunding, including but without limitation the cost of advertising and printing refunding bonds, legal and financial advice and assistance in connection therewith, and the reasonable and customary charges of escrow agents and paying agents. Revenues and other funds on hand, including reserves pledged for the payment and security of outstanding revenue bonds, may be deposited in an escrow fund created for the retirement of *those* bonds and may be invested and disbursed as provided in subsection (c) hereof to the extent consistent with the resolutions or indentures authorizing such outstanding bonds.

(8) *sell* bonds and sell or exchange refunding bonds issued hereunder in *the* manner and upon *the* terms as to maturities, interest rates, and redemption privileges and for *the* price *that* the regents determine with the approval of the *department of administration.*"

Section 33. Section 75-8609, R.C.M. 1947, is amended to read as follows:

"**75-8609. Control of expenditures.** Pursuant to the terms of appropriations of the *legislature* or of *congress* or of gifts of donors, the regents shall determine the need for all expenditures and control the purposes for which all funds shall be spent, subject to the provisions of the law dealing with *state purchases.*"

Section 34. Section 75-8703, R.C.M. 1947, is amended to read as follows:

"**75-8703. Presumptions and rules as to domicile.** *(1)* Unless the contrary appears to the unit registering authority, it is presumed *the domicile of a minor is that*:

(a) of the parents or, if one of them is deceased or they do not share the same domicile, of the parent having legal custody or, if neither parent has legal custody, the parent with whom the minor customarily resides; or

(b) of his guardian when the court appointing the guardian certifies that the primary purpose of the appointment is not to qualify the minor as a resident of this state.

(2) A resident student who marries a nonresident does not by that fact alone lose resident status for tuition and fee purposes for a period of 4 years after marriage.

HeinOnline -- 1977 Vol. I 815 1977

(3) Except as provided in the next subsection, residence is not gained or lost because of relocation as a member of the armed forces of the United States.

(4) Residence may be gained by a member of the armed forces of the United States, his spouse, or his children by living in Montana for 1 year and complying with the provisions of this section.

(5) A new domicile is established by a qualified person if he is physically present in Montana with no intention to acquire a domicile outside of Montana.

(6) Domicile is not lost by absence from Montana with no intention to establish a new domicile.

(7) Montana high school graduates are resident students of the system for 4 consecutive years of attendance if:

(a) they apply for admittance to the system within 1 year after graduation; or

(b) their parents or the parent having legal custody or, if neither parent has legal custody, the parent with whom they customarily reside *has* resided in Montana in one of the 2 years immediately preceding the graduation.

(8) Upon moving to Montana, an adult employed on a full-time basis within the state of Montana may apply for in-state tuition classification for his spouse or any dependent minor child or both. If such person meets the requirement of full-time employment within the state of Montana and files for the payment of Montana state income taxes or files estimates of *those* taxes or is subject to withholding of *those* taxes and renounces his residency in any other state and is not himself in the state primarily as a student, his spouse or any dependent minor child, or both, may at the next registration after qualifying be classified at the in-state rate, so long as he continues his Montana domicile. In the administration of this *subsection*, neither the full-time employee or spouse shall be eligible for in-state tuition classification if the primary purpose for coming to Montana was the education of the employee or spouse."

Section 35. Section 75-8705, R.C.M. 1947, is amended to read as follows:

"**75-8705. Indians — nonpayment of fees.** (1) Persons of one-fourth Indian blood or more *who* are bona fide residents of the state of Montana for at least 1 year prior to enrollment in the Montana university system, *have completed* a *4-year* course *in* an accredited high school or federal Indian school, *and show* financial need and evidence of studious and industrious habits may enroll in the university system without the payment of fees.

(2) Each unit shall make rules governing the selection of these students."

Section 36. Section 75-9108, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 816 1977

"**75-9108. Antidiscrimination.** No employer is eligible to employ any person under this program *if the* employer practices discrimination in employment against any individual because of race, *creed,* religion, color, *political ideas,* sex, *age, marital status, physical or mental handicap, ancestry, or* national origin."

Section 37. Section 75-9215, R.C.M. 1947, is amended to read as follows:

"**75-9215. Civil relief.** Any person claiming loss or damage as a result of any act or practice by a postsecondary institution or its agent, or both, which act or practice violates the criteria established by the department under 75-9206 or the prohibitions in 75-9208, may sue in a court of proper jurisdiction of this state the institution *or* the agent, or both, and their sureties for the amount of *the* damage or loss and, if successful, shall be awarded, in addition to damages, court costs and reasonable attorney's fees."

Section 38. Section 75-9216, R.C.M. 1947, is amended to read as follows:

"**75-9216. Bonds required.** (1) At the time application is made for license, the department may require the postsecondary educational institution making *the* application to file with the department a good and sufficient surety bond in such sum as may be determined by the department. *The* bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student or enrollee or his parent or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this act by *the* postsecondary educational institution and that the bonding company shall pay any final nonappealable judgment rendered by any court of this state having jurisdiction upon receipt of written notification thereof. Regardless of the number of years that *the* bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond. The bond shall be for 2 years or coterminous with the license.

(2) An application for a permit shall be accompanied by a good and sufficient surety bond in a penal sum of $1,000. *The* bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond may be in blanket form to cover more than one agent for a postsecondary educational institution, but it shall cover each agent for *the* institution in a penal sum of $1,000. The bond shall be conditioned to provide indemnification to any student, enrollee, or *the* parents or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this act by *the* agent and that the bonding company shall pay any final nonappealable judgment rendered by any court of this state having jurisdiction upon receipt of written notification thereof. Regardless of the number of years that *the* bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum thereof. The bond shall be for 2 years or coterminous with the permit.

HeinOnline -- 1977 Vol. I 817 1977

(3) The surety bond to be filed hereunder shall cover the period of the license or the permit except when a surety *is* released. A surety on any bond filed under the provisions of this section may be released after *the* surety *has served* written notice to the department 40 days prior to *the* release. *The* release *does* not discharge or otherwise affect any claim filed by a student or enrollee or his parent or guardian for loss or damage resulting from any act or practice which is a violation of this act alleged to have occurred while the bond was in effect *or from* an institution's ceasing operations during the term for which tuition has been paid while the bond was in force.

(4) A license for an institution to operate or a permit to an agent shall be suspended by operation of law when *the* institution or agent is no longer covered by a surety bond as required by this section; but the department shall cause the institution or an agent, or both, to receive at least 30 *days'* written notice prior to the release of the surety to the effect that the license or permit shall be suspended by operation of law until another surety bond *is* filed in the same manner and like amount as the bond being terminated."

Section 39. Section 80-102, R.C.M. 1947, is amended to read as follows:

"**80-102. Montana state school for deaf and blind independent institution — rights saved.** The school for the deaf and blind, formerly located at Boulder in connection with the Montana state training school but transferred *before July 1, 1943,* to the city of Great Falls, shall be known and designated as the Montana state school for the deaf and blind and shall be conducted as a separate and independent unit and institution of the state of Montana under the general supervision, direction, and control of the state board of *public* education, with a local executive board to be appointed in the manner and to have the powers, authority, and duties granted to and required of *that* board by the provisions of *75-8510 and 75-8511. However,* the transfer of *that* school or any change in the name thereof or in the objects or purposes thereof *may* not be *considered* or construed to impair or work any forfeiture or alteration of any rights, grants, or property made to or acquired by *that* school or by the state for the use and benefit of *that* school *prior to July 1, 1943.*"

Section 40. **Repealer.** Sections 80-110 and 80-112, R.C.M. 1947, are repealed.

Approved April 5, 1977.

CHAPTER NO. 267

AN ACT TO AMEND SECTION 66-1052, R.C.M. 1947, RELATING TO LIABILITY OF PROFESSIONAL UTILIZATION, PEER REVIEW, AND PROFESSIONAL STANDARDS COMMITTEES SO THAT THE STATUTE WILL APPLY TO ALL HEALTH CARE PROFESSIONALS ON SUCH COMMITTEES AND PROVIDING AN EVIDENTIAL PRIVILEGE FOR COMMITTEE RECORDS AND MEMBER TESTIMONY.

HeinOnline -- 1977 Vol. I 818 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-1052, R.C.M. 1947, is amended to read as follows:

"66-1052. Nonliability for peer review — application to nonprofit corporations. (1) No member of a utilization review committee of a hospital or long-term care facility or of a *professional* utilization committee, *peer review committee, or professional standards review committee of a society composed of persons licensed to practice a health care profession is* liable in damages to any person for any action taken or recommendation made within the scope of the functions of the committee if the committee member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to him after reasonable effort to obtain the facts of the matter for which the action is taken or a recommendation is made.

(2) The proceedings and records of professional utilization, peer review, and professional standards review committees are not subject to discovery or introduction into evidence in any proceeding. However, information otherwise discoverable or admissible from an original source is not to be construed as immune from discovery or use in any proceeding merely because it was presented during proceedings before the committee, nor is a member of the committee or other person appearing before it to be prevented from testifying as to matters within his knowledge, but he cannot be questioned about his testimony or other proceedings before the committee or about opinions or other actions of the committee or any member thereof.

(3) This act also applies to any member *or nonmember* of a nonprofit corporation engaged in performing the functions of a peer review or professional standards review committee."

Approved April 5, 1977.

CHAPTER NO. 268

AN ACT AUTHORIZING THE BOARD OF PUBLIC EDUCATION TO EMPLOY A PROFESSIONAL ASSISTANT AND SECRETARY; AMENDING SECTION 75-5612, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section that reads as follows:

Employment of a professional assistant to the board of public education — term — compensation — staff. (1) The board of public education may employ a professional assistant and may employ a secretary to perform the duties required of it.

(2) The board of public education may prescribe the term, duties, and compensation of its professional assistant.

(3) The board of public education may provide office space for its professional assistant to carry out his duties.

Section 2. Section 75-5612, R.C.M. 1947, is amended to read as follows:

"**75-5612. Officers of boards — quorum.** (1) The board of public education and the board of regents *may* each select a chairman from among their appointed members.

(2) *Professional assistant* shall serve as secretary to the board of public education, and the commissioner *of higher education serves* as secretary to the board of regents.

(3) A majority of the appointed members of each board constitutes a quorum for the transaction of business.

(4) The professional assistant shall serve as a liaison between the board of public education and the superintendent of public instruction and shall carry out other such duties as assigned by the board of public education."

Approved April 5, 1977.

CHAPTER NO. 269

AN ACT TO AMEND SECTION 32-1123.2, R.C.M. 1947, TO DEFINE THE TERM "AXLE".

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-1123.2, R.C.M. 1947, is amended to read as follows:

"**32-1123.2. Definitions.** In sections 32-1123.1 through 32-1123.11, the following definitions apply:

(1) Vehicle—as defined in section 32-2102.

(2) Motor vehicle—as defined in section 32-2102.

(3) Truck-tractor—as defined in section 32-2103.

(4) Truck—as defined in section 32-2104.

(5) Trailer—as defined in section 32-2105.

(6) Semitrailer—as defined in section 32-2105.

(7) Dolly or converter gear—a device consisting of one or two axles with a fifth wheel and trailer tongue used to support the forward end of a semitrailer, thereby converting a semitrailer into a trailer.

(8) Axle—a transverse beam which is the common axis of rotation of one or more wheels and which, to receive credit for allowable total gross loading, must be capable of continuously transmitting a proportionate share of the total gross load to the roadway when the axle is in operation."

Approved April 5, 1977.

HeinOnline -- 1977 Vol. I 820 1977

CHAPTER NO. 270

AN ACT AMENDING THE COURTESY PERMIT FOR SPECIAL FUEL VEHICLES; AMENDING SECTION 84-1833, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1833, R.C.M. 1947, is amended to read as follows:

"**84-1833. Special fuel dealers' and special fuel users' licenses and special fuel vehicle permits.** (a) Required: It shall be unlawful for any person to act as a special fuel dealer in this state unless such person is the holder of an uncanceled fuel dealers' license issued to him by the department.

Every special fuel user shall obtain from the department, prior to the use of such special fuel for the propulsion of a motor vehicle or vehicles in this state, a special fuel users' license, and a special fuel vehicle permit for each such vehicle or vehicles operated by him upon the highways as herein defined, which permit shall at all times be carried in the vehicle for which it was issued, and shall be exhibited for inspection on request of any checking station officer, Montana highway patrol officer, any authorized employee of the department of revenue, or any other law enforcement officer.

Any *out-of-state* user who operates a *special fuel vehicle solely for recreation or for religious, charitable, educational, or other eleemosynary purposes* shall secure a special fuel *users'* "*courtesy*" vehicle permit. The permit shall not be transferable and shall be valid for ninety (90) days. Permits will be issued at no cost to the user by the department of revenue, scale house personnel and gross vehicle weight patrol crews. The department may require the user who has fuel capacity in excess of thirty (30) gallons to file a report and pay the tax on fuel used in Montana on which the tax has not been paid.

(b) Application: Application for a special fuel dealer's license, a special fuel user's license, or a special fuel vehicle permit shall be made to the board unless otherwise provided herein.

(c) Form of application: The application shall be filed upon a form prepared and furnished by the department. The application shall contain such information as the department deems necessary.

(d) Bond: Except as herein provided, no special fuel dealer's license or special fuel user's license shall be issued to any person or continued in force unless such person has furnished bond, as defined in section 84-1831(i) and in such form as the department may require to secure its compliance with this act, and the payment of any and all taxes, interest

HeinOnline -- 1977 Vol. I 821 1977

and penalties due and to become due hereunder. Upon application, the department may waive the bond requirement of any resident special fuel user who establishes to the reasonable satisfaction of the board that the tax as herein provided is not delinquent or that interest or penalties are not accrued under the provisions of this act.

The total amount of the bond or bonds required of any special fuel dealer or special fuel user shall be equivalent to twice his estimated monthly tax payments as hereinafter provided, determined in such manner as the department may deem proper; provided, however, that the total amount of the bond or bonds shall never be less than five thousand dollars ($5,000) for any special fuel user awarded a contract in accordance with section 84-1832.1, nor less than five hundred dollars ($500) for any other special fuel user; and not less than one thousand dollars ($1,000) for a special fuel dealer.

(e) Issuance: Upon receipt of the application and bond in proper form, the department shall issue to the applicant a license to act as a special fuel dealer or special fuel user or a special fuel vehicle permit; provided, however, the department may refuse to issue a special fuel dealer's license, a special fuel user's license or a special fuel vehicle permit to any person: (1) who formerly held either type of license or permit which, prior to the time of filing application has been revoked for cause; or (2) who is not the real party in interest and where the license or permit of the real party in interest has been revoked for cause prior to the time of filing such application; or (3) upon other sufficient cause being shown. Before such refusal, the department shall grant the applicant a hearing and shall grant him at least ten (10) days' written notice of the time and place thereof.

(f) Expiration of license or permit: Each special fuel dealer's license, special fuel user's license and special fuel vehicle permit shall be valid until suspended or revoked for cause or otherwise canceled.

(g) Assignment forbidden: No special fuel dealer's license, special fuel user's license or special fuel vehicle permit shall be transferable.

(h) Revocation, suspension, cancellation and surrender of license and permit: The department may revoke the license of any special fuel dealer or special fuel user or any special fuel vehicle permit for reasonable cause. Before revoking such license or permit, the department shall notify the licensee or permittee of its intention so to do, by either certified or registered mail, addressed to his last known address shown in the files of the department, requiring him to appear before the department on a day and hour specified in such notice, not more than thirty (30) days nor less than ten (10) days from date of such notice, and show cause, if any he has, why the license or the permit, or each of them, should not be revoked; provided, however, that at any time prior to and pending such hearing the department may, in the exercise of reasonable discretion, suspend such license or permit.

Upon revocation by the department of any such license or permit, the holder thereof shall immediately surrender the same to the department for cancellation; and the holder of any such permit, having permanently

HeinOnline -- 1977 Vol. I 822 1977

discontinued the use of any vehicle for which the permit was issued, for whatever reason, shall immediately surrender the same to the department for cancellation.

The department shall cancel any license to act as a special fuel dealer or a special fuel user or any special fuel vehicle permit immediately upon surrender thereof by the holder.

(i) Release of surety: Any surety on a bond furnished by a special fuel dealer or special fuel user as provided herein shall be released and discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date upon which such surety shall have lodged with the department a written request to be released and discharged, but this provision shall not operate to relieve, release, or discharge the surety from any liability already accrued or which shall accrue before the expiration of the thirty (30) day period. The department shall promptly upon receiving any such request, notify the special fuel dealer or special fuel user who furnished the bond, and unless the special fuel dealer or special fuel user shall, on or before the expiration of the thirty (30) day period, file a new bond, in accordance with the requirements of this section, or make a deposit in lieu thereof as provided in section 84-1831(i), the department forthwith shall cancel the special fuel dealer's or special fuel user's license.

(j) Additional bond or deposit: The department may require a special fuel dealer or special fuel user to give a new or additional surety bond or to deposit additional securities of the character specified in section 84-1831(i), if, in its opinion, the security of the surety bond theretofore filed by such special fuel dealer or special fuel user, or the market value of the properties deposited as security by such special fuel dealer or special fuel user, shall become impaired or inadequate; and upon failure of the special fuel dealer or special fuel user to give such new additional surety bond or to deposit additional securities within thirty (30) days after being requested so to do by the department, said department forthwith shall cancel his license.

(k) All special fuel taxes due from any dealer or user under the provisions of this act, together with all penalties and interest thereon shall be a lien upon any and all property of such dealer, user or other person upon the filing by the state department of revenue of a duplicate copy of the statement so made by the state department of revenue, or a certified copy of any statement filed by said department in the office of the county clerk of the county where such property is situated which lien shall have precedence over any other claim, lien or demand thereafter filed or recorded and which may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law."

Section 2. **Effective date.** This act is effective upon its passage and approval.

Approved April 5, 1977.

HeinOnline -- 1977 Vol. I 823 1977

CHAPTER NO. 271

AN ACT TO PERMIT ESTABLISHMENT OF COMMON TRUST FUNDS FOR COLLECTIVE INVESTMENT OF FUNDS BY AFFILIATED BANKS OR TRUST COMPANIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 5-1407 that reads as follows:

5-1407. Common trust funds — affiliates. (1) Notwithstanding the provisions of 5-1401, any bank or trust company qualified to act as fiduciary in this state may:

(a) establish and maintain common trust funds for the collective investment of funds held in any fiduciary capacity by it or by another bank or trust company which is owned or controlled by a corporation which owns or controls such bank or trust company; and

(b) as a fiduciary or cofiduciary, invest funds which it holds for investment in common trust funds established and maintained pursuant to subsection (a) if such investment is not prohibited by the instrument, judgment, decree, or order creating such fiduciary relationship. This section applies to fiduciary relationships now in existence or hereafter created.

(2) To the extent not inconsistent with the provisions of this section, the provisions of 5-1401 through 5-1406 relating to common trust funds shall apply to the establishment and maintenance of common trust funds under this section.

Approved April 5, 1977.

CHAPTER NO. 272

AN ACT TO EXTEND AND FURTHER DESCRIBE THE REQUIREMENTS FOR PLUGGING AND RECLAIMING "SHOT HOLES"; ESTABLISHING ADDITIONAL FILING REQUIREMENTS; PROVIDING FOR ENFORCEMENT BY THE BOARD OF OIL AND GAS CONSERVATION; PROVIDING FOR INFORMATION TO BE GIVEN TO THE SURFACE USER; ESTABLISHING ADDITIONAL PENALTIES FOR FAILURE TO COMPLY WITH THOSE REQUIREMENTS; AMENDING SECTIONS 69-3304 AND 69-3308, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3304, R.C.M. 1947, is amended to read as follows:

"69-3304. Surety bond required — amount — filing — proper plugging and restoration of surface — certificate of filing. A person, firm or corporation desiring to engage in such geophysical exploration,

HeinOnline -- 1977 Vol. I 824 1977

shall also file with the secretary of state a good and sufficient surety bond in the amount of ten thousand dollars ($10,000.00) for a single such geophysical crew or a blanket surety bond in the amount of twenty-five thousand dollars ($25,000.00) for all such geophysical crews operating within the state for such person, firm or corporation, which bond shall indemnify the owners of property within this state against such physical damages to such property as may arise as the result of such geophysical exploration. Unless otherwise agreed as between the owner of the surface and such person, firm, or corporation, it shall be the obligation of such person, firm, or corporation upon completion of exploration to plug all "shot holes" *in such a manner as shall be specified by the board of oil and gas conservation to contain any water within its native strata by replacing all drill cuttings and filling the hole with bentonite mud or cement as required to contain the water and capping the same with an impervious material at least 1 foot in depth, the top of which shall be 4 feet below the surface of the land. The portion of the hole above the cap shall be filled with native material. The person, firm, or corporation shall also* restore the surface around the same as near as practicable to its original condition. The bond shall remain on file with the secretary of state so long as the exploration is carried on or engaged in, plus an additional 5 years thereafter; provided, however, that the aggregate liability of the surety shall, in no event, exceed the amount of said bond. Upon the filing of such bond, said secretary of state shall issue to the person, firm or corporation a certificate showing that such bond has been filed and showing the name of the designated resident agent within the state for service of process for such person, firm or corporation."

Section 2. There is a new R.C.M. section numbered 69-3305.1 that reads as follows:

69-3305.1. Additional requirements. (1) The county clerk and recorder of the county in which a permit for geophysical activity is issued will immediately forward notice of the issuance of such permit to the board of oil and gas conservation.

(2) The board shall notify the county clerk and recorder of the county if the person, firm, or corporation which has obtained a permit is not in compliance with any applicable requirement for engaging in geophysical activity within the state.

(3) If the board of oil and gas conservation determines that a person, firm, or corporation has violated any provisions of this act, the board shall take necessary action to assure compliance.

(4) Before commencing geophysical activity, the person, firm, or corporation shall notify the surface user as to the approximate time schedule of the planned activity and upon request the following information shall also be furnished:

(a) the name and permanent address of the geophysical exploration firm, along with the name and address of the firm's designated agent for the state if different from that of the firm's;

(b) evidence of a valid permit to engage in geophysical exploration;

HeinOnline -- 1977 Vol. I 825 1977

(c) name and address of the company insuring the geophysical firm;

(d) the number of the bond required in [Section 1 of this act];

(e) a description of the surface areas where the planned geophysical activity will take place;

(f) anticipated need, if any, to obtain water from the surface user during planned geophysical activity.

Section 3. Section 69-3308, R.C.M. 1947, is amended to read as follows:

"**69-3308. Failure to comply with act — misdemeanor.** A failure to comply with the terms of this act shall be deemed a misdemeanor and shall be punishable as is elsewhere provided in this code, either by fine or imprisonment, or both. *The geophysical permit of any person, firm, or corporation convicted of a violation of the plugging requirements of this act shall be revoked and may not be renewed for a period of 2 years after conviction.*"

Approved April 5, 1977.

CHAPTER NO. 273

AN ACT TO AMEND SECTION 71-226, R.C.M. 1947, TREATING WELFARE FRAUD AS THEFT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-226, R.C.M. 1947, is amended to read as follows:

"**71-226. Fraudulent acts.** Whoever knowingly obtains by means of *a* willfully false statement, representation, or impersonation or other fraudulent device public assistance to which he is not entitled *is* guilty of *theft as provided in 94-6-302.*"

Approved April 5, 1977.

CHAPTER NO. 274

AN ACT TO INCLUDE THE SALE OF DISTILLATES ON ANY BASIS OTHER THAN GROSS VOLUME DELIVERED TO BE VOID; AMENDING SECTION 13-812, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 13-812, R.C.M. 1947, is amended to read as follows:

"**13-812. The sale of gasoline and distillates on other than gross volume basis unlawful.** The sale of gasoline *and distillates* on a temperature corrected basis, or on any basis other than the gross volume of

HeinOnline -- 1977 Vol. I 826 1977

gasoline *or distillate* actually delivered, is void. Any contract in violation of this section shall be unenforceable to the extent of the violation."

Approved April 5, 1977.

CHAPTER NO. 275

AN ACT TO AMEND SECTION 15-2006, R.C.M. 1947, TO ALLOW THE COMMISSIONER OF INVESTMENTS TO WAIVE THE RESIDENCY REQUIREMENT FOR SECURITIES SALESMEN.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2006, R.C.M. 1947, is amended to read as follows:

"15-2006. Registration of broker-dealers, salesmen, and investment advisers. (1) It is unlawful for any person to transact business in this state as a broker-dealer or salesman, except in transactions exempt under section 15-2014, unless he is registered under this act. It is unlawful for any person to transact business in this state as an investment adviser unless (1) he is so registered under this act, or (2) he is registered as a broker-dealer under this act, or (3) his only clients in this state are investment companies as defined in the Investment Company Act of 1940 or insurance companies.

(2) A broker-dealer, salesman, acting as agents for an issuer or issuers or acting as agents for a broker-dealer in the sale of securities for an issuer or issuers or investment adviser may apply for registration by filing with the commissioner an application in such form as the commissioner shall prescribe and payment of the fee prescribed in section 15-2016. Except for persons in the employ of brokerage firms governed by the regulations of the securities and exchange commission, all salesmen must be legal residents of this state and must have actually resided in this state for a period of at least one (1) year next prior to the date of application for registration. *The commissioner may, upon request and for good cause shown by an applicant, waive the residency requirement.* Salesmen shall also file with the commissioner a bond of a surety company duly authorized to transact business in this state. Said bond to be in the sum of five thousand dollars ($5,000.00), payable to the state of Montana, and conditioned upon the faithful compliance with the provisions of this act, and shall provide that upon failure to so comply the salesman shall be liable to any and all persons who may suffer loss by reason thereof.

(3) The application shall contain whatever information the commissioner requires.

(4) If no denial order is in effect and no proceeding is pending under subdivision (8) of this section, registration becomes effective at noon of the thirtieth (30th) day after an application is filed. The commissioner may specify an earlier effective date and he may by order defer the effective date for an additional sixty (60) days; the effective day after the filing

HeinOnline -- 1977 Vol. I 827 1977

of any amendment shall be noon of the thirtieth (30th) day thereafter unless otherwise accelerated by the commissioner.

(5) Registration of a broker-dealer, salesman or investment adviser shall be effective until the first (1st) day of March next following such registration and may be renewed as hereinafter provided. The registration of a salesman is not effective during any period when he is not associated with an issuer or a registered broker-dealer specified in his application. When a salesman begins or terminates a connection with an issuer or registered broker-dealer, the salesman and the issuer or broker-dealer shall promptly notify the commissioner.

(6) Registration of a broker-dealer, salesman or investment adviser may be renewed by filing with the commissioner prior to the expiration thereof an application containing such information as the commissioner may require to indicate any material change in the information contained in the original application or any renewal application for registration as a broker-dealer, salesman or investment adviser filed with the commissioner by the applicant, payment of the prescribed fee and, in the case of a broker-dealer, a financial statement showing the financial condition of such broker-dealer as of a date within ninety (90) days. A registered broker-dealer or investment adviser may file an application for registration of a successor, to become effective upon approval of the commissioner.

(7) Every registered broker-dealer and investment adviser shall make and keep such accounts and other records, except with respect to securities exempt under section 15-2013(1), as may be prescribed by the commissioner. All records so required shall be preserved for three (3) years unless the commissioner prescribes otherwise for particular types of records. All the records of a registered broker-dealer or investment adviser are subject at any time or from time to time to such reasonable periodic, special or other examinations, within or without this state, by representatives of the commissioner, as the commissioner deems necessary or appropriate in the public interest or for the protection of investors.

(8) The commissioner may by order deny, suspend, or revoke registration of any broker-dealer, salesman, or investment adviser if he finds that the order is in the public interest and that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director:

(a) has filed an application for registration under this section which, as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(b) has willfully violated or willfully failed to comply with any provision of this act or a predecessor act or any rule or order under this act or a predecessor act;

(c) has been convicted of any misdemeanor involving a security or any aspect of the securities business, or any felony;

HeinOnline -- 1977 Vol. I 828 1977

(d) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(e) is the subject of an order of the commissioner denying, suspending, or revoking registration as a broker-dealer, salesman, or investment adviser;

(f) is the subject of an order entered within the past five (5) years by the securities administrator of any other state or by the federal securities and exchange commission denying or revoking registration as a broker-dealer or salesman, or the substantial equivalent of those terms as defined in this act, or is the subject of an order of the federal securities and exchange commission suspending or expelling him from a national securities exchange or national securities association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but (a) the commissioner may not institute a revocation or suspension proceeding under this clause more than one (1) year from the date of the order relied on, and (b) he may not enter any order under this clause on the basis of an order unless that order was based on facts which would currently constitute a ground for an order under this section;

(g) has engaged in dishonest or unethical practices in the securities business;

(h) is insolvent, either in the sense that his liabilities exceed his assets or in the sense that he cannot meet his obligations as they mature; but the commissioner may not enter an order against a broker-dealer or investment adviser under this clause without a finding of insolvency as to the broker-dealer or investment adviser; or

(i) has not complied with a condition imposed by the commissioner under subdivision (8) of this section, or is not qualified on the basis of such factors as training, experience, or knowledge of the securities business; or

(j) has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause, and he shall vacate any such order when the deficiency has been corrected. The commissioner may by order summarily postpone or suspend registration pending final determination of any proceeding under this section.

(9) Upon the entry of the order under subdivision (8) of this section, the commissioner shall promptly notify the applicant or registrant, as well as the employer or prospective employer if the applicant or registrant is a salesman, that it has been entered and of the reasons therefor and that if requested by the applicant or registrant within fifteen (15) days after the receipt of the commissioner's notification the matter will be promptly set down for hearing. If no hearing is requested within fifteen (15) days and none is ordered by the commissioner, the order will remain in effect until it is modified or vacated by the commissioner. If a hearing is requested or ordered, the commissioner, after notice of and opportunity for hearing, may affirm, modify or vacate the order.

(10) If the commissioner finds that any registrant or applicant for regis-

HeinOnline -- 1977 Vol. I 829 1977

tration is no longer in existence or has ceased to do business as a broker-dealer, investment adviser or salesman, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator, or guardian, or cannot be located after reasonable search, the commissioner may by order cancel the registration or application."

Approved April 5, 1977.

CHAPTER NO. 276

AN ACT TO AMEND SECTION 79-108, R.C.M. 1947, TO ESTABLISH A STALE-DATED WARRANT ACCOUNT AND TO PROVIDE FOR DISPOSITION OF STALE-DATED WARRANTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 79-108, R.C.M. 1947, is amended to read as follows:

"**79-108. Warrants — presentation — cancellation — reissue.** *(1)* All warrants drawn by the state auditor on the state treasury shall be presented for payment within 1 year after the date of the issue thereof. Should the payee or legal holder of any warrant fail to present it for payment within the time specified, the state auditor shall enter the same as canceled on the books of his office and the amount shall be credited to *a separate agency fund account administered by the state auditor.* Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment *within 4 years* from the date of issue, the state auditor may, upon proper showing by affidavit, issue a new warrant in lieu thereof.

(2) Three years after cancellation, the warrant shall be classed as unclaimed property subject to the provisions of Title 67, chapter 22. Should the payee or legal owner of any canceled warrant present it for payment or present a claim for payment, such presentation shall be to the department of revenue as provided in 67-2219."

Approved April 5, 1977.

CHAPTER NO. 277

AN ACT TO ELIMINATE THE COUNTY BOARDS OF SCHOOL BUDGET SUPERVISORS AND TRANSFER THEIR DUTIES TO THE BOARDS OF TRUSTEES; AMENDING SECTIONS 75-5707, 75-5806, 75-6106, 75-6513, 75-6709, 75-6713, 75-6714, 75-6716, 75-6717, 75-6719, 75-6720, 75-6721, 75-6727, 75-6803, AND 75-7203, R.C.M. 1947; AND REPEALING SECTIONS 75-6703, 75-6715, AND 75-6728, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-5707, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 830 1977

"**75-5707. Powers and duties.** The superintendent of public instruction shall have the general supervision of the public schools and districts of the state, and he shall have the power and shall perform the following duties or acts in implementing and enforcing the provisions of this Title:

(1) resolve any controversy resulting from the proration of joint costs by a joint board of trustees under the provisions of section 75-5929;

(2) issue, renew or deny teacher certification and emergency authorizations of employment and give notice of teacher certification suspension or revocation proceedings to be conducted by the board of education in accordance with the provisions of the teacher certification chapter of this Title;

(3) negotiate reciprocal tuition agreements with other states in accordance with the provisions of section 75-6318;

(4) pay the tuition for the residents of the Montana children's center at Twin Bridges high school in accordance with the provisions of section 75-6319;

(5) serve on the teachers' retirement board in accordance with the provisions of section 75-6203;

(6) prescribe absentee voting forms and rules in accordance with the provisions of section 75-6416;

(7) approve or disapprove the orders of a high school boundary commission in accordance with the provisions of section 75-6528;

(8) approve or disapprove the opening or reopening of a school in accordance with the provisions of sections 75-6602, 75-6603, 75-6604, or 75-6605;

(9) approve or disapprove school isolation within the limitations prescribed by section 75-6608;

(10) generally supervise the school budgeting procedures prescribed by law in accordance with the provisions of section 75-6702, and prescribe the school budget format in accordance with the provisions of section 75-6704 and 75-7209;

(11) establish a system of communication for calculating joint district revenues in accordance with the provisions of section 75-6721;

(12) approve or disapprove the adoption of a district's emergency budget resolution under the conditions prescribed in section 75-6725, and publish rules and regulations for an application for additional state aid for an emergency budget in accordance with the approval and disbursement provisions of section 75-6729;

(13) generally supervise the school financial administration provisions as prescribed by section 75-6802;

(14) prescribe and furnish the annual report forms to enable the districts to report to the county superintendent in accordance with the provisions of subsection (5) of section 75-6806, and the annual report forms

to enable the county superintendents to report to the superintendent of public instruction in accordance with the provisions of section 75-5809;

(15) approve, disapprove or adjust an increase of the average number belonging (ANB) in accordance with the provisions of sections 75-6903 and 75-6904;

(16) distribute state equalization aid in support of the foundation program in accordance with the provisions of sections 75-6908, 75-6918, and 75-6919;

(17) estimate the state-wide equalization level for the foundation program in accordance with the provisions of section 75-6920;

(18) distribute state impact aid in accordance with the provisions of section 75-6925;

(19) provide for the uniform and equal provision of transportation by performing the duties prescribed by the provisions of section 75-7005;

(20) approve or disapprove an adult education program for which a district proposes to levy a tax in accordance with the provisions of section 75-7207;

(21) request, accept, deposit and expend federal moneys in accordance with the provisions of section 75-7303;

(22) authorize the use of federal moneys for the support of an interlocal co-operative agreement in accordance with the provisions of sections 75-7306 and 75-7307;

(23) prescribe the form and contents of and approve or disapprove interstate contracts in accordance with the provisions of section 75-7308;

(24) approve or disapprove the conduct of school on a Saturday or on pupil-instruction-related days in accordance with the provisions of sections 75-7404 and 75-7405;

(25) recommend standards of accreditation for all schools to the board of education, and evaluate compliance with such standards and recommend accreditation status of every school to the board of education in accordance with the provisions of sections 75-7501 and 75-7502;

(26) collect and maintain a file of curriculum guides and assist schools with instructional programs in accordance with the provisions of sections 75-7505 and 75-7506;

(27) recommend the scope of conservation education in the schools to the board of education in accordance with the provisions of section 75-7509;

(28) establish and maintain a library of visual, aural, and other educational media in accordance with the provisions of section 75-7511;

(29) license textbook dealers, maintain a textbook library, initiate prosecution of textbook dealers violating the law, and supply a textbook listing in accordance with the provisions of the textbooks chapter of this Title;

HeinOnline -- 1977 Vol. I 832 1977

(30) administer and perform the duties as the executive officer of the board of education for vocational education in accordance with the provisions of section 75-7703;

(31) consider applications for the designation of a post-secondary vocational-technical center in accordance with the provisions of section 75-7707;

(32) establish a fund for the handling of post-secondary vocational-technical center fees in accordance with the provisions of section 75-7714;

(33) supervise and co-ordinate the conduct of special education in the state in accordance with the provisions of section 75-7803;

(34) administer the traffic education program in accordance with the provisions of section 75-7904;

(35) administer the school food services program in accordance with the provisions of sections 75-8002, 75-8003, and 75-8004;

(36) determine the result of an organization election for a community college district and the related election of trustees in accordance with the provisions of section 75-8112;

(37) review school building plans and specifications in accordance with the provisions of section 75-8206;

(38) publish and distribute fire danger books in accordance with the provisions of section 75-8309;

(39) prescribe the method of identification and signals to be used by school safety patrols in accordance with the provisions of section 75-8310; and

(40) perform any other duty prescribed from time to time by this Title, any other act of the legislature, or the policies of the board of education."

Section 2. Section 75-5806, R.C.M. 1947, is amended to read as follows:

"**75-5806. Additional positions.** In his capacity as county superintendent, he also shall serve as:

(1) the chairman of the county transportation committee, as prescribed by 75-7014;

(2) a member of the high school boundary commission of the county, as prescribed by 75-6521;

(3) an attendance officer for a district under the conditions prescribed by 75-6305; and

(4) the clerk of a joint board of trustees under the conditions prescribed by 75-5928."

Section 3. Section 75-6106, R.C.M. 1947, is amended to read as follows:

"**75-6106. Teacher certification registration.** Any person employed

as a teacher, principal, or district superintendent shall register his certificate or the district shall register its emergency authorization of employment for a teacher with the county superintendent of the county wherein he is employed in order to validate his employment status and permit payment under his employment contract. If a teacher does not register his certificate with the county superintendent within sixty (60) calendar days after the teacher begins to perform his services, he shall not be eligible to receive any further compensation under his contract of employment until he has registered his certificate. After the schools of a district have been open for sixty (60) calendar days in the current school fiscal year, the county superintendent shall notify each district of the county of each teacher who has registered his current valid certificate, and the district shall not pay any teacher who has not registered his certificate until the county superintendent does notify the district of such registration.

A teacher employed by a joint district shall register his certificate with the *county superintendent of the county in which he is teaching.*"

Section 4. Section 75-6513, R.C.M. 1947, is amended to read as follows:

"**75-6513. Joint elementary district abandonment.** Any joint elementary district shall be abandoned for the reasons prescribed in 75-6512 or when the taxable value of the taxable property of the portion of the joint district that is located within any one of the counties is of so little value that the continued inclusion of such portion in the joint district is not justified. The *boards of trustees* designated by 75-6720 for school budgeting purposes shall be responsible for ordering the abandonment of the joint district and shall immediately send a copy of such order to the county superintendent of each county with territory in the joint district.

After the issuance or receipt of the abandonment order, each county superintendent shall attach the territory within his county to a contiguous elementary district within his county; except when the district is abandoned because of the lack of taxable property in one county's territory of the district and a school is operated in another county's territory of the district which territory has a taxable value of seventy-five thousand dollars ($75,000) or more, the county superintendent of the county where such territory is located shall not attach it to another district. Such territory shall continue to operate as an elementary district within the county.

Any abandonment of a joint elementary district shall become effective on the date of the abandonment order except that district abandonments under the provisions of subsection (1) of 75-6512 shall become effective on the first day of July."

Section 5. Section 75-6709, R.C.M. 1947, is amended to read as follows:

"**75-6709. Notice of preliminary budget filing and final budget meeting.** Between the tenth and twentieth days of July of each year, the *clerk of each district* shall publish notice one time in the official news-

HeinOnline -- 1977 Vol. I 834 1977

paper of the county stating that the preliminary *budget* for *the district* for the school fiscal year just beginning, as prepared and adopted by the trustees, *is* on file in his office and open to inspection *by* all taxpayers. The notice shall also state that the *trustees* will meet at 10 a.m. on the fourth Monday in July for the purpose of considering and adopting the final budget of *the* district, that the meeting of *the trustees* may be continued from day to day until the final adoption of the *district's budget*, and that any taxpayer in *the* district may appear at such meeting and be heard for or against any part of the budget."

Section 6. Section 75-6713, R.C.M. 1947, is amended to read as follows:

"**75-6713. Final budget meeting.** On the fourth Monday in July, at the hour of 10 a.m., the *trustees of each district* shall meet *to consider the* preliminary *budget* submitted to or prepared by the county superintendent, including all information and any attachments required by law.

The *trustees* may continue *the* meeting from day to day but shall adopt the final budget for *the* district and determine the amounts to be raised by tax levies for *the* district not later than the second Monday in August and before the fixing of the tax levies for each district. Any taxpayer in *the* district may attend any portion of the *trustees'* meeting and be heard on the budget of such district or on any item or amount contained in such budget."

Section 7. Section 75-6714, R.C.M. 1947, is amended to read as follows:

"**75-6714. Final budget adjustment procedures.** At the *final budget* meeting of the *trustees, they* shall have the power to make any changes or corrections *they* may deem necessary or proper in any item or amount of the preliminary budget either by eliminating the item or amount, or by increasing or reducing the amount of any item. When it appears to the *trustees* that the amount proposed to be expended for any item of the preliminary budget is in excess of the amount actually required to be expended for such item, the *trustees* shall reduce such amount to the amount actually required to be expended and shall enter in its minutes the reasons for such reduction."

Section 8. Section 75-6716, R.C.M. 1947, is amended to read as follows:

"**75-6716. Adoption and expenditure limitations of final budget.** When the *trustees have* caused the amount of an item of the budget for *the* district to be determined and set, it shall enter the amount in the portion of the budget form provided for the reporting of the final budget and upon completion of all the items, the chairman and clerk shall sign the budget form. The resulting budget shall constitute the final budget and the appropriations for the district for the current school fiscal year. The trustees and all officers and employees of the district shall be limited in making expenditures or incurring liabilities to the amount of such appropriations except that transfers from any appropriation item to another appropriation item within a fund's budget may be made as provided by law. Expenditures made, liabilities incurred, or warrants issued

HeinOnline -- 1977 Vol. I 835 1977

in excess of any of the final budget appropriations for any item, as originally determined or as revised by transfer, shall not be a liability of the district and no money of the district shall ever be used to pay the same."

Section 9. Section 75-6717, R.C.M. 1947, is amended to read as follows:

"**75-6717. Fixing and levying tax levies by board of county commissioners.** On the second Monday in August, the county superintendent shall place before the board of county commissioners the final adopted *budget* of *the district* and any emergency budget adopted by *the* district during the previous school fiscal year. It shall be the duty of the board of county commissioners to fix and levy on all the taxable value of all the real and personal property within *the* district, all district and county taxation required to finance, within the limitations provided by law, the final *budget* and any emergency *budget* of *the district.*"

Section 10. Section 75-6719, R.C.M. 1947, is amended to read as follows:

"**75-6719. Completion, filing and delivery of final budgets.** After the final budget of *the* district has been adopted by the *trustees,* the county superintendent shall complete all the remaining portions of the budget forms and shall:

(1) send the final budget information to the superintendent of public instruction on the forms provided by the superintendent, on or before the first day of September; *and*

(2) deliver a copy of the final budget for *the* district to the county treasurer on or before the first day of September."

Section 11. Section 75-6720, R.C.M. 1947, is amended to read as follows:

"**75-6720. Filing final budgets of joint districts.** The final budgets of joint districts shall be filed in the office of the county superintendent of each county in which a part of a joint district is located *after approval by the trustees of the joint district.*"

Section 12. Section 75-6721, R.C.M. 1947, is amended to read as follows:

"**75-6721. Budgeting procedure for joint districts and establishment of communication procedure.** The trustees of a joint district shall adopt a budget according to the school budgeting laws and send a copy of such budget to the county superintendent of each county in which a part of the joint district is located. The county superintendents receiving the budget of a joint district shall jointly compute the estimated budget revenues and determine the number of mills which need to levied in the joint district for each fund for which a levy is to be made. The superintendent of public instruction shall establish a communication procedure to facilitate the joint estimation of revenues and determination of the tax levies.

After determining, in accordance with law, the number of mills which

HeinOnline -- 1977 Vol. I 836 1977

need be levied for each fund included on the final budget of the joint district, a joint statement of the required mill levies shall be prepared and signed by the county superintendents involved in the computation. A copy of the statement shall be delivered to the board of county commissioners of each county in which a part of the joint district is located not later than the Friday immediately preceding the second Monday in August."

Section 13. Section 75-6727, R.C.M. 1947, is amended to read as follows:

"75-6727. Emergency budget limitation, preparation and adoption procedures. The meeting of the trustees to consider and adopt an emergency budget shall be open to the public and any taxpayer in the district shall have the right to appear and be heard. If at such a meeting a majority of the trustees present shall find that an emergency exists, the trustees may make and adopt a preliminary emergency budget on the regular budget form setting forth fully the facts constituting the emergency. In adopting the preliminary emergency budget, the trustees may budget for any fund which was included on the final budget of the district for the current school fiscal year. The budget shall be itemized to show the amount appropriated for each item as required on the budget form.

When the emergency is due to any increase of enrollment, the maximum amount of the emergency budget for all funds shall be determined in the following manner:

(1) Determine the total amount in the final budget for the current school fiscal year of all funds affected by the emergency, less any amounts appropriated as capital outlay and any amount appropriated for addition to the cash reserve.

(2) Divide the amount determined in subsection (1) by the number of pupils originally enrolled in such district during the immediately preceding school fiscal year. The resulting cost per pupil shall constitute the maximum permissible per-pupil expenditure in the emergency budget.

(3) Determine the enrollment increase of the current school fiscal year by subtracting the number of pupils originally enrolled during the immediately preceding school fiscal year from the number of pupils enrolled for the current school year. The result shall be the enrollment increase for the current school fiscal year.

(4) Multiply the cost per pupil determined in subsection (2) by the enrollment increase determined in subsection (3). The result shall be the maximum limitation on an emergency budget for emergencies due to an increase of enrollment.

In the event of any other type of emergency, the budget shall be limited by those expenditures deemed by the trustees to be reasonable and necessary to finance the stated conditions of the emergency, and the preliminary emergency budget shall be accompanied with the details of the proposed expenditures.

Whenever the trustees adopt a preliminary emergency budget for the transportation fund, the trustees shall attach to such budget a copy of each transportation contract which is connected with the emergency and

HeinOnline -- 1977 Vol. I 837 1977

which has been prepared and executed in accordance with the school transportation contract laws.

After the trustees have adopted the emergency budget by a majority vote of the trustees, it shall be signed by the chairman of the trustees and the clerk of the district and *copies shall be sent to the county superintendent, the county treasurer, and the superintendent of public instruction.*"

Section 14. Section 75-6803, R.C.M. 1947, is amended to read as follows:

"**75-6803. County officials for financial administration when joint district.** When all of the schools of the joint district are located in one (1) county, the school financial administration duties assigned to county officials shall be performed by those officials of the county wherein the schools of the district are located. When the schools of a joint district are located in more than one (1) county, the superintendent of public instruction shall designate the county officials to perform such duties for the joint district.

The designated county treasurer shall be the custodian of all joint district moneys and shall perform all other duties of the county treasurer for the joint district. The superintendent of public instruction shall disburse all moneys for a joint district to such county treasurer."

Section 15. Section 75-7203, R.C.M. 1947, is amended to read as follows:

"**75-7203. Budgeting, levy requirement and paying elementary tuition.** The tuition amount that has been established in 75-7201 shall be paid during the ensuing school fiscal year. The trustees of the elementary district shall include such amount in the tuition fund of the preliminary budget. If the trustees should fail to include such amount or any portion of it in the preliminary budget, *they* shall adjust the budgeted amount in adopting the final budget to provide for the total tuition amount that is due during the ensuing school fiscal year. Such adjustment shall not be subject to the budget adjustment provisions of 75-6714.

The county superintendent shall report the net tuition fund levy requirement for each elementary district to the county commissioners on the second Monday of August, and a levy on the district shall be made by the county commissioners in accordance with 75-6717. Such levy requirement shall be calculated by subtracting from the total expenditure amount authorized in the final tuition fund budget, the sum of the cash balance in the tuition fund at the end of the immediately preceding school fiscal year plus any other anticipated moneys that may be realized in the tuition fund.

The trustees shall pay by warrants drawn on the tuition fund the tuition amounts owed to each district included in the county superintendent's notification provided under the provisions of 75-7201. Such payments shall be made whenever there is a sufficient amount of cash available in the tuition fund, but no later than the end of the school fiscal year for which the budget was adopted."

HeinOnline -- 1977 Vol. I 838 1977

Section 16. **Repealer.** Sections 75-6703, 75-6715, and 75-6728, R.C.M. 1947, are repealed.

Approved April 5, 1977.

CHAPTER NO. 278

AN ACT TO AMEND THE UNIFORM COMMERCIAL CODE WITH RESPECT TO THE MANNER OF HOLDING AND TRANSFERRING INVESTMENT SECURITIES AND TO AUTHORIZE THE DEPOSIT OF INVESTMENT SECURITIES WITH CLEARING CORPORATIONS AND FEDERAL RESERVE BANKS UNDER CERTAIN CONDITIONS; AMENDING SECTIONS 87A-8-102, 87A-8-320, AND 82A-401.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87A-8-102, R.C.M. 1947, is amended to read as follows:

"**87A-8-102. Definitions and index of definitions.** (1) In this chapter unless the context otherwise requires

(a) A "security" is an instrument which

(i) is issued in bearer or registered form; and

(ii) is of a type commonly dealt in upon securities exchanges or markets or commonly recognized in any area in which it is issued or dealt in as a medium for investment; and

(iii) is either one of a class or series or by its terms is divisible into a class or series of instruments; and

(iv) evidences a share, participation or other interest in property or in an enterprise or evidences an obligation of the issuer.

(b) A writing which is a security is governed by this chapter and not by Uniform Commercial Code—Commercial Paper even though it also meets the requirements of that chapter. This chapter does not apply to money.

(c) A security is in "registered form" when it specifies a person entitled to the security or to the rights it evidences and when its transfer may be registered upon books maintained for that purpose by or on behalf of an issuer or the security so states.

(d) A security is in "bearer form" when it runs to bearer according to its terms and not by reason of any endorsement.

(2) A "subsequent purchaser" is a person who takes other than by original issue.

(3) A "clearing corporation" is a corporation:

(a) at least 90% of the capital stock of which is held by or for *one or more persons, other than individuals, each of whom:*

(i) is subject to supervision or regulation pursuant to the provisions of federal or state banking laws or state insurance laws and does not hold in excess of 20% of the capital stock of the corporation; or

(ii) is a broker or dealer or investment company registered under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 and does not hold in excess of 20% of the capital stock of the corporation; or

(iii) is a national securities exchange or association registered under a statute of the United States such as the Securities Exchange Act of 1934*; and*

(b) any remaining capital stock of which is held by individuals who have purchased such capital stock at or prior to the time of their taking office as directors of such corporation and who have purchased only so much of such capital stock as may be necessary to permit them to qualify as such directors.

(4) A "custodian bank" is any bank or trust company which is supervised and examined by state or federal authority having supervision over banks and which is acting as custodian for a clearing corporation.

(5) Other definitions applying to this chapter or to specified parts thereof and the sections in which they appear are:

"Adverse claim." Section 87A-8-301.

"Bona fide purchaser." Section 87A-8-302.

"Broker." Section 87A-8-303.

"Guarantee of the signature." Section 87A-8-402.

"Intermediary bank." Section 87A-4-105.

"Issuer." Section 87A-8-201.

"Overissue." Section 87A-8-104.

(6) In addition Chapter 1 contains general definitions and principles of construction and interpretation applicable throughout this chapter."

Section 2. Section 87A-8-320, R.C.M. 1947, is amended to read as follows:

"87A-8-320. Transfer or pledge within a central depository system. (1) If a security

(a) is in the custody of a clearing corporation or of a custodian bank or a nominee of either subject to the instructions of the clearing corporation; and

(b) is in bearer form or endorsed in blank by an appropriate person or registered in the name of the clearing corporation or custodian bank or a nominee of either; and

HeinOnline -- 1977 Vol. I 840 1977

(c) is shown on the account of a transferor or pledgor on the books of the clearing corporation; then, in addition to other methods, a transfer or pledge of the security or any interest therein may be effected by the making of appropriate entries on the books of the clearing corporation reducing the account of the transferor or pledgor and increasing the account of the transferee or pledgee by the amount of the obligation or the number of shares or rights transferred or pledged.

(2) Under this section entries may be with respect to like securities or interests therein as a part of a fungible bulk and may refer merely to a quantity of a particular security without reference to the name of the registered owner, certificate or bond number or the like and, in appropriate cases, may be on a net basis taking into account other transfers or pledges of the same security.

(3) A transfer or pledge under this section has the effect of a delivery of a security in bearer form or duly endorsed in blank (section 87A-8-301) representing the amount of the obligation or the number of shares or rights transferred or pledged. If a pledge or the creation of a security interest is intended, the making of entries has the effect of a taking of delivery by the pledgee or a secured party (sections 87A-9-304 and 87A-9-305). A transferee or pledgee under this section is a holder.

(4) A transfer or pledge under this section does not constitute a registration of transfer under Part 4 of this chapter.

(5) That entries made on the books of the clearing corporation as provided in subsection (1) are not appropriate does not affect the validity or effect of the entries nor the liabilities or obligations of the clearing corporation to any person adversely affected thereby.

(6) Under this section a clearing corporation shall, upon written request, furnish to any issuer within a reasonable time a list disclosing the names of all persons who have securities of the issuer in their account with a depository and including a statement of the principal amount or number of units of each such security of the issuer on deposit. The clearing corporation may charge the issuer a fee for such written list, but the fee shall bear a reasonable relation to the cost of furnishing such list."

Section 3. There is a new R.C.M. section numbered 5-1601 that reads as follows:

5-1601. Definitions. For the purposes of 5-1602 and 5-1603, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Fiduciary" means a trustee under any trust, expressed, implied, resulting or constructive, executor, administrator, guardian, committee, conservator, curator, tutor, custodian, nominee, receiver, trustee in bankruptcy, assignee for the benefit of creditors, partner, agent, officer of any corporation, public or private, public officer, or any other person acting in a fiduciary capacity for any person, trust, or estate.

(2) "Person" means an individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

HeinOnline -- 1977 Vol. I 841 1977

Section 4. There is a new R.C.M. section numbered 5-1602 that reads as follows:

5-1602. Deposit of securities in central depository. (1) Notwithstanding any other provision of law, any fiduciary, as defined in 5-1601, holding securities in its fiduciary capacity, any bank or trust company holding securities as a custodian or managing agent, and any bank or trust company holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit of the securities in a clearing corporation, as defined in 87A-8-102. When the securities are so deposited, certificates representing securities of the same class of the same issuer may be merged and held in bulk in the name of the nominee of such clearing corporation with any other such securities deposited in such clearing corporation by any person regardless of the ownership of the securities, and certificates of small denomination may be merged into one or more certificates of larger denomination. The records of such fiduciary and the records of such bank or trust company acting as custodian, as managing agent, or as custodian for a fiduciary shall at all times show the name of the party for whose account the securities are deposited. Title to the securities may be transferred by bookkeeping entry on the books of the clearing corporation without physical delivery of certificates representing such securities. A bank or trust company so depositing securities pursuant to this section is subject to rules which in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency, may from time to time adopt. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities so deposited by the bank or trust company in the clearing corporation for the account of such fiduciary. A fiduciary shall, on demand by any party to a judicial proceeding for the settlement of the fiduciary's account or on demand by the attorney for such party, certify in writing to the party the securities deposited by the fiduciary in the clearing corporation for its account as such fiduciary.

(2) This section shall apply to any fiduciary holding securities in its fiduciary capacity and to any bank or trust company holding securities as a custodian, managing agent, or custodian for a fiduciary acting on the effective date of this section or who thereafter may act regardless of the date of the agreement, instrument, or court order by which it is appointed and regardless of whether or not such fiduciary, custodian, managing agent, or custodian for a fiduciary owns capital stock of such clearing corporation.

Section 5. There is a new R.C.M. section numbered 5-1603 that reads as follows:

5-1603. Fiduciaries — deposit of United States government and agency securities with a federal reserve bank. (1) Notwithstanding any other provision of law, any bank or trust company when acting as fiduciary as defined in 5-1601, and any bank or trust company when holding securities as custodian for a fiduciary is authorized to deposit or arrange for the deposit with the federal reserve bank in its district of any securities the principal and interest of which the United States or

HeinOnline -- 1977 Vol. I 842 1977

any department, agency, or instrumentality thereof has agreed to pay or has guaranteed payment, to be credited to one or more accounts on the books of the federal reserve bank in the name of the bank or trust company, to be designated fiduciary or safekeeping accounts, to which accounts other similar securities may be credited. A bank or trust company so depositing securities with a federal reserve bank shall be subject to such rules with respect to the making and maintenance of such deposit as, in the case of state chartered institutions, the state banking board and, in the case of national banking associations, the comptroller of the currency may from time to time adopt. The records of the bank or trust company shall at all times show the ownership of the securities held in such account. Ownership of and other interests in the securities credited to such account may be transferred by entries on the books of the federal reserve bank without physical delivery of any securities. A bank or trust company acting as custodian for a fiduciary shall, on demand of the fiduciary, certify in writing to the fiduciary the securities deposited by the bank or trust company with the federal reserve bank for the account of such fiduciary. A fiduciary shall, on demand by any party to its accounting or on demand by the attorney for the party, certify in writing to the party the securities deposited by the fiduciary with the federal reserve bank for its account as such fiduciary.

(2) This section shall apply to all fiduciaries and custodians for fiduciaries acting on the effective date of this section or who thereafter may act regardless of the date of the instrument or court order by which they are appointed.

Section 6. Section 82A-401.1, R.C.M. 1947, is amended to read as follows:

"**82A-401.1. Functions of department.** The department and its units are responsible for administering laws pertaining to business regulation, including, but not limited to, laws pertaining to:

(1) Banks and banking (Title 5, chapters 1 through *16*);

(2) Building and loan associations (Title 7, chapter 1);

(3) Credit unions (Title 14, chapter 1);

(4) Consumer protection (Title 85, chapter 4);

(5) Supervision of the milk industry (Title 27, chapter 4);

(6) Consumer loans (Title 47, chapter 2);

(7) Sale and marketing of coal (Title 50, chapter 6);

(8) Unfair business practices (Title 51, chapter 1);

(9) Regulation of petroleum products (Title 60, chapter 2);

(10) Retail installment sales (Title 74, chapter 6);

(11) Standard weights and measures (Title 90, chapter 1);

(12) Proprietary post-secondary educational institutions (Title 75, chapter 92)."

Approved April 5, 1977.

HeinOnline -- 1977 Vol. I 843 1977

CHAPTER NO. 279

AN ACT TO CLARIFY THE INVALIDATION OF MARRIAGES; AMENDING SECTION 48-311, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 48-311, R.C.M. 1947, is amended to read as follows:

"**48-311. Declaration of invalidity.** (1) The district court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:

(a) a party lacked capacity to consent to the marriage at the time the marriage was *entered into*, either because of mental incapacity or infirmity or because of the influence of alcohol, drugs, or other incapacitating substances, or a party was induced to enter into a marriage by force or duress, or by fraud involving the essentials of marriage;

(b) a party lacks the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was *entered into* the other party did not know of the incapacity;

(c) a party was under the age of sixteen (16) years or was aged sixteen (16) or seventeen (17) years and did not have the consent of his parents or guardian or judicial approval; or

(d) the marriage is prohibited.

(2) A declaration of invalidity under subsection (1)(a) through (c) may be sought by any of the following persons and must be commenced within the times specified, but in no event may a declaration of invalidity be sought after the death of either party to the marriage:

(a) for lack of capacity to consent because of mental incapacity or infirmity, no later than one (1) year after the petitioner obtained knowledge of the described condition;

(b) for lack of capacity to consent because of the influence of alcohol, drugs, or other incapacitating substances, no later than one (1) year after the petitioner obtained knowledge of the described condition;

(c) for lack of capacity to consent because of force, duress or fraud, no later than two (2) years after the petitioner obtained knowledge of the described condition;

(d) for the reason set forth in subsection (1)(b), by either party, no later than four (4) years after the petitioner obtained knowledge of the described condition;

(e) for the reason set forth in subsection (1)(c), by the underaged party, his parent or guardian, prior to the time the underaged party reaches the

HeinOnline -- 1977 Vol. I 844 1977

age at which he could have married without satisfying the omitted requirement.

(3) A declaration of invalidity for the reason set forth in subsection (1)(d) may be sought by either party, the legal spouse in case of a bigamous marriage, the county attorney, or a child of either party, at any time prior to the death of one (1) of the parties.

(4) Children born of a marriage declared invalid are legitimate.

(5) Unless the court finds, after a consideration of all relevant circumstances, including the effect of a retroactive decree on third parties, that the interests of justice would be served by making the decree not retroactive, it shall declare the marriage invalid as of the date of the marriage. The provisions of this act relating to property rights of the spouses, maintenance, support, and custody of children on dissolution of marriage are applicable to nonretroactive decrees of invalidity."

Approved April 5, 1977.

CHAPTER NO. 280

AN ACT TO AUTHORIZE EMPLOYEES OF THE DEPARTMENT OF HIGHWAYS WHO ENFORCE MOTOR TRANSPORT WEIGHT AND SAFETY LAWS, AND OFFICERS OF THE HIGHWAY PATROL, TO ALSO ENFORCE PROVISIONS OF THE PUBLIC SERVICE COMMISSION LAW REGARDING TYPES OF COMMODITIES CARRIED, ETC.; REQUIRING THE PUBLIC SERVICE COMMISSION, THE HIGHWAY PATROL BUREAU, AND DEPARTMENT OF HIGHWAYS TO COOPERATE TO REDUCE DUPLICATION OF ENFORCEMENT EFFORT; AND AMENDING SECTIONS 31-110 AND 32-1126, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 8-132 that reads as follows:

8-132. Purpose. The purpose of this bill is to establish a system to enforce provisions of the Motor Carrier Act that will:

(1) Authorize the department of highways, gross vehicle weight division, and the department of justice, highway patrol bureau, to enforce provisions of the Motor Carrier Act in cooperation with the public service commission, transport division;

(2) Increase the level of enforcement coverage available without increasing the budget or appropriations required by any agency; and

(3) Allow for analysis of the program and recommendations to the legislature by the public service commission.

Section 2. Section 31-110, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 845 1977

"**31-110. Offenses for which arrest may be made by patrolmen — murder, etc. — patrolmen when police officers — forbidden to act in labor disputes — temporary control of traffic in cities and towns — investigations of accidents — inspection of livestock.** In addition to the above duties, the highway patrol supervisor and all patrolmen are authorized under this act to make arrests for the following offenses committed; if committed in the presence of said supervisor or any of said patrolmen, or if committed in a rural district, upon the request of a peace officer, or if committed in a city or town of less than twenty-five hundred (2500) inhabitants, upon the request of any peace officer, or the mayor of said city or town: The crimes of murder, assault with a deadly weapon, arson, burglary, larceny, kidnaping, illegal transportation of narcotics, or violation of the Dyer act regarding the transportation of stolen automobiles. Provided, that such highway patrolmen shall have no authority and are expressly forbidden to make arrests in labor disputes or in preventing violence in connection with strikes, and shall not be permitted to perform any duties whatsoever in connection with labor disputes, strikes or boycotts.

Patrolmen shall be deemed police officers in making arrests in all offenses occurring on the highways and in the use of motor vehicles or the registration thereof, and for the purpose of serving warrants of arrest in connection with such violations.

The patrolmen are also hereby empowered to stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products; and whenever the patrolmen have good reason to believe that such livestock or livestock products have been stolen, they are empowered to take possession of the same until such livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained.

A highway patrolman has the same authority to enforce provisions of the motor carrier's licensing law as that granted the public service commission under 8-103. The highway patrol bureau shall cooperate with the public service commission and the department of highways to assure minimum duplication and maximum coordination of enforcement effort."

Section 3. Section 32-1126, R.C.M. 1947, is amended to read as follows:

"**32-1126. Officers may weigh vehicles and require removal of excessive loads — badges and uniforms of highway employees.** (1) A peace officer, officer of the highway patrol, or employee of the department may weigh any vehicle regulated by sections 32-1123.1 through 32-1123.11, either by means of portable or stationary scales, and may require that the vehicle be driven to the nearest scales if those scales are within two (2) miles. That person may then require the driver to unload immediately that portion of the load necessary to decrease the weight of the vehicle to conform to the maximum allowable weights specified in sections 32-1123.1 through 32-1123.11.

HeinOnline -- 1977 Vol. I 846 1977

(2) Commodities and material unloaded as required by this section shall be cared for and removed from the highway right of way by the owner or operator of the vehicle at the risk of that owner or operator. The removal shall be within a reasonable time designated by the person who has compelled the unloading.

(3) The department may establish, maintain, and operate, either intermittently or on a continuous schedule, weigh stations and require vehicles, except passenger cars and pickup trucks under eight thousand (8,000) pounds G.V.W., to enter for the purpose of weighing and inspection for compliance with all laws pertaining to their operation and safety requirements.

(4) In addition to other enforcement duties assigned under this section, an employee of the department has the same authority to enforce provisions of the motor carriers licensing law as that granted the public service commission under 8-103. This section does not relieve the public service commission from its responsibility as the lead agency as required in section 8-103, R.C.M. 1947. The commission, highway patrol, and the department shall cooperate to assure minimum duplication, and maximum coordination, of enforcement effort.

(5) An employee of the department engaged in the enforcement of this section shall wear and prominently display an identification badge or device which shows the employee's name and title. The department may authorize uniform dress for those employees."

Approved April 5, 1977.

CHAPTER NO. 281

AN ACT AMENDING SECTION 92-411, R.C.M. 1947, CONCERNING THE DEFINITION OF EMPLOYEE UNDER THE WORKERS' COMPENSATION ACT, BY REMOVING SUPERFLUOUS LANGUAGE, CLARIFYING THE COVERAGE OF CASUAL EMPLOYEES, AND CLARIFYING THE COVERAGE OF STUDENTS ENROLLED IN VOCATIONAL REHABILITATION OR OTHER ON-THE-JOB TRAINING COURSES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-411, R.C.M. 1947, is amended to read as follows:

"92-411. Employee and workman defined. (1) *The terms "employee", "workman", or "worker" mean:*

(a) each person in this state, including a contractor other than an "independent contractor" who is in the service of an employer as defined by the preceding section, under any appointment or contract of hire, expressed or implied, oral or written. *The terms include* aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service

HeinOnline -- 1977 Vol. I 847 1977

for such corporations for pay. *Casual employees as defined by 92-436 are included as employees if they are not otherwise covered by workers' compensation and if an* employer has elected to be bound by the provisions of the compensation law *for these casual employments, as provided in 92-202.1(2). Household or domestic service is excluded.*

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 71-307, *and* any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college; or

(d) students enrolled and in attendance in programs of vocational technical education approved by the state board of public education at designated postsecondary vocational technical centers.

(2) If the employer is a partnership, or sole proprietorship, such employer may elect to include as an "employee" within the provisions of this act, any member of such partnership, or the owner of the sole proprietorship, devoting full time to the partnership or proprietorship business. In the event of such election, the employer must serve upon the employer's *insurer* written notice naming the partners or sole proprietor to be covered, and no partner or sole proprietor shall be deemed an employee within this act until such notice has been given. For premium rate making, and for the determination of weekly wage for weekly compensation benefits, the insurance carrier shall assume a salary or wage of such electing "employee" to be $900 per month."

Approved April 5, 1977.

CHAPTER NO. 282

AN ACT TO AMEND SECTION 8-119, R.C.M. 1947, TO CONFORM THE PENALTY FOR VIOLATIONS BY A MOTOR CARRIER WITH THE JURISDICTION OF JUSTICE COURTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 8-119, R.C.M. 1947, is amended to read as follows:

"**8-119. Penalties for violations.** Any motor carrier, subject to the provisions of this act, or, whenever any such motor carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or persons acting for or employed by such corporation, or any person, corporation, association, or partnership, or officer, agent or employee thereof, or any broker of property or officer, agent or employee thereof, who vio-

HeinOnline -- 1977 Vol. I 848 1977

lates or fails to comply with or who procures, aids or abets in the violation of any provision of this act, or who fails to obey, observe, or comply with any lawful order, decision, rule or regulation, direction, demand, or requirement of the board, or any part of provisions thereof, shall:

(a) be subject to a civil penalty to be collected and deposited to the general fund by the board after notice and hearing in an amount not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) for the first offense, and not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each subsequent offense; or

(b) *be subject, upon conviction in a justice court, to* a fine of not less than twenty-five dollars ($25) nor more than five hundred dollars ($500) for the first offense, and not less than one hundred dollars ($100) nor more than one thousand dollars ($1,000) for each subsequent offense."

Approved April 5, 1977.

CHAPTER NO. 283

AN ACT AMENDING SECTION 32-2406, R.C.M. 1947, TO AUTHORIZE THE DEPARTMENT OF HIGHWAYS TO REVIEW LOCAL GOVERNMENT PROJECTS ON STATE RIGHT-OF-WAY AND TO AUTHORIZE THE LOCAL GOVERNMENT UNIT TO LET CONTRACTS FOR CONSTRUCTION OF THE SAME.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2406, R.C.M. 1947, is amended to read as follows:

"**32-2406. General power of department.** The department may plan, lay out, alter, construct, reconstruct, improve, repair, maintain, and the commission may abandon highways on the federal-aid systems and state highways. The department may co-operate and contract with counties and municipalities to provide assistance in performing these functions on other highways and streets. *The department may review and approve projects for the installation of public works on state highway right-of-way and authorize a county or municipality to let contracts related to such improvements.*"

Approved April 5, 1977.

CHAPTER NO. 284

AN ACT TO AMEND SECTIONS 74-608, 74-610, AND 74-611, R.C.M. 1947, TO APPLY THE SPECIFIED INTEREST RATE IN THE CASE OF RETAIL INSTALLMENT SALES TO THE END OF THE MONTH BALANCE AS WELL AS THE AVERAGE DAILY BALANCE AND TO CHANGE THE PENALTY FOR CERTAIN VIOLATIONS OF THE RETAIL INSTALLMENT SALES ACT FROM A CRIMINAL TO A CIVIL CLASSIFICATION.

HeinOnline -- 1977 Vol. I 849 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 74-608, R.C.M. 1947, is amended to read as follows:

"**74-608. Finance charge limitation.** *(1)* Notwithstanding the provisions of any other law, the finance charge included in a retail installment contract shall not exceed the following schedule:

(a) As to motor vehicles:

Class 1. Any new motor vehicle designated by the manufacturer by a year model not earlier than the year in which the sale is made $7 per $100 per year.

Class 2. Any new motor vehicle not in class 1 and any used motor vehicle designated by the manufacturer by a year model of the same or not more than 2 years prior to the year in which the sale is made $9 per $100 per year.

Class 3. Any used motor vehicle not in class 2 and designated by the manufacturer by a year model more than 2 years prior to the year in which the sale is made—$11 per $100 per year.

(b) As to any industrial or construction equipment primarily designed for or used in construction, logging, mining, or other industrial business, the price of which is over $5,000, $9 per $100 per year. This subsection shall not apply to agricultural equipment.

(c) As to services and goods other than as provided under subsections (1)*(a)* and *(1)(b)* above:

(i) *on* so much of the principal balance as does not exceed $300, $11 per $100 per year;

(ii) if the principal balance exceeds $300 but is less than $1,000, $9 per $100 per year on that portion over $300;

(iii) if the principal balance exceeds $1,000, $7 per $100 per year on that portion over $1,000.

(2) Such finance charge shall be computed on the principal balance as determined under 74-607(f) on contracts payable in successive monthly payments substantially equal in amount from the date of the contract until the maturity of the final installment, notwithstanding that the total time balance thereof is required to be paid in installments. A minimum finance charge of $20 may be charged on any retail installment contract.

(3) When a retail installment contract provides for payment other than in equal successive monthly installments, the finance charge may be a rate which will provide the same yield as is permitted on monthly payment contracts under subsections *(1)* and *(2)* hereof, having due regard for the schedule of payments in the contract.

(4) Notwithstanding the provisions of any other law, a retail charge account agreement may provide for and the seller or holder may charge, collect, and receive a finance charge as specified herein for the privilege

HeinOnline -- 1977 Vol. I 850 1977

of paying in installments thereunder. The finance charge may be computed from month to month (which need not be a calendar month) or other regular billing cycle period by applying a rate not to exceed 1½ % for each such monthly period to an amount (not including any unpaid finance charge) not in excess of the greatest of:

(i) the average daily balance in the account in the billing cycle period;

(ii) the ending balance of the account as of the last day of the billing cycle less the amount of purchases charged to the account during that billing cycle; or

(iii) the median amount within a $10 range within which such average daily balance or beginning balance falls, provided the seller applies the same rate of finance charge to all such balances within such range.

(5) If the finance charge so determined pursuant to *(4)* above for such monthly period is less than *50* cents, a maximum finance charge not in excess of *50* cents may be charged, received, and collected for such period."

Section 2. Section 74-610, R.C.M. 1947, is amended to read as follows:

"74-610. Refinancing retail installment contract. The holder of a contract, upon request by the buyer, may extend the scheduled due date of all or any part of any installment or installments or defer payment or payments or renew or restate the unpaid time balance of such contract, the amount of the installments, and the time schedule therefor and may collect for such extension, deferment, renewal, or restatement a refinance charge computed as follows: The holder may compute the refinance charge on the unpaid time balance to be extended, deferred, renewed, or restated by adding to such unpaid time balance the cost for any insurance and other benefits incidental to the refinancing plus any accrued delinquency and collection charges, after deducting any refund which may be due the buyer as for a prepayment pursuant to 74-609 at the rate of the finance charge specified in 74-608*(1)* and by reclassifying in the case of motor vehicles by its then year model for the term of the refinancing agreement but otherwise subject to the provisions of this act governing computation of the original finance charge. The provisions of this act relating to minimum finance charges under 74-608*(2)* and an acquisition cost under 74-609 shall not apply in calculating refinance charges on the contract extended, deferred, renewed, or restated. If all unpaid installments are deferred for not more than 2 months, the holder may at his election charge and collect for such deferment an amount equal to the difference between:

(1) the refund required for prepayment in full under 74-609 as of the scheduled due date of the first deferred installment, and

(2) the refund required for prepayment in full as of 1 month prior to said date times the number of months in which no scheduled payment is made."

Section 3. Section 74-611, R.C.M. 1947, is amended to read as follows:

"74-611. Penalties. *(1)* Any person who knowingly *violates* any provision of this act or *engages* in the business of a sales finance company in this state without a license therefor as provided in this act shall be

HeinOnline -- 1977 Vol. I 851 1977

guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than $500 or by imprisonment for not more than 6 months, or both.

(2) Any person violating 74-607 *through* 74-610, except as the result of an accidental and bona fide error of computation, shall be barred from recovery of any finance charge, delinquency or collection charge on the contract."

Approved April 5, 1977.

CHAPTER NO. 285

AN ACT FOR THE GENERAL REVISION OF THE LAWS RELATING TO ADMINISTRATIVE PROCEDURE; AMENDING SECTIONS 82-4201 THROUGH 82-4208, 82-4212, 82-4213, 82-4215, 82-4216, 82-4217, 82-4220 THROUGH 82-4223, 82-4227 THROUGH 82-4229, AND 82A-107, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4201, R.C.M. 1947, is amended to read as follows:

"**82-4201. Short title.** This *part (82-4201 through 82-4225)* shall be known and may be cited as the "Montana Administrative Procedure Act"."

Section 2. Section 82-4202, R.C.M. 1947, is amended to read as follows:

"**82-4202. Definitions.** For purposes of this *part, the following definitions apply:*

(1) "Agency" means any *agency, as defined in 82-4227,* of the state government, except that the provisions of this *part do* not apply to the following:

(a) the state board of pardons, except that *the* board shall be subject to the requirements of 82-4203 and 82-4205 and its rules shall be published in the Montana administrative code and register;

(b) the supervision and administration of any penal institution with regard to the institutional supervision, custody, control, care, or treatment of *youths or* prisoners;

(c) the board of regents and the Montana university system;

(d) the financing, construction, and maintenance of public works.

(2) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of an agency. *Substantive rules are either legislative rules, which if adopted in accordance with this part and under expressly delegated authority have the force of law and when not so adopted are invalid, or*

HeinOnline -- 1977 Vol. I 852 1977

adjective or interpretive rules, which may be adopted in accordance with this part and under express or implied authority to codify an interpretation of a statute although such interpretation lacks the force of law. The term includes the amendment or repeal of a prior rule but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings issued pursuant to 82-4218;

(c) rules relating to the use of public works, facilities, streets, and highways when the substance of such rules is indicated to the public by means of signs or signals;

(d) seasonal rules adopted annually relating to hunting, fishing, and trapping when there is a statutory requirement for the publication of such rules and rules adopted annually relating to the seasonal recreational use of lands and waters owned or controlled by the state when the substance of such rules is indicated to the public by means of signs or signals;

(e) rules *implementing the state personnel classification plan, the state wage and salary plan, or the statewide budgeting and accounting system;*

(f) uniform rules adopted pursuant to interstate compact, except that such rules shall be filed in accordance with *82-4205* and shall be published in the Montana administrative code.

(3) "Contested case" means any proceeding before an agency in which a determination of legal rights, duties, or privileges of a party is required by law to be made after an opportunity for hearing. The term includes but is not restricted to rate making, price fixing, and licensing.

(4) "License" includes the whole or part of any agency permit, certificate, approval, registration, charter, or other form of permission required by law but does not include a license required solely for revenue purposes.

(5) "Licensing" includes any agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, *transfer,* or amendment of a license.

(6) "Party" means any person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party; but nothing herein shall be construed to prevent an agency from admitting any person or agency as a party for limited purposes.

(7) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public organization of any character other than an agency."

Section 3. Section 82-4203, R.C.M. 1947, is amended to read as follows:

"82-4203. Rules describing agency organization and procedures — public inspection of rules — model rules. (1) In addition to other rule-making requirements imposed by law, each agency shall:

(a) *adopt* as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public

may obtain information or make submissions or requests. The notice and hearing requirements contained in 82-4204 do not apply to adoption of a rule relating to a description of its organization.

(b) *adopt* rules of practice, not inconsistent with statutory provisions, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(c) *make* available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions;

(d) *upon* request of any person or agency, provide a copy of any rule. Unless otherwise provided by statute, an agency may require the payment of the cost of providing such copies.

(2) No agency rule *is* valid or effective against any person or party whose rights have been substantially prejudiced by an agency's failure to comply with the public inspection requirement herein.

(3) The attorney general shall prepare a model form for a rule describing the organization of agencies and model rules of practice for agencies to use as a guide in fulfilling the requirements of 82-4203(1). The attorney general shall add to, amend, or revise the model rules from time to time as he *considers* necessary for the proper guidance of agencies. The model rules and additions, amendments, or revisions thereto shall be appropriate for the use of as many agencies as is practicable and shall be filed with the secretary of state and provided to any agency upon request. The adoption by an agency of all or part of the model rules *does* not relieve the agency from following the rule-making procedures required by this *part*."

Section 4. Section 82-4203.1, R.C.M. 1947, is amended to read as follows:

"**82-4203.1. Legislative review of rules.** (1) The legislature may, by joint resolution, repeal any rule in the Montana administrative code. If a rule is repealed, the legislature shall, in the joint resolution, state its objections to the repealed rule. If an agency adopts a new rule to replace the repealed rule, the agency shall adopt the new rule in accordance with the objections stated by the legislature in the joint resolution. If the legislature does not repeal a rule filed with it before the adjournment of that regular session, the rule remains valid.

(2) The legislature may also, by joint resolution, direct a change to be made in any rule in the Montana administrative code or direct the adoption of an additional rule. If a change in any rule or the adoption of an additional rule is directed to be made, the legislature shall, in the joint resolution, state the nature of the change or the additional rule to be made and its reasons therefor. The agency shall, in the manner provided in the Montana Administrative Procedure Act, adopt a new rule in accordance with the legislative direction.

(3) Rules made by agencies and changes in rules directed by the legislature under subsection *(2)* of this section, shall conform and be pursuant to statutory authority."

HeinOnline -- 1977 Vol. I 854 1977

Section 5. Section 82-4203.2, R.C.M. 1947, is amended to read as follows:

"**82-4203.2. Administrative code committee — appointment and term of members — officers.** The administrative code committee consists of four members of the senate and four members of the house of representatives appointed before the *60th* legislative day of the regular session in the same manner as standing committees of the respective houses are appointed. A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee. No more than two of the appointees of each house may be members of the same political party. A member of the committee shall serve until his term of office as a legislator ends or until the end of the *60th* legislative day of the session of the biennium following his appointment or until his successor is appointed, whichever occurs first. The committee shall elect one of its members as chairman and such other officers as it *considers* necessary."

Section 6. Section 82-4203.4, R.C.M. 1947, is amended to read as follows:

"**82-4203.4. Appointment of employees and consultants.** The administrative code committee may *retain* whatever employees, consultants, or counsel *as* are necessary to carry out the provisions of this *part and to advise the publisher in relation to the text and legal authority of the material published in the register or the code,* within the limitations of legislative appropriations."

Section 7. Section 82-4203.5, R.C.M. 1947, is amended to read as follows:

"**82-4203.5. Powers of the committee.** (1) The committee shall review all proposed rules *filed with the secretary of state* and may:

(a) prepare written recommendations for the adoption, amendment, or rejection of a rule and submit those recommendations to the department proposing the rule when a rule-making hearing will not be held in accordance with the provisions of 82-4204;

(b) prepare recommendations for the adoption, amendment, or rejection of a rule and submit oral or written testimony at a rule-making hearing; or

(c) *require* that a rule-making hearing be held in accordance with the provision of 82-4204.

(2) The committee shall prepare a report to the legislature at least once each biennium and may recommend amendments to the *Montana* Administrative Procedure Act or the repeal, amendment, or adoption of a rule as provided in 82-4203.1."

Section 8. Section 82-4204, R.C.M. 1947, is amended to read as follows:

"**82-4204. Adoption, amendment, or repeal of rules — emergency**

HeinOnline -- 1977 Vol. I 855 1977

rules. (1) Prior to the adoption, amendment, or repeal of any rule, the agency shall:

(a) *give* written notice of its intended action. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, *rationale for the intended action,* and the time when, place where, and manner in which interested persons may present their views thereon. The notice shall be filed with the secretary of state for publication in the Montana administrative register as provided in 82-4206(2) and mailed to persons who have made timely requests to the agency for advance notice of its rule-making proceedings. The notice shall be published and mailed at least *30* days in advance of the agency's intended action. If any statute *provides* for a different method of publication, the affected agency shall comply with the statute in addition to the requirements contained herein. However, in no case *may* the notice period be less than *30* days *or more than 6 months.*

(b) *afford* interested persons *at least 20 days' notice of a hearing and 28* days to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing shall be granted if requested by either 10% or 25 of the persons who will be directly affected by the proposed rule, by a governmental subdivision or agency, or by an association having not less than 25 members who will be directly affected. An *agency may continue a hearing date for cause.* Contested case procedures need not be followed in hearings held pursuant to this section. *If* a hearing is otherwise required by statute, nothing herein *alters* that requirement. The agency shall consider fully written and oral submissions respecting the proposed rule. Upon adoption of a rule, an agency shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption.

(2) If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 20 days' notice and states in writing its reasons for that finding, it may proceed, without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule may be effective for a period not longer than 120 days, but the adoption of an identical rule under subsections (1)(a) and (1)(b) of this section is not precluded. The sufficiency of the reasons for a finding of imminent peril to the public health, safety, or welfare *is* subject to judicial review.

(3) No rule *is* valid unless adopted in substantial compliance with subsections (1) *or* (2) of this section *and within 6 months of the publishing of notice thereof.*

(4) An agency may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons with respect to contemplated rule making. An agency may also appoint committees of experts or interested persons or representatives of the general public to advise it with respect to any contemplated rule making. The powers of the committees shall be advisory only. Nothing herein shall relieve the agency from following rule-making procedures required by this *part.*

HeinOnline -- 1977 Vol. I 856 1977

(5) Rules *may* not unnecessarily repeat statutory language. Whenever it is necessary to refer to statutory language in order to convey the meaning of a rule interpreting the language, the reference shall clearly indicate that portion of the language which is statutory and the portion which is amplification of the language. Each rule shall include a citation of authority pursuant to which it, or any part thereof, is adopted.

(6) Each agency shall at least annually review its rules to determine if any new rule should be adopted or any existing rule should be modified or repealed."

Section 9. There is a new R.C.M. section to be codified within the Montana Administrative Procedure Act numbered 82-4204.1, that reads as follows:

82-4204.1. Authority for rules. (1) Except as provided in 82-4203, nothing in this part confers authority upon or augments the authority of any state agency to adopt, administer, or enforce any rule. To be effective, each substantive rule adopted must be within the scope of authority conferred and in accordance with standards prescribed by other provisions of law.

(2) Whenever by the express or implied terms of any statute a state agency has authority to adopt rules to implement, interpret, make specific, or otherwise carry out the provisions of the statute, no rule adopted is valid or effective unless consistent and not in conflict with the statute and reasonably necessary to effectuate the purpose of the statute.

Section 10. Section 82-4205, R.C.M. 1947, is amended to read as follows:

"**82-4205. Filing of rules — effective date of rules.** Each agency shall file with the secretary of state a copy of each rule adopted by it. Each rule shall become effective after publication in the Montana administrative register as provided in 82-4206, except that:

(1) if a later date is required by statute or specified in the rule, the later date shall be the effective date;

(2) subject to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state or at a stated date following publication in the Montana administrative register if the agency finds that this effective date is necessary because of imminent peril to the public health, safety, or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

(3) The secretary of state may prescribe a format, style, and arrangement for rules which are filed pursuant to this *part* and may refuse to accept the filing of any rule that is not in compliance therewith. He shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules), which shall be open to public inspection, and shall provide copies of any rule upon request of any person or agency.

HeinOnline -- 1977 Vol. I 857 1977

Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies."

Section 11. Section 82-4206, R.C.M. 1947, is amended to read as follows:

"**82-4206. Publication and distribution of rules and notices.** (1) The secretary of state shall compile, index, *arrange, rearrange, correct errors or inconsistencies without changing the meaning, intent, or effect of any rule,* and publish all rules filed pursuant to this *part* in a publication which shall be known as the *administrative rules of Montana* (herein referred to as the code). *However, this does not require the republication of rules which have been published under the name "Montana Administrative Code".* The secretary of state shall *supplement,* revise, *and publish* the code, or any part thereof, as often as he *considers* necessary. *He may include such editorial notes, cross references, and other matter as he and the administrative code committee consider desirable or advantageous. He shall publish supplements to the code at such times and in such form as he considers appropriate.*

(2) The secretary of state shall each month *or at more frequent intervals* compile and publish the Montana administrative register (herein referred to as the register). The register shall contain *three* sections, a rules section, a notice section, *and an interpretation section.*

(a) The rules section of the register shall contain all rules filed since the compilation and publication of the preceding issue of the register *together with the concise statement of reasons required under 82-4204(1)(b).*

(b) The notice section of the register shall contain all rule-making notices filed with the secretary of state pursuant to 82-4204 since the compilation and publication of the preceding register.

(c) The interpretation section of the register shall contain all opinions of the attorney general and all declaratory rulings of agencies issued since the publication of the preceding register.

(d) Each issue of the register shall contain the issue number and date of the register and a table of contents. Each page of the register shall contain the issue number and date of the register of which it is a part. The secretary of state may include *with* the register information to help the user in *relating the register to the Montana administrative code.*

(3) The secretary of state, with the consent of the adopting agency, may omit from the code or register any rule the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if the rule *merely incorporates by reference a model code, federal agency rule, or like publication* made available on application to the agency and if the code or register contains a notice stating the *citation and* general subject matter of the omitted rule and stating how a copy may be obtained.

(4) The code shall be arranged, indexed, and printed or duplicated in such manner as to permit separate publication of portions thereof relating to individual agencies. An agency may make arrangements with the secretary of state for the printing of as many copies of such separate publications as it may require. The cost of any such separate publications shall be paid by the agency.

HeinOnline -- 1977 Vol. I 858 1977

(5) The secretary of state shall distribute copies of the code *and supplements or* revisions thereto without charge to the following:

(a) attorney general, one copy;

(b) clerk of each court of record of this state, one copy;

(c) clerk of United States district court for the district of Montana, one copy;

(d) clerk of United States court of appeals for the ninth circuit, one copy;

(e) each county clerk of this state, for use of county officials and the public, one copy, *which may be maintained in a public library in the county seat or in the county offices;*

(f) state law library, one copy;

(g) state historical society, one copy;

(h) each unit of the *Montana university system*, one copy;

(i) law library of the university of Montana, one copy;

(j) legislative council, three copies;

(k) library of congress, one copy;

(l) state library, one copy.

(6) The secretary of state, clerk of each court of record in the state, clerk of each county in the state, and the librarians for the state law library and the university of Montana law library shall maintain a complete, current set of the code, including *supplements or* revisions thereto. Such persons shall also maintain the register *issues published* during the preceding 2 years. The secretary of state shall also maintain a permanent *set of the registers.*

(7) The secretary of state shall make copies of and subscriptions to the code *and supplements or* revisions thereto and the register available to any person at prices fixed to cover publication and mailing costs.

(8) The secretary of state shall determine the cost of supplying copies of the code *and supplements or* revisions thereto and the register. Such cost shall be the approximate cost of printing or duplicating and mailing. However, a uniform price per page or group of pages may be established without regard to differences in cost of printing different parts of the code *and supplements or* revisions thereto and the register.

(9) The secretary of state shall publish all notices, rules, and interpretations filed with him, at least once a month or as directed by the administrative code committee but not more often than twice a month, in a publication called the Montana administrative code register. He shall send the register without charge to each person listed in 82-4206(5) and to each member of the legislature requesting the same. He shall send the register to any other person who pays a subscription fee which he shall fix in consultation with the administrative code committee.

HeinOnline -- 1977 Vol. I 859 1977

(10) The secretary of state shall deposit all fees he collects in the general fund.

(11) The secretary of state may charge agencies a filing fee for all material to be published in the code or register based on an estimated cost of printing, which he shall fix in consultation with the administrative code committee."

Section 12. Section 82-4207, R.C.M. 1947, is amended to read as follows:

"**82-4207. Petition for adoption of rules.** An interested person or, when the legislature is not in session, a member of the legislature on behalf of an interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 60 days after submission of a petition, the agency either shall deny the petition in writing (stating its reasons for the denial) or shall initiate rule-making proceedings in accordance with 82-4204."

Section 13. Section 82-4208, R.C.M. 1947, is amended to read as follows:

"**82-4208. Judicial notice of rules.** The courts shall take judicial notice of any rule filed and published under the provisions of this *part.*"

Section 14. Section 82-4212, R.C.M. 1947, is amended to read as follows:

"**82-4212. Examination of evidence by agency — proposed orders.** When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, *may* not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing *unless he becomes unavailable to the agency. If the person who conducted the hearing becomes unavailable to the agency, proposed findings of fact may be prepared by a person who has read the record only if the demeanor of witnesses is considered immaterial by all parties.* The parties may waive compliance with this section by written stipulation."

Section 15. Section 82-4213, R.C.M. 1947, is amended to read as follows:

"**82-4213. Final orders — notification.** (1) A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the

HeinOnline -- 1977 Vol. I 860 1977

underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record. *Each conclusion of law shall be supported by authority or by a reasoned opinion.*

(2) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 82-4218. No such agency decision or order *is* valid or effective against any person or party nor may it be invoked by the agency for any purpose until it has been made available for public inspection as herein required. This provision is not applicable in favor of any person or party who has actual knowledge thereof or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order."

Section 16. Section 82-4215, R.C.M. 1947, is amended to read as follows:

"**82-4215. Licenses.** (1) When the grant, denial, renewal, revocation, suspension, annulment, withdrawal, limitation, *transfer,* or amendment of a license is required by law to be preceded by notice and opportunity for hearing, the provisions of this *part* concerning contested cases apply.

(2) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(3) No revocation, suspension, annulment, withdrawal, or amendment of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined."

Section 17. Section 82-4216, R.C.M. 1947, is amended to read as follows:

"**82-4216. Judicial review of contested cases.** (1) *(a)* A person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this *part.* This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by statute. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

HeinOnline -- 1977 Vol. I 861 1977

(b) A party who proceeds before an agency under the terms of a particular statute shall not be precluded from questioning the validity of that statute on judicial review, but such party may not raise any other question not raised before the agency, unless it is shown to the satisfaction of the court that there was good cause for failure to raise the question before the agency.

(2) (a) Proceedings for review shall be instituted by filing a petition in district court within 30 days after service of the final decision of the agency or if a rehearing is requested, within 30 days after the decision thereon. Except as otherwise provided by statute, the petition shall be filed in the district court for the county where the petitioner resides or has his principal place of business or where the agency maintains its principal office. Copies of the petition shall be promptly served upon the agency and all parties of record.

(b) The petition shall include a concise statement of the facts upon which jurisdiction and venue are based, a statement of the manner in which the petitioner is aggrieved, and the ground or grounds specified in subsection (7) of this section upon which the petitioner contends he is entitled to relief. The petition shall demand the relief to which the petitioner believes he is entitled, and the demand for relief may be in the alternative.

(3) Unless otherwise provided by statute, the filing of the petition shall not stay enforcement of the agency's decision. The agency may grant or the reviewing court may order a stay upon terms which it *considers* proper.

(4) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(5) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(6) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not shown in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

HeinOnline -- 1977 Vol. I 862 1977

(7) The court *may* not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

(a) in violation of constitutional or statutory provisions;

(b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or

(g) because findings of fact, upon issues essential to the decision, were not made although requested."

Section 18. Section 82-4217, R.C.M. 1947, is amended to read as follows:

"**82-4217. Appeals.** An aggrieved party may obtain review of a final judgment of a district court under this *part* by appeal to the supreme court within 60 days after entry of judgment. Such appeal shall be taken in the manner provided by law for appeals from district courts in civil cases. Unless otherwise provided by statute or unless the agency has granted a stay through the completion of the judicial review process:

(1) *if* appeal is taken from a judgment of the district court affirming an agency decision, the agency decision shall not be stayed except upon order of the supreme court; except that, in cases where a stay is in effect at the time of the filing of notice of appeal, the stay shall be continued by operation of law for 20 days from the date of filing of the notice;

(2) *if* appeal is taken from a judgment of the district court reversing or modifying an agency decision, the agency decision shall be stayed pending final determination of the appeal unless the supreme court orders otherwise."

Section 19. Section 82-4220, R.C.M. 1947, is amended to read as follows:

"**82-4220. Subpoenas and enforcement — compelling testimony.** (1) An agency conducting any proceeding subject to this *part* shall have the power to require the furnishing of such information, the attendance of such witnesses, and the production of such books, records, papers, documents, and other objects as may be necessary and proper for the purposes of the proceeding. In furtherance of this power, an agency upon its own motion may, and upon request of any party appearing in a contested case shall, issue subpoenas for witnesses or subpoenas duces tecum. The method for service of subpoenas, witness fees, and mileage shall be the

HeinOnline -- 1977 Vol. I 863 1977

same as required in civil actions in the district courts of the state. Except as otherwise provided by statute, witness fees and mileage shall be paid by the party at whose request the subpoena was issued.

(2) In case of disobedience of any subpoena issued and served under this section or of the refusal of any witness to testify as to any material matter with regard to which he may be interrogated in a proceeding before the agency, the agency may apply to any district court in the state for an order to compel compliance with the subpoena or the giving of testimony. If the agency fails or refuses to seek enforcement of a subpoena issued at the request of a party or to compel the giving of testimony *considered* material by a party, the party may make such application. The court shall hear the matter as expeditiously as possible. If the disobedience or refusal is found to be unjustified, the court shall enter an order requiring compliance. Disobedience of such order shall be punishable by contempt of court in the same manner and by the same procedures as is provided for like conduct committed in the course of civil actions in district courts. If another method of subpoena enforcement or compelling testimony is provided by statute, it may be used as an alternative to the method provided for in this section.

(3) Each agency shall provide in its rules of practice for discovery prior to a contested case hearing."

Section 20. Section 82-4221, R.C.M. 1947, is amended to read as follows:

"**82-4221. Representation.** Any person compelled to appear in person or who voluntarily appears before any agency or representative thereof shall be accorded the right to be accompanied, represented, and advised by counsel. In a proceeding before an agency, every party shall be accorded the right to appear in person or by or with counsel but this *part* shall not be construed as requiring an agency to furnish counsel to any such person."

Section 21. Section 82-4222, R.C.M. 1947, is amended to read as follows:

"**82-4222. Service.** Except where a statute expressly provides to the contrary, service in all agency proceedings subject to the provisions of this *part* and in proceedings for judicial review thereof shall be as prescribed for civil actions in the district courts."

Section 22. Section 82-4223, R.C.M. 1947, is amended to read as follows:

"**82-4223. Construction and effect.** Nothing in this *part* shall be *considered* to limit or repeal requirements imposed by statute or otherwise recognized law. No subsequent legislation shall be *considered* to supersede or modify any provision of this *part*, whether by implication or otherwise, except to the extent that such legislation shall do so expressly."

Section 23. Section 82-4227, R.C.M. 1947, is amended to read as follows:

"**82-4227. Definitions.** As used in this *chapter*:

HeinOnline -- 1977 Vol. I 864 1977

(1) "*agency*" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules, *determine contested cases, or enter into contracts* except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "*rule*" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public; *or*

(b) declaratory rulings as to the applicability of any statutory provision or of any rule.

(3) "agency action" means the whole or a part of an agency rule, license, order, or contract or the equivalent or denial thereof."

Section 24. Section 82-4228, R.C.M. 1947, is amended to read as follows:

"**82-4228. Agency requirements.** (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final *agency action is taken* that is of significant interest to the public.

(2) An agency shall be *considered* to have complied with the notice provisions of this *section* if:

(a) an environmental impact statement is prepared and distributed as required by the Montana Environmental Policy Act, Title 69, chapter 65;

(b) a proceeding is held as required by the Montana Administrative Procedure Act;

(c) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(d) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision prior to a final decision on a matter.

(3) Procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views, or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

HeinOnline -- 1977 Vol. I 865 1977

(4) The provisions of this *section* do not apply to:

(a) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare, or safety;

(b) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or

(c) a decision involving no more than a ministerial act.

(5) Each agency shall adopt guidelines for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request."

Section 25. Section 82-4229, R.C.M. 1947, is amended to read as follows:

"**82-4229. Enforcement.** The district courts of the state have jurisdiction to set aside an agency decision under *82-4228* upon petition of any person whose rights have been prejudiced, made within 30 days of the date of the decision."

Section 26. Section 82A-107, R.C.M. 1947, is amended to read as follows:

"**82A-107. Duties and powers of department heads.** (1) Except as otherwise provided by law, each department head shall:

(a) *supervise*, direct, account for, organize, plan, administer, and execute the functions vested in the department by this title or other law;

(b) *establish* the policy to be followed by the department and employees;

(c) *compile* and submit reports and budgets for the department as required by law or requested by the governor;

(d) *provide* the governor with any information that he requests at any time on the operation of the department;

(e) *represent* the department in communications with the governor;

(f) *prescribe* rules, consistent with law and rules established by the governor, for the administration of the department; the conduct of the employees; the distribution and performance of business; and the custody, use, and preservation of the records, documents, and property pertaining to department business. The lieutenant governor, secretary of state, attorney general, auditor, and superintendent of public instruction may prescribe their own rules for their departments or offices, and the governor may not prescribe rules for them. *The rules described in this subsection are limited to statements concerning only the internal management of the agency and not affecting private rights or procedures available to the public. This section does not authorize the adoption of any rule as rules are defined in the Montana Administrative Procedure Act.*

HeinOnline -- 1977 Vol. I 866 1977

(g) *subject* to the approval of the governor, establish the internal organizational structure of the department, and allocate the functions of the department to units to promote the economic and efficient administration and operation of the department. The internal structure of the department shall be established in accordance with 82A-104(2).

(h) *subject* to law and the state merit system, if applicable, establish and make appointments to necessary subordinate positions and abolish unnecessary positions;

(i) *maintain* a central office in Helena for the department and such other facilities throughout the state as may be required for the effective and efficient operation of the department.

(2) Except as otherwise provided by law, each department head may:

(a) *subject* to law and the state merit system, if applicable, transfer employees between positions, remove persons appointed to positions, and change the duties, titles, and compensation of employees within the department;

(b) *delegate* any of the functions vested in the department head to subordinate employees;

(c) *apply* for, accept, administer, and expend funds, grants, gifts, and loans from the federal government or any other source in administering the department's functions;

(d) *enter* into agreements with federal, state, and local agencies necessary to carry out the department's functions."

Section 27. There is a new section that reads as follows:

Transition schedule — public education rules. Rules and policies of the board of public education and the state superintendent of public instruction are subject to 82-4204(3) on and after October 1, 1977. Any such rules and policies in effect on January 1, 1977, may be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 82-4204(1).

Section 28. There is a new section that reads as follows:

Transition schedule — administration rules. Rules and policies of the department of administration not exempted from the Montana Administrative Procedure Act are subject to 82-4204(3) on and after October 1, 1977. The director of administration shall discontinue publication of the Montana administrative manual after that date but may continue the publication of this material in manual form under a new title not containing the word "administrative". The director may file any rules published in the first volume of the Montana administrative manual as of January 1, 1977, with the secretary of state before October 1, 1977, without being subject to the notice and hearing requirements of 82-4204(1). The secretary of state shall arrange with the director of administration for publication of the rules of the department of administration in a volume separable from the administrative rules of Montana for the convenience of state offices which do not wish to acquire the entire code.

HeinOnline -- 1977 Vol. I 867 1977

Section 29. There is a new section that reads as follows:

Transition schedule — institutions rules. Rules and policies of the department of institutions relating to patients or inmates in a mental, medical, or eleemosynary institution are subject to 82-4204(3) on and after October 1, 1977. Any such rules in effect on January 1, 1977, may be filed before October 1, 1977, for publication in the administrative code without being subject to the notice and hearing requirements of 82-4204(1).

Section 30. **Saving clause.** Section 82-4220(3), R.C.M. 1947, does not apply to a contested case for which the initial notice of hearing was issued prior to March 15, 1977.

Approved April 5, 1977.

CHAPTER NO. 286

AN ACT TO AMEND SECTIONS 4-1-407, 32-3403, 68-1901, 79-306, 79-1401, 84-5606.6, AND 84-723, R.C.M. 1947, RELATING TO THE DEPOSIT OF MONEYS IN THE STATE TREASURY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4-1-407, R.C.M. 1947, is amended to read as follows:

"**4-1-407. Revenue to be paid to state treasurer — disposition of revenue.** Except as provided in section 4-1-408 of this code, all fees, charges, taxes and revenues collected by or under authority of the Montana department, shall be *deposited with* the state treasurer. *He* shall deposit *the* funds to the credit of the state general fund."

Section 2. Section 32-3403, R.C.M. 1947, is amended to read as follows:

"**32-3403. Disposition of funds collected.** The department of justice shall retain five per cent (5%) of the funds collected in payment of the trip fees to defray costs of administration. The remaining ninety-five per cent (95%) shall be *transferred*, on or before the fifteenth day of each month after collection, to the credit of the department of highways."

Section 3. Section 68-1901, R.C.M. 1947, is amended to read as follows:

"**68-1901. Management of fund.** The retirement fund shall be managed as follows:

(1) The board of administration shall have exclusive control of the administration of the fund except as otherwise provided.

(2) The fund shall be invested by the state board of investments as part of the long-term investment fund.

(3) The department of administration shall deposit in the state treasury all amounts received by it as provided in this act.

HeinOnline -- 1977 Vol. I 868 1977

(4) The state treasurer shall be custodian of the retirement fund, subject to the exclusive control of the board of administration as to the administration thereof and the board of investments as to the investment thereof.

(5) Interest earned on any cash deposit in a bank by the state treasurer and income on other assets constituting a part of the fund shall be paid into the fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year, in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(6) Except as herein provided, no member and no employee of the department of administration shall have any interest direct, or indirect, in the making of any investment, or in the gains or profits accruing therefrom. And no member or employee of the department directly or indirectly, for himself or as an agent or partner of others, may borrow any of its funds or deposits, nor shall any member or employee in any manner use the same except to make such current and necessary payments as are authorized by the department nor shall any member or employee of the department become an endorser or surety as to or in any manner an obligor for investments for the retirement system."

Section 4. Section 79-306, R.C.M. 1947, is amended to read as follows:

"79-306. State treasurer as treasurer of state agencies — deposits of moneys. (1) The state treasurer is designated the treasurer of every state agency and institution.

(2) All state agencies and institutions shall deposit all moneys, credits, evidences of indebtedness, and securities either in banks, building and loan associations or savings and loan associations located in the city or town in which the agencies and institutions are situated if there is a qualified bank, building and loan association or savings and loan association in the city or town as designated by the state treasurer with the approval of the board of investments, or with the state treasurer. Such banks, building and loan association or savings and loan association shall pledge securities sufficient to cover the deposits at all times, and the deposits shall be made in the name of the state treasurer, and shall be subject to withdrawal at his option, and shall draw interest as other state moneys, in accordance with the provisions of sections 79-301 and 79-302.

(3) Nothing in this chapter shall impair or otherwise affect any covenant entered into pursuant to law by any agency or institution respecting the segregation, deposit, and investment of any revenues or funds pledged for the payment and security of bonds or other obligations authorized to be issued by such agency, and all such funds shall be deposited and invested in accordance with such covenants notwithstanding any provision of this chapter.

(4) All moneys, credits, evidences of indebtedness, and securities received by a state agency or institution shall be deposited either with the state treasurer or in a depository approved by the state treasurer each day

HeinOnline -- 1977 Vol. I 869 1977

when the accumulated amount of coin and currency requiring deposit exceeds $100 or total collections exceed $500. All moneys, credits, evidences of indebtedness, and securities collected shall be deposited at least weekly."

Section 5. Section 79-1401, R.C.M. 1947, is amended to read as follows:

"**79-1401. Deposits of moneys received from permanent grants of state educational institutions.** All moneys received from the investment of grants of a state institution and all money received from the leasing of lands granted to a state institution shall be deposited with the state treasurer of Montana for each of such institutions, to the credit of the federal and private revenue fund."

Section 6. Section 84-5606.6, R.C.M. 1947, is amended to read as follows:

"**84-5606.6. Disposition of license fees — appropriations — transfer to general fund — justification of expenses.** All license fees collected under the provisions of this act shall be deposited with the state treasurer in the department's cigarette enforcement account in the earmarked revenue fund. There shall be appropriated to the department, from said cigarette enforcement account, such sum as may be necessary to comply with the provisions of this act for the fiscal biennium ending June 30, 1971. On or before June 30, 1971, the department shall pay to the state treasurer to the credit of the state general fund, all funds in excess of seven thousand five hundred dollars ($7,500) in said cigarette enforcement account, not needed for the administration of this act.

For the biennium beginning July 1, 1971, and each biennium thereafter, there shall be appropriated to the department a sum deemed justified and reasonable to operate the department's cigarette enforcement division, providing that after payment of all pending and known expenses, all sums so appropriated in excess of seven thousand five hundred dollars ($7,500) not needed for the administration of this act, shall be transferred to the state general fund to be available for general fund purposes. Such transfer shall be made within fifteen (15) days of the last day of the biennium.

All expenses charged against said cigarette enforcement account shall be justified by itemized claims coupled with standard accounting reports."

Section 7. Section 84-723, R.C.M. 1947, is amended to read as follows:

"**84-723. Collection of nonresident inheritance taxes, gross earnings on freight lines, license taxes by state department of revenue.** The duty of collecting the nonresident inheritance taxes, all gross earning taxes on freight lines, and the following license taxes, to wit: The corporation license tax, taxes on express companies and sleeping car companies, coal mines, and dealers license taxes, metalliferous mines license tax, cement producers and dealers license taxes, the gasoline distributors and dealers license tax, the oil producer's license tax and all other license taxes determined by the state department of revenue, the responsibility for collection of which has heretofore been imposed upon the state treasurer are hereby transferred from the state treasurer to the state department of revenue; such collections to be *deposited with* the state treasurer *as*

HeinOnline -- 1977 Vol. I 870 1977

required by law, and it is further provided that all duties heretofore imposed by law upon the state treasurer, with reference to the collection and issuance of receipts for any of the above named license taxes, or other taxes above enumerated, are hereby imposed upon the state department of revenue."

Approved April 5, 1977.

CHAPTER NO. 287

AN ACT TO AMEND SECTION 32-2143, R.C.M. 1947, TO REDEFINE RECKLESS DRIVING AND TO AMEND THE PENALTIES THEREFOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2143, R.C.M. 1947, is amended to read as follows:

"**32-2143. Reckless driving.** *(1) A* person *commits the offense of reckless driving if he:*

(a) operates any vehicle in willful or wanton disregard for the safety of persons or property*; or*

(b) flees or attempts to flee from or elude a peace officer who is lawfully in pursuit and whose vehicle is at the time in compliance with the requirements of 32-21-132.

(2) A person convicted of reckless driving *under subsection (1)(a)* shall be punished upon a first conviction by imprisonment for a period of not more than ninety (90) days, or by fine of not less than twenty-five dollars ($25.00) nor more than three hundred dollars ($300.00), or by both such fine and imprisonment, and on a second or subsequent conviction shall be punished by imprisonment for not less than ten (10) days nor more than six (6) months, or by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00), or by both such fine and imprisonment.

(3) A person convicted of reckless driving *under subsection (1)(b) shall be punished by imprisonment in the county or city jail for not less than 10 days or more than 6 months to which may be added at the discretion of the court a fine of not less than $300 or more than $500. On a second or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days or more than 1 year to which may be added at the discretion of the court a fine of not less than $500 or more than $1,000.*

(4) Each municipality in this state *may* enact *and enforce subsections (1) through (3)* of this section as an ordinance."

Approved April 5, 1977.

CHAPTER NO. 288

AN ACT TO AMEND TITLE 69, CHAPTER 41, R.C.M. 1947, CONFERRING GENERAL POWERS AND DUTIES UPON THE BOARD AND DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES; AUTHORIZING THE DEPARTMENT TO ADOPT RULES FOR THE ASSESSMENT OF FEES IN PERFORMING LABORATORY SERVICES; AUTHORIZING THE DEPARTMENT TO BRING AN ACTION FOR INJUNCTIVE RELIEF WHEN A PUBLIC HEALTH LAW, RULE, OR ORDER ADOPTED OR ISSUED AS AUTHORIZED BY LAW HAS BEEN VIOLATED; AMENDING SECTIONS 69-4110 AND 69-4111, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4110, R.C.M. 1947, is amended to read as follows:

"**69-4110. Functions, powers, and duties of department.** The department shall:

(1) Study conditions affecting the citizens of the state by making use of birth, death, and sickness records;

(2) Make investigations, disseminate information, and make recommendations for control of diseases and improvement of public health to persons, groups, or the public;

(3) At the request of the governor, administer any federal health program for which responsibilities are delegated to states;

(4) Inspect and work in conjunction with custodial institutions and Montana university system units periodically as necessary and at other times on request of the governor;

(5) After each inspection made under subsection (4) of this section, submit a written report on sanitary conditions to the governor and to the director of institutions or *commissioner of higher education* and include recommendations for improvement in conditions if necessary;

(6) Advise state agencies on location, drainage, water supply, disposal of excreta, heating, plumbing, sewer systems, and ventilation of public buildings;

(7) Organize laboratory services and provide equipment and personnel for those services;

(8) Develop and administer activities for the protection and improvement of dental health and supervise dentists employed by the state, local boards of health, or schools;

(9) Develop and administer a program to protect the health of mothers and children;

(10) Conduct health education programs;

(11) Supervise school and local public health nurses in the performance of their duties;

HeinOnline -- 1977 Vol. I 872 1977

(12) Consult with the superintendent of public instruction on health measures for schools;

(13) Develop and administer a program for services to handicapped children including diagnosis, medical, surgical and corrective treatment, and after-care and related services;

(14) Supervise local boards of health;

(15) Bring actions in court for the enforcement of the health laws and defend actions brought against the board or department;

(16) Accept and expend federal funds available for public health services;

(17) Have the power to use personnel of local departments of health to assist in the administration of laws relating to public health; *and*

(18) Adopt rules imposing fees for the tests and services performed by the laboratory of the department. In adopting a rule imposing fees, the department may establish only a fee that will reimburse the department for the costs incurred in performing tests and services. All fees shall be deposited in the general fund."

Section 2. Section 69-4111, R.C.M. 1947, is amended to read as follows:

"**69-4111. Legal adviser to state board and department — injunction.** *(1)* The attorney general is legal adviser to the board and department. If the county attorney fails to act *and* with the approval of the attorney general, the department may retain special counsel and compensate him from appropriations to the department. Either the county attorney of a county where a cause of action arises or the department may bring an action necessary to abate, restrain, or prosecute the violation of public health laws.

(2) Except as otherwise provided in the public health laws administered by the board or the department, the department may through the attorney general or appropriate county attorney sue in district court to enjoin any violation of the public health laws, rules, or orders adopted or issued under the public health laws administered by the board or department."

Approved April 5, 1977.

CHAPTER NO. 289

AN ACT TO PROVIDE FOR A MANDATORY MINIMUM SENTENCE OF IMPRISONMENT OF 10 DAYS, THE IMPOSITION OR EXECUTION OF WHICH MAY NOT BE DEFERRED OR SUSPENDED, FOR PERSONS CONVICTED OF A THIRD OR SUBSEQUENT OFFENSE OF DRIVING UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; AMENDING SECTION 32-2142, R.C.M. 1947.

HeinOnline -- 1977 Vol. I 873 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2142, R.C.M. 1947, is amended to read as follows:

"**32-2142. Persons under the influence of intoxicating liquor or of drugs.** (a) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is under the influence of intoxicating liquor to drive or be in actual physical control of any motor vehicle upon the highways of this state.

(b) In any criminal prosecution for a violation of paragraph (a) of this section relating to driving a vehicle while under the influence of intoxicating liquor, the amount of alcohol in the defendant's blood at the time alleged as shown by chemical analysis of the defendant's blood, urine, breath or other bodily substance, shall give rise to the following presumptions:

1. If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood it shall be presumed that the defendant was not under the influence of intoxicating liquor:

2. If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant:

3. If there was at that time 0.10 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of intoxicating liquor:

4. Per cent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred (100) cubic centimeters of blood:

5. The foregoing provisions of paragraph (b) shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of intoxicating liquor.

(c) It is unlawful and punishable as provided in paragraph (d) of this section for any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive a motor vehicle within this state. The fact that any person charged with a violation of this paragraph is or has been entitled to use such a drug under the laws of this state shall not constitute a defense against any charge of violating this paragraph.

(d) Every person who is convicted of a violation of this section shall be punished by imprisonment in the county or city jail for not more than six (6) months or by a fine of not less than one hundred dollars ($100.00) or more than five hundred dollars ($500.00) or by both such fine and imprisonment. On a second conviction he shall be punished by imprisonment in the county or city jail for not less than ten (10) days nor more

HeinOnline -- 1977 Vol. I 874 1977

than six (6) months, to which may be added, at the discretion of the court a fine of not less than three hundred dollars ($300.00) nor more than five hundred dollars ($500.00). On the third or subsequent conviction he shall be punished by imprisonment for a term of not less than thirty (30) days nor more than one (1) year, to which may be added at the discretion of the court a fine of not less than five hundred dollars ($500.00) nor more than one thousand dollars ($1,000.00). *Notwithstanding any provision to the contrary providing for suspension of execution of a sentence imposed under this subsection, the imposition or execution of the first 10 days of the jail sentence imposed for a third or subsequent offense that occurred within 5 years of the first offense may not be deferred or suspended.*

(e) Each and every municipality in this state is hereby given authority to enact the foregoing paragraphs (a), (b), (c) and (d) of this section, with the word "state" in the first sentence of paragraphs (a) and (c) changed in each instance to read "municipality," as an ordinance, and is hereby given jurisdiction of the enforcement of said ordinance, and of the imposition of the fines and penalties therein provided.

(f) The board shall forthwith revoke the license or permit to drive and operating privilege and any nonresident operating privilege of any person upon receiving a record of such person's conviction or forfeiture of bail not vacated under this section."

Approved April 5, 1977.

CHAPTER NO. 290

AN ACT TO ESTABLISH A STATE POLICY FOR ADULT BASIC EDUCATION, ALLOWING A STATE FUND ADMINISTERED BY THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR ITS SUPPORT; AMENDING SECTION 75-7512, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-7514.1 that reads as follows:

75-7514.1. State policy for adult basic education. Affirming that reading, writing, and other basic educational skills are vital for all citizens in modern society, the legislature declares that it is the continuing policy of Montana to encourage adult basic education programs that will develop the full educational potential of each citizen. The legislature recognizes that funds from local, state, and federal sources may be necessary to provide the basic education needed by Montana citizens.

Section 2. Section 75-7512, R.C.M. 1947, is amended to read as follows:

"75-7512. Definition of adult education and adult basic education. *(1)* As used in this *title*, unless the context clearly indicates otherwise*:*

(a) the term "adult education" means the instruction of persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation; *and*

(b) the term "adult basic education" means instruction in basic skills such as reading, writing, arithmetic, and other skills required to function in society offered to persons 16 years of age or older who are not regularly enrolled, full-time pupils for the purposes of ANB computation. Adult basic education may include any subject normally offered in the basic curricula of an accredited elementary or secondary school in the state. Neither definition *may* include the instruction in *postsecondary* vocational-technical centers."

Section 3. There is a new R.C.M. section numbered 75-7515.1 that reads as follows:

75-7515.1. Adult basic education fund and its distribution. (1) To encourage adult basic education, the legislature may appropriate funds to the superintendent of public instruction for the support of adult basic education programs in any school or community college district.

(2) The superintendent of public instruction shall direct the distribution of funds appropriated by the legislature for adult basic education. The trustees of any district may apply to the superintendent for funds for its adult basic education courses. The financial adminstration and accounting of adult basic education funds shall be the same as that of adult education.

Approved April 5, 1977.

CHAPTER NO. 291

AN ACT TO NOT REQUIRE THE REGISTERING OF WARRANTS OF A SCHOOL DISTRICT AS LONG AS THERE ARE MONEYS AVAILABLE IN ANY DISTRICT FUND; AMENDING SECTION 75-6805, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6805, R.C.M. 1947, is amended to read as follows:

"75-6805. Duties of county treasurer. The county treasurer of each county shall:

(1) receive and hold all school moneys subject to apportionment, and keep a separate accounting of their apportionments to the several districts which are entitled to a portion of such moneys according to the apportionments ordered by the county superintendent. A separate accounting shall be maintained for each county fund supported by a county-wide levy for a specific, authorized purpose, including:

(a) the basic county tax in support of the elementary foundation programs,

HeinOnline -- 1977 Vol. I 876 1977

(b) the basic special tax for high schools in support of the high school foundation programs,

(c) the county tax in support of the county's high school transportation obligation,

(d) the county tax in support of the high school obligations to the retirement systems of the state of Montana,

(e) any additional county tax required by law to provide for deficiency financing of the elementary foundation programs,

(f) any additional county tax required by law to provide for deficiency financing of the high school foundation programs,

(g) the county tax for a post-secondary vocational-technical center when levied by the board of county commissioners, and

(h) any other county tax for schools which may be authorized by law and levied by the county commissioners;

(2) whenever requested, notify the county superintendent of the amount of county school moneys on deposit in each of the funds enumerated in subsection (1) of this section and the amount of any other school moneys subject to apportionment, and apportion such county and other school moneys to the districts in accordance with the apportionment ordered by the county superintendent;

(3) keep a separate accounting of the expenditures for each budgeted fund included on the final budget of each district;

(4) keep a separate accounting of the receipts, expenditures, and cash balances for each budgeted fund included on the final budget of each district and for each nonbudgeted fund established by each district;

(5) except as otherwise limited by law, pay all warrants properly drawn on the county or district school moneys and properly endorsed by their holders;

(6) receive all revenue collected by and for each district and deposit these receipts in the fund designated by law, or by the district if no fund is designated by law. Interest and penalties on delinquent school taxes shall be credited to the same fund and district for which the original taxes were levied;

(7) send all revenues received for a joint district, part of which is situated in his county, to the county treasurer designated as the custodian of such revenues, no later than the fifteenth day of December of each year and every three (3) months thereafter until the end of the school fiscal year;

(8) register district warrants drawn on a budgeted fund in accordance with section 16-2604, R.C.M., 1947, when there are insufficient moneys available *in the sum of moneys in all funds of the district* to make payment of such warrant. Redemption of registered warrants shall be made in accordance with sections 16-2605, 16-2602, and 16-2607, R.C.M., 1947;

HeinOnline -- 1977 Vol. I 877 1977

(9) invest the moneys of any district as directed by the trustees of the district; and

(10) give to the trustees of each district, at least quarterly, an itemized report for each fund maintained by the district showing the paid warrants, outstanding warrants, registered warrants, amount and types of revenue received, and the cash balance."

Approved April 5, 1977.

CHAPTER NO. 292

AN ACT AMENDING SECTION 40-3520, R.C.M. 1947, TO PROVIDE THAT WORKERS' COMPENSATION INSURERS ARE EXCEPTED FROM FICTITIOUS GROUP PROVISIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-3520, R.C.M. 1947, is amended to read as follows:

"**40-3520. Fictitious groups.** (1) No insurer, whether an authorized insurer or an unauthorized insurer, shall make available through any rating plan or form, property, casualty or surety insurance to any firm, corporation, or association of individuals, any preferred rate or premium based upon any fictitious group of such firm, corporation, or association of individuals.

(2) No form or plan of insurance covering any group or combination of persons or risks shall be written or delivered within or outside this state to cover persons or risks in this state at any preferred rate or on any form other than as offered to persons not in such group or combination and to the public generally, unless such form, plan of insurance, and the rates or premiums to be charged therefor have been submitted to and approved by the commissioner as being not unfairly discriminatory, and as not otherwise being in conflict with subsection (1) above or with any provision of chapter 36 of this title (rates and rating organizations) to the extent that such chapter 36 is, by its terms, applicable thereto.

(3) This section does not apply to life insurance, disability insurance, *workers' compensation insurance written for industry or business associations,* or annuity contracts. *However, workers' compensation group insurance rates are subject to all applicable provisions of Title 40, chapter 56.*"

Approved April 5, 1977.

CHAPTER NO. 293

AN ACT TO AMEND SECTION 10-806, R.C.M. 1947, TO ALLOW THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO RECEIVE APPLICATIONS FOR DAY CARE LICENSES FROM INDIANS RESIDING ON AN INDIAN RESERVATION.

HeinOnline -- 1977 Vol. I 878 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-806, R.C.M. 1947, is amended to read as follows:

"**10-806. Licenses issued by the state department — application by Indians — rules — minimum requirements of licensees.** (1) The state department shall issue licenses to persons to receive into a day care facility, children for care during the day or part of a day. Application for a license shall be made to the state department through the county department of public welfare in the county in which the applicant lives, on forms prescribed by the state department. Upon receipt of the application, the county welfare department, shall, within a reasonable time, investigate to determine whether a license should be granted.

(2) Applications by Indians residing on Indian reservations shall be made through the tribal governing body on forms prescribed by the state department. Applications made through a tribal governing body shall be accompanied by a request by the tribal governing body that the county welfare department in the county in which the applicant resides investigate to determine whether a license should be granted. This investigation shall be made within a reasonable time.

(3) The state department shall prescribe the conditions upon which licenses are issued, and shall adopt rules for the conduct of the facilities which are consistent with the welfare of the children received. The state department must issue licenses to agencies meeting the following minimum requirements;

(a) The applicant, his employees, and all those persons who will come in direct contact with the children are of good moral character

(b) The staff of the facility is sufficient in number to provide adequate supervision and care of the children admitted

(c) Essential programs and practices carried on by the facility staff are developed and carried out with due regard for the protection of the health, safety, development, and well-being of the children

(d) Applicant and staff are qualified by practical experience or education or training, to give good care and treatment to the children

(e) Physical facilities are of a kind that can meet the minimum state standards to provide for the protection of the children from fire and health hazards

(f) Intake records are kept on each child admitted for care

(g) The applicant and staff limits admissions to the maximum number indicated on the current license

(h) The applicant will arrange for the necessary precautions to guard against communicable diseases

(i) Public liability insurance and fire insurance is currently in force for the protection of the operator, his staff, and the facility."

Approved April 5, 1977.

HeinOnline -- 1977 Vol. I 879 1977

CHAPTER NO. 294

AN ACT TO DEFINE THE OFFENSE OF CARELESS DRIVING AND TO MAKE IT PUNISHABLE AS PROVIDED IN SECTION 32-21-157, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 32-2143.3 that reads as follows:

32-2143.3. Careless driving. A person operating or driving a vehicle of any character on a public highway of this state shall drive it in a careful and prudent manner so as not to unduly or unreasonably endanger the life, limb, property, or other rights of a person entitled to the use of the street or highway.

Section 2. There is a new R.C.M. section numbered 32-2143.4 that reads as follows:

32-2143.4. Penalty. A person violating the provisions of 32-2143.3 is guilty of the offense of careless driving and shall be punishable as provided in 32-21-157.

Approved April 5, 1977.

CHAPTER NO. 295

AN ACT TO ALLOW BOND IN THE CASE OF TRAFFIC VIOLATIONS TO BE MADE BY CHECK IN LIEU OF CASH.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 31-112.1 that reads as follows:

31-112.1. Check in lieu of cash. (1) In the case of traffic violations, bond may be made by personal check in lieu of cash. Highway patrolmen or other authorized agents receiving bonds on behalf of the court may accept a personal check in lieu of cash provided that:

(a) the check is drawn on a bank domiciled in the state of Montana; and

(b) the person who writes the check in lieu of cash bond has two documents identifying him.

(2) If a check is offered in lieu of cash, the highway patrolman or other authorized agent who accepts the check is not liable in the case of nonpayment.

(3) A person who writes a check in lieu of cash bond which is returned

HeinOnline -- 1977 Vol. I 880 1977

for insufficient funds is subject to prosecution under 94-6-309, and obtaining bond constitutes securing services for the purposes of that section.

Approved April 5, 1977.

CHAPTER NO. 296

AN ACT TO CHANGE PUBLICATION OF NOTICE REQUIREMENTS FOR COUNTY WATER AND SEWER DISTRICTS; AMENDING SECTIONS 16-4503, 16-4505, 16-4507, 16-4520, 16-4527, AND 16-4533, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-4503, R.C.M. 1947, is amended to read as follows:

"**16-4503. Petition — boundaries of district — publication.** A petition, which may consist of any number of separate instruments, shall be presented at a regular meeting of the board of commissioners of the county in which the proposed district is located, signed by the registered voters within the boundaries of the proposed district, equal in number to at least ten per centum (10%) of the registered voters of the territory included in such proposed district. When the territory to be included in such proposed district lies in more than one county, a petition must be presented to the board of county commissioners of each county in which said territory lies and each of said petitions must be signed by at least ten per centum (10%) of the registered voters of the territory within said county to be included within such proposed district. Such petition shall set forth and describe the proposed boundaries of such district, and shall pray that the same be incorporated under the provisions of this act, and the text of such petition shall be published *once each week for 2 consecutive weeks in a* newspaper printed and published in every county in which said territory lies, together with a notice stating the time of the meeting at which same will be presented. The first publication shall be at least two (2) weeks before the time at which the petition is to be presented. When contained upon more than one (1) instrument, one (1) copy only of such petition need be published. No more than five of the names attached to said petition need appear in such publication of said petition and notice, but the number of signers shall be stated."

Section 2. Section 16-4505, R.C.M. 1947, is amended to read as follows:

"**16-4505. Proposition submitted — who may vote — certificate of secretary of state — district deemed incorporated — must hear testimony — suit commenced within one year — election.** Upon such hearing of said petition, the board of commissioners shall determine whether or not said petition complies with the requirements of the provisions of this act, and for that purpose must hear all competent and relevant testimony offered in support of or in opposition thereto. Such determination shall be entered upon the minutes of said board of commis-

HeinOnline -- 1977 Vol. I 881 1977

sioners. A finding of the board of commissioners in favor of the genuineness and sufficiency of the petition and notice shall be final and conclusive against all persons except the state of Montana upon suit commenced by the attorney general. Any such suit must be commenced within one (1) year after the order of the board of commissioners declaring such district organized as herein provided, and not otherwise. Upon the final determination of the boundaries of the district the board of commissioners of each county in which said district lies shall give notice of an election to be held in said proposed district for the purpose of determining whether or not the same shall be incorporated, the date of which election shall be not more than sixty (60) days from the date of the final hearing of such petition. Such notice shall describe the boundaries so established and shall state the proposed name of the proposed incorporation (which name shall contain the words ".... county water and/or sewer district"), and this notice shall be published *once each week for 2 consecutive weeks in a* newspaper printed and published in every county in which said district lies. The first publication shall be made at least two (2) weeks before the time at which the election is to be held. At such election the proposition to be submitted shall be: "Shall the proposition to organize .... county water and/or sewer district under (naming the chapter containing this act) of the acts of the .... session of the Montana legislature and amendments thereto be adopted?" And the election thereupon shall be conducted, the vote canvassed and the result declared in the same manner as provided by law in respect to general elections, so far as they may be applicable, except as in this act otherwise provided. No person shall be entitled to vote at any election under the provisions of this act unless such person possesses all the qualifications required of voters under the general election laws of the state, and is a resident of the proposed district or the owner of taxable real property located within the county in which he proposes to vote and situated within the boundaries of the proposed district; provided however a person who is the owner of such real property need not possess the qualifications required of a voter in subsection (1)(c) of section 23-2701, R.C.M. 1947; provided further that such voter shall be qualified if he is registered to vote in any state of the United States. Within four (4) days after such election the vote shall be canvassed by the board of commissioners. If at least forty percent (40%) of all registered voters residing within the proposed district have voted and if a majority of the votes cast at such election in each municipal corporation or part thereof and in the unincorporated territory of each county included in such proposed district shall be in favor of organizing such county district, said board of each such county shall by an order entered on its minutes declare the territory enclosed within the proposed boundaries duly organized as a county water and/or sewer district under the name theretofore designated, and the county clerk of each such county shall immediately cause to be filed with the secretary of state and shall cause to be recorded in the office of the county recorder of the county or counties in which such district is situated, each, a certificate stating that such a proposition was adopted. Upon the receipt of such last-mentioned certificate the secretary of state shall, within ten (10) days, issue his certificate reciting that the district (naming it) has been duly incorporated according to the laws of the state of Montana. A copy of such certificate shall be transmitted to and filed with the county clerk of the county or counties in which such

HeinOnline -- 1977 Vol. I 882 1977

district is situated. From and after the date of such certificate, the district named therein shall be deemed incorporated, with all the rights, privileges and powers set forth in this act and necessarily incident thereto. In case less than a majority of the votes cast are in favor of said proposition the organization fails but without prejudice to renewing proceedings at any time in the future."

Section 3. Section 16-4507, R.C.M. 1947, is amended to read as follows:

"**16-4507. Nomination of officers.** (1) The mode of nomination and election of all elective officers of such district to be voted for at any district election and the mode of appointment of a director or directors by said mayor or mayors or by said board of commissioners shall be as follows and not otherwise.

(2) The name of a candidate shall be printed upon the ballot when a petition of nomination shall have been filed in his behalf in the manner and form and under the conditions hereinafter set forth.

(3) The petition of nomination shall consist of not less than five (5) individual certificates, which shall read substantially as follows:

PETITION OF NOMINATION
Individual Certificate

State of ....
County of ....

Prect. No.....

I, the undersigned, certify that I do hereby join in a petition for the nomination of ...., whose residence is at .... for the office of .... of the .... district to be voted for at the district election to be held in the .... district on the .... day of ...., 19..; and I further certify that I am a qualified elector and an owner or lessee of real property within said district, or a resident therein, and am not at this time a signer of any other petition nominating any other candidate for the above named office; or, in case there are several places to be filled in the above named office, that I have not signed more petitions than there are places to be filled in the above named office; that my residence is at No ..... street, ..., and that my occupation is ....

(Signed) .....

State of Montana
County of ....

...., being duly sworn, deposes and says that he is the person who signed the foregoing certificate and that the statements therein are true and correct.

(Signed) .....

Subscribed and sworn to before me this .... day of .... 19...

.....
Notary Public

The petition of nomination of which this certificate forms a part shall, if found insufficient, be returned to ...., at ...., Montana.

HeinOnline -- 1977 Vol. I 883 1977

(4) Clerk to furnish forms. It shall be the duty of the county clerk to furnish upon application a reasonable number of forms of individual certificates of the above character. If the district lies in more than one county, the county clerk whose county contains the largest percentage of the territory of said district shall fulfill this function.

(5) Certificates. Each certificate must be a separate paper. All certificates must be of uniform size as determined by the county clerk. Each certificate must contain the name of one signer thereto and no more. Each certificate shall contain the name of one candidate and no more. Each signer must be a qualified elector owning real property or residing within said district, must not at the time of signing a certificate have his name signed to any other certificate for any other candidate for the same office, or, in case there are several places to be filled in the same office, signed to more certificates for candidates for that office than there are places to be filled in such office. In case an elector has signed two or more conflicting certificates, all such certificates shall be rejected. Each signer must verify his certificate and make oath that the same is true, before a notary public. Each certificate shall further contain the name and address of the person to whom the petition is to be returned in case said petition is found insufficient.

(6) Presentation of petition. A petition of nomination, consisting of not less than five (5) individual certificates for any one candidate, may be presented to the county clerk not earlier than forty-five (45) days nor later than thirty (30) days before the election. The county clerk shall endorse thereon the date upon which the petition was presented to him. If the district lies in more than one county, such petition for nomination shall be presented to the county clerk whose county contains the largest percentage of the territory of said district and said county clerk shall fulfill all duties assigned to county clerks in elections under this act.

(7) Examination of petition. When a petition of nomination is presented for filing to the county clerk, he shall forthwith examine the same, and ascertain whether or not it conforms to the provisions of this section. If found not to conform thereto, he shall then and there in writing designate on said petition the defect or omission or reason why such petition cannot be filed, and shall return the petition to the person named as the person to whom the same may be returned in accordance with this section. The petition may then be amended and again presented to the clerk as in the first instance. The clerk shall forthwith proceed to examine the petition as hereinbefore provided. If necessary, the board of commissioners shall provide extra help to enable the clerk to perform satisfactorily and promptly the duties imposed by this section.

(8) Signer may withdraw name. Any signer to a petition of nomination and certificate may withdraw his name from the same by filing with the county clerk a verified revocation of his signature before the filing of his petition by the clerk, and not otherwise. He shall then be at liberty to sign a petition for another candidate for the same office.

(9) Candidate may withdraw. Any person whose name has been presented under this section as a candidate may, not later than twenty-five

HeinOnline -- 1977 Vol. I 884 1977

(25) days before the day of election, cause his name to be withdrawn from nomination by filing with the county clerk a request therefor in writing, and no name so withdrawn shall be printed upon the ballot. If, upon such withdrawal, the number of candidates remaining does not exceed the number to be elected, then other nominations may be made by filing petitions therefor not later than twenty-five (25) days prior to such election.

(10) Petition filed. If either the original or amended petition of nomination be found sufficiently signed as hereinbefore provided, the clerk shall file the same twenty-five (25) days before the date of the election. When a petition of nomination shall have been filed by the clerk it shall not be withdrawn or added to and no signatures shall be revoked thereafter.

(11) Petitions preserved. The county clerk shall preserve in his office for a period of two years, all petitions of nomination and all certificates belonging thereto, filed under this section.

(12) List of candidates. Immediately after such petitions are filed, the county clerk shall enter the names of the candidates in a list, with the offices to be filled, and shall not later than twenty (20) days before the election certify such list as being the list of candidates nominated as required by the provisions of this act, and the board of commissioners of each county in which the district lies shall cause said certified list of names and the offices to be filled, to be published in the proclamation calling the election at least *once each week for 2 consecutive weeks in a newspaper* of general circulation published in each county in which such district is located. Such proclamation shall conform in all respects to the general state law governing the conduct of general elections now or hereafter in force, applicable thereto, except as otherwise herein provided.

(13) Ballots. Form. The county clerk shall cause the ballots to be printed and bound and numbered as provided by said general state law, except as otherwise required in this act. The ballots shall contain the list of names and the respective offices as published in the proclamation and shall be in substantially the following form:

GENERAL (OR SPECIAL) DISTRICT ELECTION
.... District,
(Inserting date thereof.)

Instructions to Voters: To vote, stamp or write a cross (x) opposite the name of the candidate for whom you desire to vote. All marks otherwise made are forbidden. All distinguishing marks are forbidden and make the ballot void. If you wrongly mark, tear or deface this ballot, return it to the inspector of election, and obtain another.

(14) How printed. All ballots printed shall be precisely on the same size, quality, tint of paper, kind of type, and color of ink, so that without the number it would be impossible to distinguish one ballot from another; and the names of all candidates printed upon the ballot shall be in type of the same size and style. A column may be provided on the right-hand side for questions to be voted upon at district election, as provided for under this act. The names of the candidates for each office shall be arranged in alphabetical order, and nothing on the ballot shall be indicative of the source of the candidacy or of the support of any candidate.

HeinOnline -- 1977 Vol. I 885 1977

(15) No candidate omitted. The name of no candidate who has been duly and regularly nominated, and who has not withdrawn his name as herein provided shall be omitted from the ballot.

(16) Office. The offices to be filled shall be arranged in the following order: "For director vote for (giving number)."

(17) Voting squares. Half-inch square shall be provided at the right of the name of each candidate wherein to mark the cross.

(18) Spaces below printed names. Half-inch spaces shall be left below the printed names of candidates for each office, equal in number to the number to be voted for, wherein the voter may write the name of any person or persons for whom he may wish to vote.

(19) Votes necessary to elect. In case there is but one person to be elected to an office, the candidate receiving a majority of the votes cast for all the candidates for that office, shall be declared elected; in case there are two or more persons to be elected to an office, as that of director, then those candidates equal in number to the number to be elected, who receive the highest number of votes for such office shall be declared elected.

(20) Failure to qualify. If a person elected fails to qualify, the office shall be filled as if there were a vacancy in such office, as hereinafter provided.

(21) Mode of appointment by mayor. The mode of appointment of director or directors by a mayor, or by a board of commissioners, shall be by certificate of appointment signed by said mayor or mayors, or issued by said board of commissioners, and transmitted to the board of directors of said district.

(22) Informality not to invalidate. No informality in conducting district elections shall invalidate the same, if they have been conducted by directors to fill a vacancy, or appointed by a mayor or by this act."

Section 4. Section 16-4520, R.C.M. 1947, is amended to read as follows:

"**16-4520. Publication.** Such notice shall be published *once each week for 2 consecutive weeks in a* newspaper published in each county wherein such district is located, which newspaper or newspapers shall be designated by the board of directors. Every qualified elector, owning or residing upon real property, within such voting precincts, but no others, shall be entitled to vote at such election. All the expenses of holding such election shall be borne by the district."

Section 5. Section 16-4527, R.C.M. 1947, is amended to read as follows:

"**16-4527. Commissioners to levy water taxes.** If from any cause, the revenues of the district shall be inadequate to pay the interest or principal of any bonded debt as it becomes due or any other expenses or claims against the district, then the board of directors must, at least fifteen (15) days before the first day of the month in which the board of commissioners

HeinOnline -- 1977 Vol. I 886 1977

of the county, or city and county, or counties in which such district is located, are required by law to levy the amount of taxes required for county or city and county purposes, furnish to the board or boards of commissioners, and to the auditor or auditors, respectively, an estimate in writing of the amount of money required by the district for the payment of the principal of or interest on any bonded debt as it becomes due, and of the amount of money required to establish reasonable reserve funds for either of said purposes, together with a description of the lands benefited thereby, as stated by the board of directors in the resolution declaring the necessity to incur such bonded indebtedness, and also of the amount of money required by the district for any other purpose in this section set forth, and the board of commissioners of such county or city and county must annually, at the time and in the manner of levying other county or city and county taxes and until any such bonded debt is fully paid, levy upon the lands so benefited and cause to be collected, the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof to be known as the ".... district bond tax"; and until all other expenses or claims are fully paid, levy upon all of the lands of the district and cause to be collected the proportionate share to be borne by the land located in their county of a tax sufficient for the payment thereof to be known as the ".... district water and/or sewer tax.

When the amount of money required for any purpose in this section enumerated has been determined, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its area bears to the total area of all of the lands to be assessed; or said assessment may, at the option of the board or boards of county commissioners, be based upon the taxable valuation, as stated in the last completed county assessment roll, of the lots or parcels of land, exclusive of improvements thereon, within said district, in which case, each lot or parcel of land to be assessed shall be assessed with that part of the amount of money required which its taxable valuation bears to the total taxable valuation of all of the lands to be assessed. Provided however that where the district lies in more than one county, the same method of assessment shall be used by each board of county commissioners.

When the written estimate of the amount of money required has been delivered to the board of commissioners, said board shall give notice of its intention to levy and collect a tax sufficient for the payment thereof. Such notice shall be given:

(1) By posting notice thereof in five (5) public places within the county and within the boundaries of the lands upon which the tax is to be levied, and

(2) By publishing a copy of the notice *once each week for 2 consecutive weeks in a* newspaper published in each county wherein the district is located.

(3) By forwarding regular first class mail or registered mail, at least ten (10) days prior to the hearing provided for in paragraph (d) of this section, a copy of the notice addressed to the owners of taxable real property within the district as shown by the current assessment book on file

HeinOnline -- 1977 Vol. I 887 1977

in the office of the assessor of the county or counties the boundaries of which include taxable real property of the district.

The legislative assembly hereby finds, determines and declares that the giving of notice in accordance with paragraphs (1), (2) and (3) of this section is reasonably calculated to inform the owners of taxable real property located within the boundaries of the district of the hearing provided for in paragraph (d) of this section, and that the giving of any further notice is impracticable and is unnecessary to the assurance of due process of law to such property owners.

Such notice shall state:

(a) The amount of money required;

(b) The method of assessment which the board or boards of commissioners intends to employ;

(c) The boundaries or description of the lands to be assessed, which said boundaries or description may be recited in full, or may be given by reference to any instrument on file or of record in the office of the clerk and recorder, treasurer or assessor of the county or counties in which the district or part thereof is situate; and

(d) The time when and the place where, the board or boards of commissioners will hear and pass upon all protests that may be made against the levy of the tax or any matter pertaining thereto, which said hearing shall be had no less than fifteen (15) days after the last publication of the notice.

At the time and place designated for said hearing any owner of property situated within the area to be assessed may appear and protest the levy of the tax or any matter pertaining thereto. All protests must be heard, considered and ruled upon by the board of commissioners. The board of commissioners may adjourn said hearing from time to time.

Where such tax is, for any reason, deemed unlawful by the person whose property is taxed, whether he has protested the same at the hearing above provided or not, he may pay the tax or the installments thereof under protest in the manner provided by section 84-4502, and thereupon, and within the time prescribed and in the manner provided by said section 84-4502, may commence an action to recover such tax, or installments, and in such action contest and litigate the payment of such tax on the same grounds and for the same reasons that he has stated in his written protest, and for no other reasons and on no other grounds; provided, that all of the provisions of said section 84-4502 for the retention or refunding of taxes paid under protest shall apply to taxes paid under protest under this section."

Section 6. Section 16-4533, R.C.M. 1947, is amended to read as follows:

"**16-4533. Exclusion of territory — petition — contents — duties of secretary — hearing — order excluding lands.** Any territory, included within any district formed under the provisions of this act, and not benefited in any manner by such district, or its continued inclusion

HeinOnline -- 1977 Vol. I 888 1977

therein, may be excluded therefrom by order of the board of directors of such district upon the verified petition of the owner or owners in fee of lands whose assessed value, with improvements, is in excess of one-half of the assessed value of all the lands, with improvements, held in private ownership in such territory. Said petition shall describe the territory sought to be excluded and shall set forth that such territory is not benefited in any manner by said district or its continued inclusion therein, and shall pray that such territory may be excluded and taken from said district. Such petition shall be filed with the secretary of the district and shall be accompanied by a deposit with such secretary of the sum of one hundred dollars ($100.00), to meet the expenses of advertising and other costs incident to the proceedings for the exclusion of such territory, including the cost of recording a certified copy of the order hereinafter provided for, any unconsumed balance to be returned to the petitioner. Upon the filing of such petition with the secretary of the district he shall call a meeting of the board of directors of the district at a time not less than twenty-five (25) days nor more than fifty (50) days after the filing of the petition and cause a notice of the filing of such petition to be published *once each week for 2 consecutive weeks in a* newspaper of general circulation published in each county in which the district is situated. Such notice shall also state the date of the filing of such petition and that the same will come on for hearing before the board of directors of the district and shall state the time of the hearing and the place thereof, which shall be the regular meeting place of the board of directors of the district; provided, that the board may adjourn the hearing to a more convenient meeting place within the district. Any landowner or taxpayer within the district shall have the right to appear at said hearing, either in behalf of or in opposition to the granting of said petition. Said petition shall come on for hearing before the board of directors of the district at the time and place specified in the notice of hearing. If upon such hearing the board of directors determines that it is for the best interests of the district that the lands mentioned in the petition, or some portion thereof, be excluded from the district, or if it appears that such lands, or some portion thereof, will not be benefited by their continued inclusion in the district, then the board of directors shall make an order that such lands, or such portion thereof, be excluded from the district, such order to describe specifically the lands so excluded. From the time of the making of such order the lands so excluded shall be deemed to be no longer included in the district, but such order of exclusion shall not be taken to invalidate in any manner any taxes or assessments theretofore levied or assessed against the lands so excluded. A copy of such order of exclusion, certified to by the secretary of the district, shall be recorded in the office of the county recorder of the county or counties in which the district is situated and the record of such certified copy shall be deemed prima facie evidence of the exclusion from the district of the lands purporting to be excluded thereby."

Approved April 5, 1977.

CHAPTER NO. 297

AN ACT TO AMEND LAWS RELATING TO TENANTS' SECURITY

DEPOSITS TO ALLOW DEDUCTIONS FOR CLEANING EXPENSES AND TO DELETE REQUIREMENT FOR VERIFICATION OF THE LIST OF DAMAGES; AMENDING SECTIONS 42-301, 42-303 THROUGH 42-305, AND 42-308, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 42-301, R.C.M. 1947, is amended to read as follows:

"**42-301. Definitions.** As used in this chapter, *the following definitions apply:*

(1) "Damage" means any and all tangible loss, injury or deterioration of a leasehold premises caused by the willful or accidental acts of the tenant occupying same or by the tenant's family, licensees or invitees, as well as any and all tangible loss, injury or deterioration resulting from the tenant's omissions or failure to perform any duty imposed upon the tenant by law with respect to the leasehold.

(2) "Leasehold premises" means the premises occupied by the tenant together with all common areas, recreational facilities, parking areas and storage facilities to which the tenant has access as well as all personal property owned or controlled by the landlord the use of which is permitted to the tenant.

(3) "Cleaning expenses" means the actual and necessary cost of cleaning done by an owner or his selected representative for cleaning needs not attributable to normal wear brought about by the tenants' failure to bring the premises to the condition it was at the time of renting.

(4) "Security deposit" means value given, in money or its equivalent, to secure the payment of rent by the tenant under a leasehold agreement or to secure payment for damage to *and cleaning of* the leasehold premises. If a leasehold agreement or an agreement incident thereto requires the tenant or prospective tenant to provide or maintain in effect any deposit to the landlord for part or all of the term of the leasehold agreement, the deposit shall be presumed to be a security deposit."

Section 2. Section 42-303, R.C.M. 1947, is amended to read as follows:

"**42-303. Security deposit — deductions authorized.** Any landlord renting property covered by this section may deduct from the security deposit a sum equal to the damage alleged to have been caused by the tenant together with a sum equal to the unpaid rent owing to the landlord at the time of such deduction and a sum for *actual cleaning expenses. No cleaning charges may be imposed for normal maintenance performed on a cyclical basis by the landlord as noted by the landlord at the time the tenant occupies the space, unless the landlord is forced to perform this maintenance because of negligence of the tenant. Additionally, no cleaning charges can be deducted until notice has been given to the tenant. The notice shall include the cleaning not accomplished by the tenant, and the additional and type or types of cleaning which needs to be done by the tenant to bring the premises back to its condition at the time of its renting. After the delivery of the notice the tenant shall have 48 hours to complete the required cleaning.* No person may deduct or withhold from the security

HeinOnline -- 1977 Vol. I 890 1977

deposit any amount for purposes other than those set forth in this subsection."

Section 3. Section 42-304, R.C.M. 1947, is amended to read as follows:

"**42-304. List of damages to leased premises.** Every landlord, within thirty (30) days subsequent to the termination of a tenancy or within thirty (30) days subsequent to a surrender and acceptance of the leasehold premises, whichever occurs first, shall provide the departing tenant with a written list of any damage *and cleaning charges, brought after the provisions of 42-303 have been followed,* to the leasehold premises which the landlord alleges is the responsibility of the tenant. Delivery of such list shall be accompanied by payment of the difference, if any, between the security deposit and the permitted charges set forth in section 3 [42-303]. *Delivery shall be accomplished by mailing the list and refund to the tenant's last known address or the new address provided by the tenant.*"

Section 4. Section 42-305, R.C.M. 1947, is amended to read as follows:

"**42-305. Failure to provide list of damages.** Any landlord who fails to provide the departing tenant with a written list of damage *and cleaning charges* as required by section 4 [42-304] shall forfeit all rights to withhold any portion of the security deposit *for the damages or cleaning charges.*"

Section 5. Section 42-308, R.C.M. 1947, is amended to read as follows:

"**42-308. Condition of premises at beginning of lease — failure to furnish list to tenant.** (1) Any person engaged in the rental of property for residential purposes who requires a security deposit shall furnish to each prospective tenant, prior to execution of a lease or creation of a tenancy, a separate written statement as to the present condition of the premises intended to be let, as well as a copy of the written list of damage *and cleaning charges,* if any, provided to the tenant of the immediately preceding leasehold agreement for the premises in question.

(2) Each written statement of the present condition of a premises intended to be let shall contain, at least, the following:

(a) a clear and concise statement of the present condition of the premises known to the landlord or his agent or which should have been known upon reasonable inspection;

(b) if the premises have never previously been let, a statement indicating such fact;

(c) if any damage to the leasehold premises resulting from the immediately preceding leasehold agreement has not been restored, a statement indicating such fact and setting forth such unrestored damage; and

(d) the signature of the landlord or his agent.

(3) Any person engaged in the rental of property for residential purposes who fails to furnish a prospective tenant, prior to the execution of the lease or creation of the tenancy, with a separate written statement of the present condition of the premises intended to be let and, if any,

HeinOnline -- 1977 Vol. I 891 1977

a written list of damage *and cleaning charges* provided to the tenant of the immediately preceding leasehold agreement, shall be barred from recovering any sum for damage to *or cleaning of* the leasehold premises unless he can establish by clear and convincing evidence that the damage occurred during the tenancy in question and was caused by the tenant occupying the leasehold premises or the tenant's family, licensees or invitees."

Approved April 5, 1977.

CHAPTER NO. 298

AN ACT TO REVISE LAWS RELATING TO COOPERATIVE MARKETING ASSOCIATIONS, PROVIDING FOR PERPETUAL EXISTENCE, CHANGING PROVISIONS RELATING TO AMENDMENT AND FILING OF ARTICLES OF INCORPORATION AND AMENDMENT OF BYLAWS, PROVIDING FOR RESERVES AND DISTRIBUTION OF NET EARNINGS, AND PROVIDING FOR MERGER OF SUCH ASSOCIATIONS; AMENDING SECTIONS 14-408, 14-409, AND 14-410, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 14-408, R.C.M. 1947, is amended to read as follows:

"**14-408. Articles of incorporation.** Each association formed under this act must prepare and file articles of incorporation, setting forth:

(a) The name of the association;

(b) The purposes for which it is formed;

(c) The place where its principal business will be transacted;

(d) The term for which it is to exist, *which may be perpetual*;

(e) The number of its directors or trustees, which shall not be less than five nor more than thirteen, and the names and residences of those who are appointed for the first three months and until their successors are elected and qualified.

(f) If organized without capital stock, whether the property rights and interest of each member shall be equal or unequal; and if unequal, the articles shall set forth the general rule or rules applicable to all members by which the property rights and interests, respectively, of each member may and shall be determined and fixed and the association shall have the power to admit new members who shall be entitled to share in the property of the association with the old members, in accordance with such general rule or rules.

(g) The articles must be subscribed by the incorporators and acknowledged by one of them before an officer authorized by the law of this state to take and certify acknowledgments of deeds and conveyances; and shall be filed in accordance with the provisions of the general corporation law

HeinOnline -- 1977 Vol. I 892 1977

of this state, and when so filed the said articles of incorporation, or certified copies thereof, shall be received in all the courts of this state, and other places, as prima facie evidence of the facts contained therein, and of the due incorporation of such association."

Section 2. Section 14-409, R.C.M. 1947, is amended to read as follows:

"**14-409. Amendments to articles of incorporation.** *At any time after filing, the* articles of incorporation may be amended. *Any* amendment *of the articles of incorporation shall* be approved by two-thirds of the directors and then adopted by vote of not less than two-thirds of those stockholders voting thereon at any regular meeting of the stockholders or at a special meeting of the *stockholders called for that purpose. A statement setting forth the amendment shall be executed and acknowledged on behalf of the association by its president or vice-president and its corporate seal affixed thereto and attested by its secretary. The statement shall be filed in the office of the secretary of state who shall thereupon issue a certificate of amendment of the articles of incorporation. A certified copy of such certificate shall be filed in the office of the county clerk for the county in which the principal office of the association is located.*"

Section 3. Section 14-410, R.C.M. 1947, is amended to read as follows:

"**14-410. Bylaws.** Each association incorporated under this act must, within thirty days after its incorporation, adopt for its government and management a code of bylaws, not inconsistent with the powers granted by this act. A majority vote of the members or stockholders, or their written assent, is necessary to adopt such bylaws. *The bylaws may be amended at any regular or special meeting if approved by a majority vote of the stockholders voting thereon.* Each association under its bylaws may also provide for any or all of the following matters:

(a) The time, place and manner of calling and conducting its meetings.

(b) The number of stockholders or members constituting a quorum.

(c) The right of members or stockholders to vote by proxy or by mail or by both, and the conditions, manner, form, and effects of such votes.

(d) The number of directors constituting a quorum.

(e) The qualifications, compensation and duties and term of office of directors and officers; time of their election and the mode and manner of giving notice thereof.

(f) Penalties for violations of the bylaws.

(g) The amount of entrance, organization and membership fees, if any; the manner and method of collection of the same, and the purposes for which they may be used.

(h) The amount which each member or stockholder shall be required to pay annually or from time to time, if at all, to carry on the business of the association, the charge, if any, to be paid by each member or stockholder for services rendered by the association to him and the time of payment and the manner of collection; and the marketing contract between the association and its members or stockholders which every member or stockholder may be required to sign.

HeinOnline -- 1977 Vol. I 893 1977

(i) The number and qualifications of members or stockholders of the association and the conditions precedent to membership or ownership of common stock; the method, time, and manner of permitting members to withdraw or the holders of common stock to transfer their stock; the manner of assignment and transfer of the interest of members, and the shares of common stock; the conditions upon which, and the time when membership of any member shall cease. The automatic suspension of the rights of a member when he ceases to be eligible to membership in the association, and mode, manner, and effect of the expulsion of a member; manner of determining the value of a member's interest and provision for its purchase by the association upon the death or withdrawal of a member or stockholder or upon the expulsion of a member or forfeiture of his membership, or at the option of the association, by conclusive appraisal by the board of directors. In case of the withdrawal or expulsion of a member the board of directors shall equitably and conclusively appraise his property interests in the association and shall fix the amount thereof in money, which shall be paid to him within one year after such expulsion or withdrawal."

Section 4. There is a new R.C.M. section numbered 14-430 that reads as follows:

14-430. Reserves — distribution of net earnings. (1) An association organized under this chapter may set aside such part of its net earnings as its board of directors considers advisable for the purpose of creating or maintaining a capital reserve. In addition to such capital reserve, the directors may set aside a sum not to exceed 5% of the annual net earnings of the association, which shall be used for the purposes of promoting and teaching cooperative organization and principles. The directors may establish and accumulate reserves for buildings, machinery and equipment, depreciation, losses, and other proper purposes.

(2) Net earnings in excess of any such deductions shall be distributed annually to patrons on the basis of patronage. An association subject to the provisions of this chapter may distribute net earnings in cash, credits, stock, revolving fund certificates, other certificates or securities of the association or of other associations, or in any combination thereof.

Section 5. There is a new R.C.M. section numbered 14-431 that reads as follows:

14-431. Merger or consolidation of cooperative associations — sale of substantially all assets. (1) It is lawful for two or more cooperative associations formed, before or after July 1, 1977, under the laws of the state of Montana to merge or consolidate with each other. One or more such associations may merge or consolidate with one or more associations incorporated under the laws of another state relating to organization of cooperative associations by complying with the provisions of this chapter or with the applicable laws of the state where the surviving or new association has its principal place of business.

(2) Before an association may merge or consolidate with any other association, a written plan of merger or consolidation shall be prepared by the board of directors of one or both associations by a committee

HeinOnline -- 1977 Vol. I 894 1977

appointed for that purpose by the board of directors of one or both associations or by a committee composed of at least 10% of the stockholders of one of the associations concerned. Such plan shall set forth all the terms of the merger or consolidation and the proposed effect thereof on each of the stockholders of the associations concerned. In the case of consolidation, the plan shall also contain a copy of the proposed articles for the new association to be formed.

(3) Notice of the proposed plan and, in the case of consolidation, of the proposed new articles shall be mailed to each stockholder of the associations to be affected thereby.

(4) The notice shall advise the stockholders of each association of the time and place that each association will meet, at which time the proposal shall be considered and voted upon by each association. The meetings may be held not less than 30 or more than 60 days after the mailing of notice. The plan shall be considered adopted if a quorum is present and two-thirds of those voting vote in its favor.

(5) Within 30 days after the merger or consolidation plan has been adopted, documents of merger or consolidation setting forth the plan and the manner of adoption thereof shall be signed and acknowledged by the president or vice-president and by the secretary or assistant secretary of each association merging or consolidating and filed with the clerk and recorder of the county in which the principal office of the new or surviving association is located if the office is in Montana and with the Montana secretary of state. If the new or surviving association has its principal office in Montana, the merger or consolidation becomes effective as of the date of filing with the Montana secretary of state. If its principal office is outside the state of Montana, the merger or consolidation becomes effective upon full compliance with the laws of the state in which its principal office is located. If there is a merger, the articles and bylaws of the surviving association are amended to the extent provided in the documents setting forth the plan of merger.

(6) At any meeting, the stockholders of a cooperative association may authorize the disposition or sale of all or substantially all of the association's assets if notice that such disposition or sale will be considered at such meeting has been given to all persons entitled to vote thereon and if disposition or sale is approved by two-thirds of those stockholders voting at the meeting.

(7) On the effective date, the associations which are parties to a plan adopted pursuant to this section become a single association. In the case of a merger, the surviving association is that association so designated in the plan. In the case of a consolidation, the new association is the association provided for in the plan. The separate existence of all associations which are parties to the plan, except the surviving or new association, then ceases. The surviving or new association possesses all the rights and all the property of each of the individual associations and is responsible for all their obligations. Title to any property is vested in the surviving or new association with no reversion or impairment thereof caused by the merger or consolidation. No right of any creditor may be impaired by the merger or consolidation without his consent.

HeinOnline -- 1977 Vol. I 895 1977

(8) No action may be maintained to invalidate any sale, merger, or consolidation taken pursuant to this chapter because of the manner of its adoption unless the action is commenced within 2 years after the required filings have been made in relation to such corporate action or, if none is required, after the effective date of such corporate action.

Approved April 5, 1977.

CHAPTER NO. 299

AN ACT TO REVISE THE ATTACHMENT LAW; PROVIDING FOR JUDICIAL SUPERVISION OF THE ISSUANCE OF A WRIT OF ATTACHMENT AND PROVIDING FOR PRESEIZURE NOTICE AND HEARING OR IN CERTAIN CASES FOR IMMEDIATE POSTSEIZURE HEARING; AMENDING SECTIONS 93-4301, 93-4304, AND 93-6908, R.C.M. 1947; AND REPEALING SECTION 93-4302, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 93-4301, R.C.M. 1947, is amended to read as follows:

"**93-4301. When attachment may issue.** *(1) A* plaintiff, at the time of issuing the summons, or at any time afterward, may have the property of the defendant attached as security for the satisfaction of any judgment that may be recovered.

(2) Property may be attached in:

(a) an action upon a contract, express or implied, for the direct payment of money, where the contract*:*

(i) is not secured by any mortgage or lien upon real property*;* or

(ii) is originally secured *and* such security has, without any act of the plaintiff or the person to whom the security was given, *become* valueless*;* and

(b) an action based upon a statutory stockholders' liability.

(3) Attachment may not issue if the defendant gives security to pay the judgment."

Section 2. There is a new R.C.M. section numbered 93-4302.1 that reads as follows:

93-4302.1. Affidavit required for attachment. When attachment of a defendant's property is sought, an affidavit must be made by the plaintiff or someone in his behalf stating:

(1) facts which show the defendant is indebted to the plaintiff in the manner specified in 93-4301(2);

HeinOnline -- 1977 Vol. I 896 1977

(2) that the attachment is not sought to hinder, delay, or defraud any creditor of the defendant;

(3) facts creating a reasonable belief that the defendant:

(a) is leaving or about to leave this state taking with him property, money, or other effects which might be subjected to payment of the debt;

(b) is disposing or about to dispose of his property which would be subject to execution;

(c) has the power to dispose of or conceal or remove from the state property which would be subject to execution; or

(d) is likely to suffer liens or encumbrances on his property which would be subject to execution;

(4) a particular description and the actual value of the property to be attached.

Section 3. Section 93-4304, R.C.M. 1947, is amended to read as follows:

"**93-4304. Undertaking.** *(1)* Before issuing the writ, the *court* must require a written undertaking on the part of the plaintiff, with two or more sufficient sureties to be approved by the *court*, in a sum not less than double the amount claimed by the plaintiff, if such amount be $1,000 or under, or, in case the amount so claimed by plaintiff shall exceed $1,000, then in a sum equal to such amount. *In* no case shall an undertaking be required exceeding in amount the sum of $20,000. The condition of such undertaking shall be to the effect that if the defendant *recovers* judgment, or if the court finally *decides* that the plaintiff was not entitled to an attachment, the plaintiff will pay all costs that may be awarded to the defendant, and all damages he may sustain by reason of the issuing of the attachment, not exceeding the sum specified in the undertaking.

(2) At any time within 30 days after the service of summons, the defendant may except to the sufficiency of the sureties. If he fails to do so, he is deemed to have waived all objections to them.

(3) When excepted to, the plaintiff's sureties, upon notice to the defendant of not less than 2 days nor more than 10 days, must justify before a judge of the district court, and upon failure to justify, or if others in their place fail to justify, at the time and place appointed, the judge shall issue an order vacating the writ of attachment."

Section 4. There is a new R.C.M. section numbered 93-4304.1 that reads as follows:

93-4304.1. Writ — when issued. A judge of a court having jurisdiction of the cause may issue a writ of attachment when:

(1) he has received the affidavit described in 93-4302.1;

(2) he has approved the undertaking required in 93-4304; and

(3) the party seeking attachment has made a prima facie showing:

HeinOnline -- 1977 Vol. I 897 1977

(a) in the case of real property, of his right to attachment and the necessity for seizure;

(b) in the case of personal property:

(i) of his right to attachment and the necessity for seizure at a show cause hearing before the court with at least 3 days' notice to the defendant; if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places in the county where the property is located; or

(ii) of his right to attachment and the necessity for seizure and that the delay caused by notice and a hearing would seriously impair the remedy sought by the party seeking possession. Evidence of such impairment must be presented in open court and the court must set forth with specificity the reasons why such delay would seriously impair the remedy sought by the person seeking attachment.

Section 5. There is a new R.C.M. section numbered 93-4304.2 that reads as follows:

93-4304.2. Postseizure hearing. (1) When a writ has been issued upon real property or upon the showing specified in 93-4304.1(3)(b)(ii), the defendant may challenge the seizure of the property at a hearing before the court to be held within 3 days after the seizure. Notice of the right to a postseizure hearing shall be served personally on the defendant, or if the defendant cannot be found for personal service, notice shall be posted on the property and in three public places in the county where the property is located.

(2) At such hearing the defendant may challenge the merit of the underlying action, the need for the prejudgment seizure of property, or both. The writ shall be quashed if the court makes a preliminary finding that:

(a) the plaintiff cannot establish the prima facie validity of his claim; or

(b) the plaintiff cannot establish by a preponderance of the evidence the need for the continued attachment of the defendant's property.

Section 6. Section 93-6908, R.C.M. 1947, is amended to read as follows:

"**93-6908. Writ of attachment may issue upon affidavit.** A writ to attach the property of the defendant *may* be issued by the justice at the time of, or after issuing summons and before answer, on receiving an affidavit by or on behalf of the plaintiff, showing the same facts as are required to be shown by the affidavit specified in *93-4302.1*."

Section 7. **Repealer.** Section 93-4302, R.C.M. 1947, is repealed.

Approved April 5, 1977.

HeinOnline -- 1977 Vol. I 898 1977

CHAPTER NO. 300

AN ACT TO ALLOW PUBLIC EMPLOYEES WHO ARE ABSENT FROM WORK BECAUSE OF EMPLOYMENT-RELATED INJURY TO CONTINUE PAYMENTS TO THE RETIREMENT SYSTEM AND TO PROVIDE FOR PAYMENT OF EMPLOYER RETIREMENT CONTRIBUTIONS DURING THE ABSENCE; AMENDING SECTION 68-1606, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-1606, R.C.M. 1947, is amended to read as follows:

"**68-1606. Absence due to illness or injury.** *(1)* Time, *not to exceed 5 years,* during which a member is absent from service by reason of injury or illness determined within one (1) year after the end of such absence as arising out of and in the course of his employment shall be considered as spent in service for the purpose of qualification for retirement benefits or survivorship allowances, but not for the calculation of such benefits, *unless the member complies with subsections (2) through (4) of this section, in which case the absence shall be considered as time spent in service for both the calculation and qualification of benefits.*

(2) Any member absent because of an employment-related injury which entitles him to workers' compensation payments may contribute to the retirement system, upon his return to service, amounts equal to the contributions which would have been made by him to the system on the basis of his compensation at the commencement of his absence. Whenever a member elects to continue his contributions, the employer shall contribute an amount equal to what its employer contributions would have been had the member not been absent from service.

(3) A member must file with the board, within 6 months after he returns to service, a written notice of his intent to pay the contributions under subsection (2). The employer shall provide the employee with written notice of the provisions of this section which shall be signed by the employee and returned to the employer, who shall provide a copy to the board.

(4) Payment of the employee's contributions which are due because of the period of absence may be made in one sum at the time of filing the notice or on an installment basis not to exceed 24 monthly payments.

(5) A member so absent loses his right to contribute under this section if all of his accumulated normal contributions are refunded pursuant to 68-1905."

Approved April 5, 1977.

CHAPTER NO. 301

AN ACT TO AMEND SECTION 81-1404, R.C.M. 1947, TO PROVIDE THAT TIMBER FROM STATE FORESTS MAY BE SOLD ON AN

HeinOnline -- 1977 Vol. I 899 1977

ACCELERATED ADVERTISING SCHEDULE IN EMERGENCY CASES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-1404, R.C.M. 1947, is amended to read as follows:

"**81-1404. Sale of timber — advertising for bids — purchaser's agreement.** Under the direction of the state board of land commissioners, the department of natural resources and conservation may sell the timber crop and other crops of the forests, after examination, estimate, appraisal, and report and under such rules as may be established by the board. *Timber* proposed for sale in excess of 100,000 board *feet* shall be advertised in a paper of the county in which the timber is situated for a period of at least 30 days, during which time the department shall receive sealed bids up to the hour of the closing of the bids, as specified in the notice of sale. *In cases of emergency due to fire, insect, fungus, parasite, or blowdown, timber proposed for sale not in excess of 200,000 board feet may be advertised by invitation to bid for a period of not less than 10 days.* The department may reject any or all bids, upon approval of the board, or it shall award the sale to the highest responsible bidder. Upon award of sale the purchaser shall execute a formal agreement, approved by the board, which describes the area on which the timber is to be cut, the approximate quantity to be cut by species, *and* the rate for each product of each species. *The agreement* shall stipulate that all timber shall be paid for in advance of cutting, fix a date for termination of the agreement, and define rules of silviculture, cutting, utilization, scaling, and slash disposal and such other rules as in the discretion of the board are essential to the perpetuation of the state forests."

Approved April 5, 1977.

CHAPTER NO. 302

AN ACT TO CHANGE THE DATE OF ELECTION FOR COMMISSIONERS OF IRRIGATION DISTRICTS FROM THE FIRST SATURDAY IN APRIL TO THE FIRST TUESDAY IN APRIL; AMENDING SECTION 89-1303, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-1303, R.C.M. 1947, is amended to read as follows:

"**89-1303. First election of commissioners — regular election — term of office.** The regular election for commissioners in each district shall be held annually on the first *Tuesday* in April of each year; and *within 40 days* following their election the commissioners shall meet and organize as a board by electing a president from their number and a secretary, who may or may not be a commissioner, and who shall each hold

HeinOnline -- 1977 Vol. I 900 1977

office during the pleasure of the board. The term of office of each commissioner shall begin *on the date of the organizational meeting* after the regular election and shall continue for three years and until the election and qualification of his successor. Commissioners are elected by the electors of the entire district. At the regular election for commissioners held in April, 1921, there shall be elected one commissioner for the first division of each district who shall hold his office for the term of one year, one commissioner for the second division of each district who shall hold his office for the term of two years, and one commissioner for the third division of each district who shall hold his office for the term of three years; and if there be five divisions in a district one commissioner shall be elected for the fourth division who shall hold his office for two years, and one commissioner shall be elected for the fifth division who shall hold his office for three years; and if there be seven divisions in a district one commissioner shall be elected for the sixth division who shall hold his office for two years, and one commissioner shall be elected for the seventh division who shall hold his office for three years; provided, however, that this act shall not be construed to extend the term of any commissioner heretofore elected or appointed in any district."

Approved April 5, 1977.

CHAPTER NO. 303

AN ACT REQUIRING AN AGREEMENT OF BULK REINSURANCE BY A FOREIGN OR ALIEN INSURER TO BE APPROVED BY THE COMMISSIONER OF INSURANCE AND ALLOWING THE COMMISSIONER TO REQUIRE A DEPOSIT.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 40-2911 that reads as follows:

40-2911. Bulk reinsurance, foreign or alien insurers. (1) A foreign or alien insurer may reinsure all or substantially all of its insurance in force in Montana or a major class thereof with an agreement of bulk reinsurance, but no such agreement may become effective unless filed with the commissioner and approved by him in writing after a hearing thereon.

(2) The commissioner shall approve the agreement within a reasonable time after such a hearing unless he finds that it would substantially reduce the protection or service to the policyholders.

(3) The commissioner may require a foreign or alien insurer to establish a trust account in this state, not to exceed the aggregate reserves of the policies contained in the bulk reinsurance agreement, prior to granting approval.

Approved April 5, 1977.

HeinOnline -- 1977 Vol. I 901 1977

CHAPTER NO. 304

AN ACT TO AUTHORIZE THE BOARD OF LAND COMMISSIONERS TO ISSUE AGRICULTURAL AND GRAZING LEASES FOR OTHER THAN 10-YEAR TERMS IN ORDER TO ACHIEVE UNIFORMITY IN THE NUMBER OF LEASE RENEWALS PER YEAR; AND TO PROVIDE FOR A TERMINATION DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 81-407.1 that reads as follows:

81-407.1. Uniform lease renewal. Notwithstanding any other section in this chapter, the department may, in order to achieve uniformity in the number of lease renewals per year, issue 4-, 5-, and 6-year grazing and agricultural leases during the 5-year period 1979-1983. Leases to be issued for other than 10-year terms shall be chosen by means of a nondiscretionary, random process and shall be limited to those leases which were not subject to competitive bid at the previous renewal.

Section 2. **Termination date.** This act terminates on July 1, 1983.

Approved April 5, 1977.

CHAPTER NO. 305

AN ACT TO PROVIDE FOR DELETION OF PRICE AGREEMENTS AND APPROVAL BY THE BOARD OF COSMETOLOGISTS; TO PROVIDE FOR A TEMPORARY LICENSE FOR A COSMETOLOGICAL ESTABLISHMENT FOR A LIMITED PERIOD AND UNTIL INSPECTION IS MADE; TO PROVIDE THAT THE BOARD OF COSMETOLOGISTS MAY PROVIDE FOR A 2- OR 3-YEAR RENEWAL AND THAT THE RENEWAL DATE MAY BE CHANGED BY RULE FOR THE MANAGER-OPERATOR AND SALON OWNER CATEGORY AND PLACING LIMITS ON THE RENEWAL FEE; AND TO PROVIDE FOR INCREASED LATE RENEWAL FEES; AMENDING SECTIONS 66-806, 66-813.1, AND 66-816, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-806, R.C.M. 1947, is amended to read as follows:

"**66-806. Power of board to adopt rules.** *(1)* The board shall prescribe rules for the conduct of its business; the qualification, examination, and registration of applicants to practice or teach cosmetology; applicants for manager-operator licenses; the regulation and instruction of apprentices and students; the conduct of schools of cosmetology for apprentices and students; and generally for the conduct of the persons, firms, or corporations affected by this act.

(2) The board shall adopt a seal and authenticate its acts."

HeinOnline -- 1977 Vol. I 902 1977

Section 2. Section 66-813.1, R.C.M. 1947, is amended to read as follows:

"**66-813.1. Inspection fees — temporary permit.** Upon application for a license, any cosmetological establishment must pay an initial inspection fee of $25. *The board may authorize the department to grant to a cosmetological establishment, upon payment of the initial inspection fee, a temporary permit authorizing the cosmetological establishment to operate for a period of not to exceed 90 days or until the inspector is able to make the inspection, whichever event occurs first. This temporary permit is not renewable.*"

Section 3. Section 66-816, R.C.M. 1947, is amended to read as follows:

"**66-816. Duration and renewal of licenses and certificates — delinquent renewal fee.** (1) Licenses and certificates shall be issued for no longer than 1 year *unless otherwise provided by rule.* Licenses and certificates expire on December 31 unless *otherwise provided by rule or* renewed for the next year *or renewal period.* Licenses and certificates may be renewed by application made prior to December 31 of each year, *unless otherwise provided,* and the payment of a required renewal fee. Expired licenses and certificates may be renewed under rules made by the board, *but the right to renew an expired license or certificate terminates after 10 years of nonpayment. The board may provide by rule for a change in the renewal date and renewal period for the manager-operator and salon owner category. The renewal fee may not exceed twice the fee for a 2-year renewal or three times the fee for a 3-year renewal and shall be as set by the board.*

(2) In addition to the foregoing requirements for renewal, persons applying for the renewal of teachers' licenses must have fulfilled the following additional requirements:

(a) During each year an active teacher, either full time or part time, must have successfully completed thirty (30) hours professional teacher training at a school approved by the board as a prerequisite to the renewal of the teacher's license.

(b) Persons holding a teacher's license, but not actively engaged either full time or part time in teaching cosmetology during the preceding year, may renew the license by paying the required fee.

(c) Persons holding a teacher's license but not actively engaged in teaching cosmetology either full time or part time for the preceding year or longer and wishing to resume active teaching of cosmetology must successfully complete thirty (30) hours professional teachers' training at a school approved by the board before resuming active teachers' training. However, the foregoing provisions do not prevent the board, under rules it adopts from permitting a person holding a teacher's license and not actively engaged either full time or part time in teaching cosmetology from teaching as a substitute for an active teacher.

(3) A fee of *$10* shall be charged in addition to other fees fixed by law for renewal applications of licenses and certificates made after December 31 of each year *or other predetermined renewal deadline.* The

HeinOnline -- 1977 Vol. I 903 1977

department shall notify license *and certificate* holders of the expiration date of *licenses and certificates* not less than 30 days before the expiration date, and call attention to the penalty imposed for failure to renew *a* license *or certificate* by the date of expiration."

Approved April 5, 1977.

CHAPTER NO. 306

AN ACT TO REVISE THE HORSE RACING LAW TO PROVIDE AUTHORITY FOR THE BOARD OF HORSE RACING TO DENY AN APPLICATION FOR RELICENSURE FOR UP TO 2 YEARS FOR VIOLATION OF THE LAW OR RULES AND ORDERS OF THE BOARD; AND TO PROVIDE THAT A RACE MEET LICENSEE SHALL PAY TO MONTANA-BRED WINNERS 10% OF ONLY THAT PART OF THE WINNER'S PURSE THAT THE RACE MEET LICENSEE HAS CONTRIBUTED; AMENDING SECTIONS 62-508 AND 62-509, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 62-508, R.C.M. 1947, is amended to read as follows:

"**62-508. Penalty for violations of law — authority of board.** (1) A person holding a race meet, and an owner, trainer, or jockey participating in a race meet, without first being licensed under this chapter, and a person violating this chapter is guilty of a misdemeanor.

(2) The board may exclude from race courses in this state a person who the board considers detrimental to the best interest of racing.

(3) The board may suspend or revoke any license issued by the department to a *licensee and* assess a fine, not to exceed $500, against a *licensee* who violates any of the provisions of this chapter or any rule or order of the board. *In addition to the suspension or revocation and fine, the board may forbid application for relicensure for a 2-year period.*

(4) The board shall promulgate *rules* implementing this chapter, including the right to a hearing for individuals against whom action is taken or proposed herein.

It is lawful to conduct race meets at a race track or otherwise, at any time during the week."

Section 2. Section 62-509, R.C.M. 1947, is amended to read as follows:

"**62-509. Race exclusively for Montana bred horses — bonus for winner.** (1) For the purpose of encouraging the breeding, in this state, of valuable thoroughbred, purebred, quarter horse, appaloosa, or registered horses, at least one race each day at each race meet shall be limited to horses bred in this state. If, in the opinion of the board sufficient competition cannot be had among this class of horses, the race may be eliminated for the day and a substitute race provided instead.

HeinOnline -- 1977 Vol. I 904 1977

(2) A sum equal to 10% of the first money of every purse won by a horse bred in this state shall be paid by the licensee conducting the race meet to the breeder of the horse. *Only the money contributed by the licensee conducting the race meet may be considered in computing the bonus.*"

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved April 5, 1977.

CHAPTER NO. 307

AN ACT TO PROVIDE FOR THE USE OF WATER THAT IS NOW UNAPPROPRIATED BUT MAY NOT BE AVAILABLE AT ALL TIMES AND FOR ALL USES; AMENDING SECTION 89-885, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-885, R.C.M. 1947, is amended to read as follows:

"**89-885. Criteria for issuance of permit.** The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply*:*

(a) at times when the water can be put to the use proposed by the applicant;

(b) in the amount the applicant seeks to appropriate; and

(c) throughout the period during which the applicant seeks to appropriate, the amount requested is available;

(2) the rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion or construction are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) an applicant for an appropriation of fifteen (15) cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected."

Approved April 5, 1977.

CHAPTER NO. 308

AN ACT TO PROVIDE FOR ENFORCEMENT OF THE STATE AIR

HeinOnline -- 1977 Vol. I 905 1977

AND WATER POLLUTION LAWS BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AGAINST PERSONS RESIDENT IN CANADA AND PERSONS WHO CANNOT BE LOCATED IN MONTANA; AMENDING SECTIONS 69-3906, 69-3921.1, 69-4802, AND 69-4820.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-3906, R.C.M. 1947, is amended to read as follows:

"69-3906. Definitions. Unless the context requires otherwise, in this act: (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(3) "Emission" means a release into the outdoor atmosphere of air contaminants.

(4) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity *and includes persons resident in Canada.*

(5) "Advisory council" means the air pollution control advisory council provided for in section 82A-606.

(6) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(7) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6."

Section 2. Section 69-3921.1, R.C.M. 1947, is amended to read as follows:

"69-3921.1. Civil penalties — actions against defendants not found in Montana. (1) Any person who violates any provision of this chapter, or any rule enforced thereunder or any order made pursuant thereto, shall be subject to a civil penalty not to exceed one thousand dollars ($1,000). Each day of violation shall constitute a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose, assess and recover the civil penalty. The civil penalty is in lieu of the criminal penalty provided for in section 69-3921.

(2) *(a)* Action under subsection (1) of this section is not a bar to enforcement of this chapter, or of rules or orders made under it, by injunction or other appropriate civil remedies.

HeinOnline -- 1977 Vol. I 906 1977

(b) An action under subsection (1) or to enforce this chapter or the rules or orders made under it may be brought in the district court of any county where a violation occurs or is threatened if the defendant cannot be located in Montana.

(3) Moneys collected hereunder shall be deposited in the state general fund."

Section 3. Section 69-4802, R.C.M. 1947, is amended to read as follows:

"**69-4802. Definitions.** Unless the context requires otherwise in this chapter:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present;

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters;

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health;

(5) "Pollution" means contamination, or other alteration of the physical, chemical, or biological properties of any state waters, which exceeds that permitted by Montana water quality standards, including, but not limited to, standards relating to change in temperature, taste, color, turbidity, or odor; or discharge of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not "pollution" under this chapter.

(6) "Sewerage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point;

(7) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes;

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes, and includes sewerage systems and treatment works;

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; however, this subsection

HeinOnline -- 1977 Vol. I 907 1977

does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters;

(10) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity *and includes persons resident in Canada*;

(11) "Council" means the state water pollution control advisory council provided for in section 82A-607;

(12) "Board" means the board of health and environmental sciences, provided for in section 82A-605;

(13) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6;

(14) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health;

(15) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged;

(16) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source;

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants;

(18) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constituents which are discharged into state waters."

Section 4. Section 69-4820.1, R.C.M. 1947, is amended to read as follows:

"69-4820.1. Additional enforcement remedies. (1) In addition to all other remedies created by this act, the department is authorized to take appropriate enforcement action on its own initiative to:

(a) prevent, abate, and control the pollution of state waters;

(b) prevent, abate, and control any violation of a condition or limitation imposed by a permit issued under section 69-4806, R.C.M. 1947;

(c) prevent, abate, and control any violations of regulations relating to pretreatment standards.

(2) In furtherance of subsection (1) of this section, any person violating any condition, limitation, standard or other requirement established pursuant to this chapter may be served with a compliance order issued by

HeinOnline -- 1977 Vol. I 908 1977

the department. Such order must specify the condition, limitation, standard or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard or other requirement that has been violated. The compliance order issued under this section shall be personally served by an authorized representative of the department.

(3) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for any violation which would be subject to a compliance order under subsection (2) of this section. Any action under this subsection may be commenced in the district court of any county in which the defendant is located or resides or is doing business *or any county where a violation occurs or is threatened if the defendant cannot be located in Montana*, and the court shall have jurisdiction to restrain such violation and to require compliance.

(4) Any person found to be in violation of a condition, limitation, standard or other requirement established pursuant to this section shall be subject to the penalty provisions of section 69-4823, R.C.M. 1947.

(5) For the purpose of this subsection, the term "person" shall mean, in addition to the definition contained in section 69-4802, R.C.M. 1947, any responsible corporate officer."

Approved April 5, 1977.

CHAPTER NO. 309

AN ACT FOR THE GENERAL REVISION AND CLARIFICATION OF THE LAWS RELATING TO THE LEGISLATURE AND THE LAWS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 12-216, R.C.M. 1947, is amended to read as follows:

"**12-216. Reference to other titles, chapters, or sections.** A statute which refers to a *title, chapter, or* section number without further identification or attribution shall be presumed, unless the context clearly indicates otherwise, to refer to a title, chapter, or section of the Revised Codes of Montana, 1947."

Section 2. Section 12-402, R.C.M. 1947, is amended to read as follows:

"**12-402. Appointments to fill vacancies.** *If an appointed commissioner dies, resigns, or fails or refuses to serve,* his office becomes vacant. *The* governor shall *appoint a qualified person* to fill the vacancy for the unexpired term."

Section 3. Section 19-103, R.C.M. 1947, is amended to read as follows:

"**19-103. General definitional rules — definitions of certain**

words. The following *rules apply in this code: the* present tense includes the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular includes the plural and the plural, the singular; *fractions of a year are computed by the number of months; thus, half a year is 6 months; fractions of a day are disregarded in computations which include more than 1 day and involve no questions of priority. Unless* the context *requires otherwise, the following definitions apply in the Revised Codes of Montana 1947:*

(1) "Property" means real and personal *property.*

(2) "Real property" *means* lands, tenements, hereditaments, and possessory title to public lands.

(3) "Personal property" *means* money, goods, chattels, things in action, and *evidences* of debt.

(4) "*Year*" means a calendar year.

(5) "Month" means a calendar month.

(6) "State", when applied to the different parts of the United States, includes the District of Columbia and the territories.

(7) "United States" *includes* the *District of Columbia* and *the* territories.

(8) "*Will*" includes codicils.

(9) "*Writ*" *means* an order in writing, issued in the name of the state or of a court or judicial officer.

(10) "Process" means a writ or summons issued in the course of judicial proceedings.

(11) "*Vessel*" when used in reference to shipping includes ships of all kinds, steamboats and steamships, canal boats, and every structure adapted to be navigated from place to place.

(12) "Peace officer" *means* any *person described* in *95-210.*

(13) "Magistrate" means any *officer described* in *95-208.*

(14) "*Several*" means two or more.

(15) "*Third* persons" *means* all *persons* who are not parties to the obligation or transaction concerning which the phrase is used.

(16) "Usage" *means* a reasonable and lawful public custom concerning transactions of the same nature as those which are to be affected thereby, existing at the place where the obligation is to be performed, and either known to the parties or so well established, general, and uniform that *the parties* must be presumed to have acted with reference thereto.

(17) "Usual" means according to usage.

(18) "Customary" means according to usage.

(19) "*Willfully*", when applied to the intent with which an act is done or omitted, *denotes* a purpose or willingness to commit the act or make

HeinOnline -- 1977 Vol. I 910 1977

the omission referred to. It does not require any intent to violate *the* law, to injure another, or to acquire any advantage.

(20) "*Neglect*", "negligence", "negligent", and "negligently" *denote* a want of *the* attention to the nature or probable consequences of the act or omission *that* a prudent man *would* ordinarily *give* in acting in his own concerns.

(21) "*Corruptly*" *denotes* a wrongful design to acquire or cause some pecuniary or other advantage to the person guilty of the act or omission referred to or to some other person.

(22) "*Malice*" and "maliciously" *denote* a wish to vex, annoy, or injure another person or an intent to do a wrongful act, established either by proof or presumption of law.

(23) "*Knowingly*" *denotes* only a knowledge that the facts exist which bring the act or omission within the provisions of this code. It does not require any knowledge of the unlawfulness of *the* act or omission.

(24) "*Bribe*" *means* anything of value or advantage, present or prospective, or any promise or undertaking to give *anything of value or advantage, which is* asked, given, or accepted with a corrupt intent to *unlawfully* influence the person to whom it is given in his action, vote, or opinion in any public or official capacity.

(25) "*Seal*", *when* the seal of a court or public officer is required by law to be affixed to any paper, includes an impression of *the* seal upon the paper alone or upon any substance attached to the paper capable of receiving a visible impression. The seal of a private person may be made in like manner, by the scroll of a pen, or by writing the word "seal" against his name.

(26) "Pledge", "mortgage", "conditional sale", "lien", "assignment", and like terms, when used in referring to a security interest in personal property, include a corresponding type of security interest under the Uniform Commercial Code—Secured Transactions.

(27) "Person" includes a corporation as well as a natural person.

(28) "Writing" includes printing.

(29) "Oath" includes an affirmation or declaration.

(30) "Testify" includes every mode of oral statement under oath or affirmation.

(31) "Deposition" means a statement made under oath or affirmation and reduced to writing.

(32) "Signature" or "subscription" includes the mark of a person who cannot write if the person's name is written near the mark by another person who also signs his own name as a witness.

(33) "Judicial officers" means justices of the supreme court, judges of the district courts, justices of the peace, municipal judges, and city judges."

Section 4. Section 19-105, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 911 1977

"**19-105. Notice — actual and constructive.** Notice is:

(1) actual whenever it consists *of* express information of a fact;

(2) constructive whenever it is imputed by law."

Section 5. Section 43-205, R.C.M. 1947, is amended to read as follows:

"**43-205. Time and place of meeting.** Each *regular* session of the *legislature* shall *be convened* at the seat of government at 12 noon on the first Monday *of January of each odd-numbered year or, if* January 1 *is a Monday*, on the first Wednesday. *The legislature shall meet* at other times when convened by the governor or by *the* written request of a majority of the *legislators* or, when the *legislature* is in session, by a recorded vote of a majority of the *legislators*."

Section 6. Section 43-404, R.C.M. 1947, is amended to read as follows:

"**43-404. Compelling attendance.** Any witness neglecting or refusing to attend in obedience to *a* subpoena may be arrested by the sergeant-at-arms and brought before the senate or house. The only warrant of authority necessary to authorize *the* arrest is a copy of a resolution of the senate or house, signed by the president *of the senate* or speaker of the house and countersigned by the secretary or clerk."

Section 7. Section 43-503, R.C.M. 1947, is amended to read as follows:

"**43-503. Bills returned without approval.** *(1) A bill or item or items of an appropriations bill become law whenever:*

(a) the bill *passes* both houses of the *legislature;*

(b) the bill is returned by the governor without his signature and with objections thereto or, if it *is* a bill containing several items of appropriation of money, with objections to one or more items; and

(c) upon reconsideration *the* bill or item or items pass both houses by the constitutional majority.

(2) The bill or item or items *shall* be authenticated by a certificate endorsed on or attached to the bill or the copy of the statement of objections. *The form of the certificate shall be:* "This bill having been returned by the governor with his objections thereto and, after reconsideration, having passed both houses by the constitutional majority has become a law this .... day of ...., A.D ....." or "The following items in the within statement (naming them) having, after reconsideration, passed both houses by the constitutional majority have become a law this .... day of ...., A.D. ...." *The* endorsement, signed by the president of the senate and the speaker of the house, is sufficient authentication *of the bill or item or items.*

(3) The authenticated bill or statement *shall* be delivered to the governor, *who shall deposit it* with the laws in the office of the secretary of state."

Section 8. Section 43-505, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 912 1977

"43-505. **Bills remaining with the governor.** *(1) A* bill which has passed both houses of the legislature and has not been returned by the governor within 5 days after its delivery to him if the legislature is in session or within 25 days if the legislature is adjourned *becomes* law.

(2) The governor *shall deliver the bill to the secretary of state and direct him to authenticate it by a certificate endorsed or attached* thereon. *The form of the certificate shall be:* "This bill having remained with the governor 5 days, and the legislature being in session, it has become a law this .... day of ...., ..." or "This bill having remained with the governor 25 days, and the legislature being adjourned, it has become a law this .... day of ...., ..." *The* certificate *shall* be signed by the secretary of state and deposited with the laws in his office."

Section 9. Section 43-508, R.C.M. 1947, is amended to read as follows:

"43-508. **"Passage" — meaning of.** "*Passage*", as used in *43-507, means* the enactment into law of a bill which has passed the *legislature* either with or without the approval of the governor, as provided in the constitution."

Section 10. Section 43-709, R.C.M. 1947, is amended to read as follows:

"43-709. **Appointment and composition of legislative council — term — vacancies.** *(1)* There is a legislative council which consists of*:*

(a) four members of the house of representatives appointed by the speaker of the house with the advice of the majority and minority leaders of the house, no more than two of whom *may* be of the same political party*;* and

(b) four members of the senate appointed by the committee on committees of the senate, no more than two of whom *may* be of the same political party.

(2) Membership on the council *is* for 2 years and terminates with *the* appointment of a new council or on the *50th* legislative day of the *next* regular session following the *one* in which the appointment was made, whichever event occurs first. A new council shall be appointed no later than the *50th* day of each regular session.

(3) A vacancy on *the* legislative council occurring when the legislature is not in session shall be filled by the selection of another member by the same method as the original appointment."

Section 11. Section 43-710, R.C.M. 1947, is amended to read as follows:

"43-710. **Powers and duties of council.** (1) If a question of *statewide* importance arises when the legislature is not in session and a subcommittee has not been appointed to consider the question, the legislative council shall, with the concurrence of the priorities committee, assign *the* question to an appropriate subcommittee.

(2) The legislative council shall supervise the activities of the council staff.

HeinOnline -- 1977 Vol. I 913 1977

(3) The legislative council shall assist in the preparation and submission of all standing and select committee and subcommittee reports and recommendations to the legislature.

(4) This section shall not be construed to permit the council to approve or disapprove of any substantive portions or recommendations of a standing *or* select committee *or* subcommittee report."

Section 12. Section 43-711, R.C.M. 1947, is amended to read as follows:

"**43-711. Executive director, personnel and consultants, functional divisions.** (1) The legislative council may employ an executive director and such other personnel, not members of the council, as it *considers* necessary to assist in the preparation of *proposed legislative acts and* standing and select committee and subcommittee reports and recommendations and *to carry out* other *council* activities. *The council* shall fix the compensation of such employees. It *may also* employ the services of any research agency which it *considers* necessary in the discharge of its duties.

(2) The legislative council may establish functional divisions within the council staff in order to carry out all of the responsibilities delegated to the council by law or legislative rule. *The divisions* shall include the following:

(a) *legislative* services division*:*

(i) engrossing and enrolling*;*

(ii) mailroom*;*

(iii) printing;

(b) *research* and reference services division*:*

(i) general and specialized legislative research*;*

(ii) legislative reference and information, including preparation and publication of the Legislative Review to be sold at the cost of the publication plus postage*;*

(iii) committee staffing when the legislature is not in session;

(c) *legal* services division*:*

(i) bill drafting*;*

(ii) legal counseling*;*

(d) *management* and business services division, *which shall:*

(i) maintain bookkeeping records*;*

(ii) sign claims and payrolls*;*

(iii) order all printing, supplies, and equipment*; and*

(iv) serve *the* house and senate during the session."

HeinOnline -- 1977 Vol. I 914 1977

Section 13. Section 43-711.2, R.C.M. 1947, is amended to read as follows:

"**43-711.2. Distribution of senate and house journals and session laws.** *(1)* Immediately after the senate and house journals and the session laws mentioned in 43-711.1 are bound, the legislative services division of the legislative council *shall* distribute *them.*

(2) It shall distribute the house and senate journals as follows:

(a) to each county clerk, one copy of each for the use of the county;

(b) to the state historical library, such number of copies of both, not exceeding 150 of each, as may be required by it for purposes of distribution and exchange;

(c) to the state law librarian, two copies of each for the use of *the* library and such additional copies as may be necessary for the purposes of exchange;

(d) to the library of *congress,* two copies of each; *and*

(e) to the lieutenant governor, each member of the *legislature, the* secretary of the senate, and *the* chief clerk of the house of representatives at the session at which the journals were adopted, one copy of each.

(3) It shall distribute the session laws as follows:

(a) to each department of the government at Washington and of the government of this state, one copy;

(b) to the library of *congress,* eight copies;

(c) to the state library, two copies;

(d) to the state historical library, two copies;

(e) to the state law librarian, four copies for the use of *the* state law library *and such additional copies as may be required for exchange with libraries and institutions maintained by other states, territories, and public libraries;*

(f) to the library of each custodial institution, one copy;

(g) to each Montana member of *congress, each* United States district judge *in Montana,* each of the judges of the *state* supreme and district courts, and each of the state officers, one copy;

(h) to the lieutenant governor, each member of the *legislature, the* secretary of the senate, and *the* chief clerk of the house of representatives at the session at which *the* laws were adopted, one copy;

(i) to each of the incorporated colleges of the state and each unit of the state university *system,* one copy;

(j) to each county clerk, three copies for the use of the county; *and*

(k) to each county attorney and to each clerk of *a* district court, one copy."

HeinOnline -- 1977 Vol. I 915 1977

Section 14. Section 43-713, R.C.M. 1947, is amended to read as follows:

"**43-713. Powers relating to hearings.** *(1)* In the discharge of its duties on behalf of standing committees and subcommittees, the legislative council *may* hold hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, and cause depositions of witnesses to be taken in the manner prescribed by law for taking depositions in civil actions in district court.

(2) If a person *disobeys a* subpoena issued by the council on behalf of a standing committee or subcommittee or *if a* witness *refuses* to testify on any matters regarding which he may be lawfully interrogated, the district court of any county or *a* judge thereof *shall*, on application of the legislative council, compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court *or* a refusal to testify therein."

Section 15. Section 43-716, R.C.M. 1947, is amended to read as follows:

"**43-716. Appointment and composition of joint subcommittees — officers — powers and duties — vacancies.** (1) *(a)* The standing committees of the house and senate shall appoint subcommittees from each body to meet jointly on those bills and resolutions *that are* designated to them by the priorities committee. The *composition of each subcommittee* shall be as follows:

(i) four members of the house standing committee appointed by the chairman of the standing committee, no more than two of whom may be of one political party; and

(ii) four members of the senate standing committee appointed by the chairman of the standing committee, no more than two of whom may be of one political party.

(b) The chairman of the standing committee may appoint himself to the subcommittee.

(2) Each subcommittee shall elect its chairman and vice-chairman from among its members. The chairman and vice-chairman may not be members of the same political party.

(3) The subcommittees may perform their functions when the legislature is not in session. *The* personnel, data, and facilities of the legislative council shall be made available to such subcommittees.

(4) (a) Each subcommittee shall accumulate, compile, analyze, and furnish such information *relevant* to existing or prospective legislation as *it determines, on* its own initiative, *to be pertinent* to important issues of policy and questions of statewide importance, including but not limited to:

(i) the possibilities of consolidations of departments, commissions, boards, and institutions in state government for:

HeinOnline -- 1977 Vol. I 916 1977

(A) the elimination of unnecessary activities and duplications in office personnel and equipment;

(B) the coordination of activities;

(C) the purpose of increasing efficiency of service or effecting economies; and

(D) the purpose of studying and inquiring into the financial administration of state governments and subdivisions thereof, including the problems of assessment and collection of taxes; and

(ii) all other matters pertaining to the function of *the* departments and branches of state government.

(b) Each subcommittee shall prepare such bills and resolutions as, in its opinion, the welfare of the state may require for presentation to the next regular session of the *legislature.*

(c) Each subcommittee shall keep accurate records of its activities and proceedings.

(5) A subcommittee appointed for the purpose of making a study assigned by the priorities committee may make recommendations for legislation. These recommendations and the study report shall be submitted to the legislature at the *next regular* session.

(6) If *a* subcommittee member *misses* more than two committee meetings or hearings without just cause when the legislature is not in session, the member is *considered* to have resigned and the vacancy shall be filled in the same manner as the original appointment. Any other vacancy shall be filled in the same manner."

Section 16. Section 43-717, R.C.M. 1947, is amended to read as follows:

"**43-717. Legislative committee on priorities — composition — functions.** (1) There is a legislative committee on priorities which *is* composed of eight members of the house rules committee, *no more than* four of whom *may* be of the same political party, and eight members of the senate rules committee, *no more than* four of whom *may* be of the same political party.

(2) The committee on priorities shall be appointed at the same time as all other standing committees.

(3) The committee on priorities shall consider resolutions requesting council studies and all other study requests and establish and prepare a list of priorities from among them. The committee shall transmit the list to the legislative council before the end of each regular session and shall assign the bills and studies to the appropriate standing *committees* in the order in which the studies and bills appear on the list of priorities. The committee shall assign as many studies and bills as the resources of the council staff *allow.*"

Section 17. Section 43-721, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 917 1977

"**43-721. Establishment of program.** It is the public policy of this state that there be a legislative intern program open to students attending the university of Montana, Montana state university, eastern Montana college, northern Montana college, western Montana college, *and the* Montana college of mineral science and technology. *Any* private *college* of higher education in the state may also establish an intern program for the purposes of this act."

Section 18. Section 43-725, R.C.M. 1947, is amended to read as follows:

"**43-725. Intern qualifications.** *(1)* The legislative interns must have the following qualifications:

(a) at least one quarter of "state government" or its equivalent as a course of study at an institution of higher learning;

(b) attainment of at least the level of a junior at an institution of higher learning; *and*

(c) the necessary degree of scholastic achievement, leadership, and involvement in community affairs.

(2) Preference shall be given to Montana high school graduates."

Section 19. Section 43-801, R.C.M. 1947, is amended to read as follows:

"**43-801. Purposes of act.** The *purposes* of this act *are* to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, and to provide for the licensing of lobbyists and the suspension or revocation of *the* licenses."

Section 20. Section 43-803, R.C.M. 1947, is amended to read as follows:

"**43-803. Licensing of lobbyists.** (1) Licenses — fees — eligibility. Any adult *of* good moral character who is a citizen of the United States and *who is* otherwise qualified under this act may be licensed as a lobbyist. The secretary of state shall provide *a license* application *form. The* application *form* may be obtained in the office of the secretary of state and filed therein. Upon approval of *the* application *by the secretary of state* and payment of the license fee of $10 to the secretary of state, a license shall be issued which *entitles* the licensee to practice lobbying on behalf of one or more principals. Each license shall expire on December 31 of each odd-numbered year. No application *may* be disapproved without affording the applicant a hearing. *The hearing* shall be held and *the* decision entered within 10 days of the date of *the* filing of the application. The license fees collected by the secretary of state under this act shall be deposited by him in the state treasury.

(2) Suspension or revocation of license. Upon *a* verified complaint in writing to the attorney general charging the holder of a license with unprofessional conduct or with having procured his license by fraud or perjury or through error, the attorney general *may* bring *a* civil action in the district court for Lewis and Clark *County* against the holder and

HeinOnline -- 1977 Vol. I 918 1977

in the name of the state as plaintiff to revoke *or suspend* the license. Hearing shall be held by the court unless the defendant-licensee demands a jury trial. The trial shall be held as soon as possible and at least 20 days after the filing of the charges and shall take precedence over all other matters pending before the court. If the court finds for the plaintiff, judgment shall be rendered revoking *or suspending* the license and the clerk of the court shall file a certified copy of the judgment with the secretary of state. The *secretary of state* may commence such *an* action on his own motion.

(3) Suspension of lobbying privileges. No lobbyist whose license has been suspended or revoked and no person who has been convicted of a violation of any provision of this act *may* engage in lobbying until he has been reinstated to the practice of lobbying and duly licensed."

Section 21. Section 43-806, R.C.M. 1947, is amended to read as follows:

"**43-806. Practice without license and registration prohibited — copies of statements, briefs, etc. — applicability of restrictions.** (1) No person *may* practice as a lobbyist unless he has been licensed under 43-803 and unless *he is listed on* the docket as employed in respect to such matters as he *is* promoting or opposing. No principal *may* directly or indirectly authorize or permit any lobbyist employed by him to practice lobbying in respect to any legislation affecting the pecuniary interest of *the* principal until *the* lobbyist is duly licensed and the name of *the* lobbyist is duly entered on the docket. No person *may* be employed as a lobbyist for a compensation dependent in any manner upon the passage or defeat of any proposed or pending legislation or upon any other contingency connected with the action of the legislature, of either branch thereof, or of any committee thereof.

(2) Before or within 5 days after *a lobbyist delivers* any written or printed statement, argument, or brief to the entire membership of either or both houses of the legislature, *he shall deposit* three copies with the secretary of state.

(3) The restrictions *on* the practice of lobbying provided by this act *are* effective only during the regular and special sessions of the legislature."

Section 22. Section 43-902, R.C.M. 1947, is amended to read as follows:

"**43-902. Schedule of fees for proceedings.** *(1) A* person desiring to receive one complete set of the proceedings of a regular session of the legislature shall pay to the secretary of state the amount prescribed in the joint legislative rules. Upon receipt of *the* money, the secretary of state shall transmit the name of *the* person to the executive director of the legislative council, who shall supply *the* person with a complete set of the proceedings. Any person desiring to receive more than one set shall pay the session fee for each additional set.

(2) A person who requests that a set of the proceedings be mailed shall pay an additional fee *as prescribed in the joint legislative rules* to the secretary of state for each complete set that is mailed.

HeinOnline -- 1977 Vol. I 919 1977

(3) A person desiring to receive single copies of mimeographed bills, mimeographed resolutions, printed bills, printed resolutions, or amendments thereto shall purchase them from the legislative services division of the legislative council for a price varying with the length of the document as prescribed in the joint rules.

(4) A person desiring to receive single copies of status sheets or status of proceedings may purchase them from the legislative services division of the legislative council for a price per copy as prescribed in the joint rules. A person may subscribe to receive daily copies of the status sheets or status of proceedings by mail for a fee covering the actual costs of *the* service which the legislative council may fix.

(5) The executive director of the legislative council *and the secretary of state* shall account for all funds collected *by their respective offices* under this section and *shall* transmit such funds to the treasurer of the state of Montana, who shall credit them to the general fund."

Section 23. Section 43-1111, R.C.M. 1947, is amended to read as follows:

"**43-1111. Legislative finance committee and office of legislative fiscal analyst.** There is a legislative finance committee which *is* a permanent joint committee of the legislature. There is *an* office of legislative fiscal analyst. The legislative fiscal analyst shall *carry* out the provisions of this act."

Section 24. Section 43-1118, R.C.M. 1947, is amended to read as follows:

"**43-1118. Approval of budget amendments.** All budget amendments for state agencies must be submitted through the budget director to the committee. No state agency shall expend in excess of the appropriation except under authority of a budget amendment."

Section 25. Section 79-2303.1, R.C.M. 1947, is amended to read as follows:

"**79-2303.1. Legislative audit committee.** (1) There is a legislative audit committee which *is* a permanent joint committee of the *legislature.*

(2) There is *an* office of the legislative auditor. The *legislative auditor is* responsible for performing the duties imposed by this act."

Section 26. Section 79-2304, R.C.M. 1947, is amended to read as follows:

"**79-2304. Appointment and term of members — officers — vacancies.** *(1)* The legislative audit committee consists of four members of the *senate* and four members of the *house* of *representatives* appointed before the *60th* legislative day of *each regular* session in the same manner as standing committees of the respective houses are appointed. No more than two of the appointees of each house *may* be members of the same political party.

(2) A member of the committee shall serve until his term of office as a legislator ends or until his successor is appointed, whichever occurs first.

HeinOnline -- 1977 Vol. I 920 1977

(3) The committee shall elect one of its members as chairman and such other officers as it *considers* necessary.

(4) A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the legislature by the remaining members of the committee."

Section 27. Section 79-2310, R.C.M. 1947, is amended to read as follows:

"79-2310. Powers and duties of legislative auditor. The legislative auditor shall:

(1) *audit* the financial affairs and transactions of every state agency;

(2) *make* a complete written report of each audit. A copy of each report shall be furnished to the department of administration, the state agency which *was* audited, each member of the committee, and the legislative council.

(3) *report* immediately in writing to the attorney general and the governor any apparent violation of penal statutes disclosed by the audit of a state agency and furnish the attorney general *with* all information in his possession relative to the violation;

(4) *report* immediately in writing to the governor any instances of misfeasance, malfeasance, or nonfeasance by a state officer or employee disclosed by the audit of a state agency;

(5) *report* immediately to the surety upon the bond of *an* official or employee when an audit discloses a shortage in the accounts of the official or employee. *Failure* to notify the surety does not release the surety from any obligation under the bond.

(6) *report* to the *legislature* during the first week of each regular session. *The* report shall contain, among other things, copies of or summaries of audit reports on state agencies and any recommendations relating to such reports.

(7) *have* the authority to audit records of organizations and individuals receiving grants from or on behalf of the state to determine that the grants are administered in accordance with the grant terms and conditions. *Whenever* a state agency enters into an agreement to grant resources under its control to others, the agency must obtain the written *consent* of the grantee to *the* audit *provided for in this subsection."*

Section 28. Section 93-104, R.C.M. 1947, is amended to read as follows:

"93-104. Jurisdiction. The court has jurisdiction to try impeachments presented by the house of representatives."

Section 29. Section 95-2801, R.C.M. 1947, is amended to read as follows:

"95-2801. Officers liable to impeachment. The governor, executive officers, heads of state departments, and judicial officers *are* liable to impeachment for felonies and misdemeanors or malfeasance in office."

HeinOnline -- 1977 Vol. I 921 1977

Section 30. Section 95-2803, R.C.M. 1947, is amended to read as follows:

"**95-2803. Articles of impeachment.** *(1)* All impeachments must be by resolution originated in and *adopted by the house of representatives. The resolution shall be* conducted *through the house* by managers elected by the house.

(2) The managers shall prepare articles of impeachment, present them at the bar of the senate, and prosecute *them.*"

Section 31. **Repealer.** Sections 43-318, 43-511, 43-714, 43-719, 59-604, and 90-403, R.C.M. 1947, are repealed.

Approved April 5, 1977.

CHAPTER NO. 310

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO LICENSURE OF RADIOLOGIC TECHNOLOGISTS AND PROVIDING AN IMMEDIATE EFFECTIVE DATE; AMENDING SECTIONS 66-3701, 66-3705, 66-3706, 66-3707, 66-3708, AND 66-3709, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-3701, R.C.M. 1947, is amended to read as follows:

"**66-3701. Definitions.** As used in this act unless the context clearly requires otherwise:

(1) "Board" means the board of radiologic technologists created by this act.

(2) "License" means an authorization, to apply x-ray radiation to persons, issued by the department of professional and occupational licensing.

(3) "Department" means the department of professional and occupational licensing.

(4) "Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, dentistry, dental hygiene, podiatry, chiropody, osteopathy, or chiropractic.

(5) "Permit" means an authorization which may be granted by the board, to apply x-ray radiation to persons when the applicant's qualifications do not meet standards required for the issuance of a license.

(6) "Radiologic technologist" means a person other than a licensed practitioner who applies *diagnostic* x-ray radiation to persons."

Section 2. Section 66-3705, R.C.M. 1947, is amended to read as follows:

"**66-3705. Applicants — qualifications.** *(1)* Each applicant for licen-

HeinOnline -- 1977 Vol. I 922 1977

sure as a radiologic technologist *other than those qualifying under 66-3708 or 66-3708.1* shall have satisfactorily completed a *24-month* course of study in radiologic technology approved by the board.

(2) Each applicant for licensure as a radiologic technologist including those qualifying under 66-3708 or 66-3708.1 shall:

(a) be of good moral character;

(b) be at least eighteen (18) years of age; *and*

(c) not be addicted to intemperate use of alcohol or narcotic drugs."

Section 3. Section 66-3706, R.C.M. 1947, is amended to read as follows:

"**66-3706. Examinations — licensure.** (1) Examinations for licensure as a radiologic technologist shall include a written portion and may also include practical and oral portions as established by the board.

(2) The board shall provide applicants for licensure the opportunity for examinations at intervals not to exceed 6 months.

(3) A nonrefundable examination fee, established by the board but not to exceed $50, shall be submitted prior to examination for licensure. An applicant failing the examination shall be charged a nonrefundable application fee for any subsequent examination. An applicant failing any subsequent examination *is* not eligible for reexamination until 12 months following the last failed examination.

(4) The board may accept in lieu of its own examination a certificate of the American Registry of Radiologic Technologists (ARRT) or a certificate, registration or license issued by another state whose qualifications are at least equal to those set forth in this *chapter*."

Section 4. There is a new R.C.M. section numbered 66-3701.1 that reads as follows:

66-3701.1. Legislative findings. The legislature declares that the practice of radiologic technology affects the public health, safety, and welfare and that it is therefore necessary to regulate and control such practice in the public interest. The purpose of this chapter is to protect the public from the unprofessional, improper, unauthorized, or unqualified practice of radiologic technology.

Section 5. Section 66-3707, R.C.M. 1947, is amended to read as follows:

"**66-3707. Licenses — permits.** (1) The board shall issue a license or permit to each applicant who has submitted a nonrefundable licensing fee set by the board not to exceed $50 and has met the requirements of this *chapter*. Fees collected by the department shall be deposited in the earmarked revenue fund for the use of the board in administering this *chapter*.

(2) The board may issue a permit to an applicant not qualifying for the issuance of a license under the provisions of this *chapter* but who has demonstrated to the satisfaction of *a physician specializing in radiology*

HeinOnline -- 1977 Vol. I 923 1977

approved by the board the capability of performing high quality x-ray examinations without endangering public health and safety. Permits issued under provisions of this section shall specify x-ray examinations that may be performed by the holder. Permits shall be valid for a period not to exceed 12 months but may be renewed under the provisions for original issuance.

(3) Applicants meeting minimum requirements for licensure shall be issued a temporary permit to work as a radiologic technologist. This temporary permit shall expire 15 days after the date of first opportunity for examination.

(4) The board shall issue temporary permits to uncertified persons to *perform x-ray examinations* when adequate evidence is provided the board that such a permit is necessary because of a regional hardship or emergency condition and that such person is capable of performing x-ray examinations without endangering public health and safety. Temporary permits *may* not exceed 12 months in duration but may be renewed by reestablishing, to the board's satisfaction, evidence of continued regional hardship or emergency conditions.

(5) *Each* radiologic technologist shall carry his license or permit while at work. The license or permit shall be displayed on request.

(6) The board may issue to licensees or permittees such other cards, certificates, or documents as it considers necessary or convenient to the proper administration of this chapter."

Section 6. Section 66-3708, R.C.M. 1947, is amended to read as follows:

"66-3708. Issuance of license without examination. *(1)* The board shall issue a license to an applicant if the applicant has been employed as a radiologic technologist for at least 5 of the 6 years immediately preceding *October 9, 1976.*

(2) Applications for licensure under this section must be submitted to the board no later than October 9, 1977."

Section 7. There is a new R.C.M. section numbered 66-3708.1 that reads as follows:

66-3708.1. Licensure by demonstration of proficiency. (1) The board shall issue a license to an applicant if:

(a) he has been employed as a radiologic technologist for at least 2 of the 3 years immediately preceding October 9, 1976 and can demonstrate proficiency by practical examination;

(b) he is a student engaged in a course of x-ray technology on October 9, 1976, subsequently completes the course, and can demonstrate proficiency to the satisfaction of the board; and

(c) he has successfully completed a 24-month course in x-ray technology within 2 years immediately preceding October 9, 1976 and can demonstrate proficiency to the satisfaction of the board.

HeinOnline -- 1977 Vol. I 924 1977

(2) Applications for licensure under subsections (1)(a) and (1)(c) of this section must be submitted to the board no later than October 9, 1977.

Section 8. Section 66-3709, R.C.M. 1947, is amended to read as follows:

"**66-3709. Expiration of license — renewal.** (1) Licenses expire on December 31 of the first *even-numbered* year following the year of their issuance and on every *even-numbered* year thereafter.

(2) A license shall be renewed by the board upon payment of a license fee set by the board and submission of a renewal application containing such information as the board *considers* necessary to show that the applicant for renewal is a radiologic technologist in good standing.

(3) A radiologic technologist who has been licensed in Montana and whose license has not been revoked or suspended and who has temporarily ceased activities as a radiologic technologist for not more than 5 years may apply for reissuance of a license upon complying with the provisions of this section, including payment of an application fee."

Section 9. There is a new R.C.M. section numbered 66-3709.1 that reads as follows:

66-3709.1. Replacement documents. The board may charge a reasonable fee for the replacement or duplication of a certificate, license, permit, or other document issued pursuant to this chapter.

Section 10. **Effective date.** This act is effective on passage and approval.

Approved April 5, 1977.

CHAPTER NO. 311

AN ACT TO REQUIRE THE BOARD OF LAND COMMISSIONERS TO LEASE STATE LAND TO THE HIGHEST BIDDER EXCEPT UNDER CERTAIN CONDITIONS; AMENDING SECTION 81-405, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-405, R.C.M. 1947, is amended to read as follows:

"**81-405. Renewal leases — preference right of lessee — exceptions.** (1) A lessee of state land classed as agricultural, grazing, town lot or city lot, who has paid all rentals due from him to the state, and who has not violated the terms of his lease, is entitled to have his lease renewed for a five (5) or ten (10) year period at the rental rate provided by law for the renewal period, and subject to any other conditions at the time of the renewal imposed by law as terms of the lease at any time within thirty (30) days prior to its expiration if no other applications for lease of the land have been received thirty (30) days prior to the expiration of his lease. If other applications have been received, the holder of the lease has the preference right to lease the land covered by his former lease

HeinOnline -- 1977 Vol. I 925 1977

by meeting the highest bid made by any other applicant. Applications for lease of lands in this section shall be given preference in the order of their receipt at the office of the department.

(2) The board shall accept the highest bid. If the lessee exercises the preference right and believes the bid to be excessive, he may request an administrative hearing. Such request must contain a statement of reasons why the lessee believes the bid not to be in the state's best interest, and must be accompanied by a deposit equal to 20% of the competitive bid in the case of grazing lands, and $1 per acre in the case of agricultural lands. The department shall grant the request for a hearing if it determines that the statement indicates evidence that the bid may not be in the state's best interests. The board may, after the hearing, reduce the rental from the amount bid if the lessee shows that the bid is not in the best interest of the state because it is above community standards for a lease of such land, would cause damage to the tract, or impair its long-term productivity. If the board reduces the bid, it shall set forth its findings and conclusions in writing and so inform the lessee and competitive bidder. It is the duty of the board to secure the best lessees possible, so that the state may receive the maximum return possible with the least injury occurring to the land.

(3) When the department receives an application to lease an unleased tract, it shall advertise for bids on the tract. The tract shall be leased to the highest bidder unless the board determines that the bid is not in the state's best interest for the reasons set forth in subsection (2). If the high bid is rejected, the board shall set forth the reasons for the rejection in writing. The lease shall then be issued, at a rental to be determined by the board, to the first bidder willing to pay the board determined rental whose name is selected through a random selection process from all bidders on the tract.

(4) Notwithstanding the foregoing provisions, the board may withdraw any agricultural or grazing land from further leasing for such period as the board determines to be in the best interest of the state. Bids for leases and applications for renewals of leases of state agricultural lands or state grazing lands shall be in writing and sealed and shall be submitted to the board at the office of the department."

Approved April 5, 1977.

CHAPTER NO. 312

AN ACT ALLOWING THE MOVEMENT OF CATTLE TO AN ADJACENT COUNTY FOR GRAZING PURPOSES UNDER A TRANSPORTATION PERMIT USED IN LIEU OF A COUNTY LINE BRAND INSPECTION; AMENDING SECTIONS 46-801.2 AND 46-802, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-801.2, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 926 1977

"**46-801.2. Inspection of livestock before change of ownership or removal from county — transportation permits.** (1) Except as otherwise provided in this act, it is unlawful to remove or cause to be removed from a county in this state any livestock, or to transfer ownership by sale or otherwise, or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector, and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of such change of ownership as provided in this act. The inspection must be made in daylight provided, however, that the change of ownership inspection requirements of this subsection shall not apply when such sale or change of ownership transaction involves five or less such animals.

(2) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained, or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this act.

(3) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been inspected for marks and brands by a state stock inspector and an inspection certificate for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market, as provided in this act.

(4) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this act, or where change of ownership has occurred or when moved under a market consignment permit shall have in his possession the certificate of inspection, market consignment permit, *or transportation permit* issued in connection therewith, and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector at the request of either of them. Section 46-803 shall be extended to livestock transported or sold under the above-mentioned permits.

(5) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business, or where a purebred cow is being transported from county to county in this state by its owner for show purposes, and where there is no change of ownership, the inspection certificate as required by this act, may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed one (1) year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow are to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

(b) The owner of a saddle, work, or show horse may apply for a perma-

HeinOnline -- 1977 Vol. I 927 1977

nent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared, or a lip tattoo, or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a five dollar ($5) permit fee for each horse. The application shall contain a thorough physical description of the horse and list all brands and tattoos carried by the horse.

Upon approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer are being transported from county to county in this state by the owner for rodeo purposes, and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described thereon. The certificate is effective only between April 1 and October 31 of the year for which it is issued. The certificate shall be issued by a state stock inspector.

(d) An owner of livestock or his agent may be issued a transportation permit allowing the movement of his livestock into an immediately adjoining county and return when the livestock are being moved for grazing purposes and when they are being moved to and from land owned or controlled by the owner of the livestock or his agent. The permit is valid for 6 months and must be issued by a state stock inspector. The fee for the permit is $5, which shall be paid to the state stock inspector at the time the permit is issued and remitted by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. This permit may be used in lieu of the inspection and certificate required by this section for movement of livestock across a county line."

Section 2. Section 46-802, R.C.M. 1947, is amended to read as follows:

"46-802. Duties of state stock inspectors and deputy stock inspectors — department authorized to adopt rules. (1) State stock inspectors and deputy state stock inspectors, upon the application of the owner, or the duly authorized agent of the owner of livestock, shall inspect the livestock which are intended for sale, removal or shipment and issue his certificate of inspection therefor, if it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof.

HeinOnline -- 1977 Vol. I 928 1977

(2) The inspection shall include an examination of the livestock and all marks and brands thereon to identify the livestock. The certificate of inspection shall be made in triplicate and shall specify the date of inspection, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock or of the applicant for inspection, and the purchaser or transferee, if applicable, the class of the animal, the marks and brands, if any, upon the animal, and any other information and upon the form of certificate as the department may from time to time require. One copy of the certificate shall be retained by the inspector, one copy shall be furnished by the inspector to the owner or shipper of the livestock, and one copy shall be filed by the inspector with the department within 5 days.

(3) If it appears with reasonable certainty that the applicant is the owner of the livestock or has the lawful right to the possession thereof, the state stock inspectors or deputy state stock inspectors or any sheriff or deputy sheriff, upon application of an owner or his agent of the livestock to be consigned and delivered directly to a licensed livestock market located in another county of the state, or delivered directly to a shipping point duly approved by the department where a livestock inspector is available for inspection, in an adjoining county, shall issue to the person a separate market consignment permit or transportation permit for each owner when the owner, or owners, or their duly authorized agents sign the permit certifying the brands, description and destination of the livestock. The market consignment permit or transportation permit shall be made in triplicate, shall specify the date and time issued, the place of origin and place of destination of the shipment, the name and address of the owner of the livestock and the name and address of the person actually transporting the livestock if different than the owner, the kind of livestock, the marks and brands, if any, upon the livestock, a description of the vehicle or vehicles to be used to transport the livestock to include the license number of the vehicles and any other information and upon the form of permit as the department may from time to time require. Any permit so issued shall be good for shipment within thirty-six (36) hours from date and time of issue, however, permits not used within this time limitation must be returned to the issuing officer to be canceled and to release the permittee from performance. One (1) copy of the permit shall be retained by the inspector or sheriff's office, one (1) copy shall be filed by the inspector or sheriff's office with the department within five (5) days of the date of issue, and one (1) copy shall be furnished by the inspector or sheriff's office to the owner or shipper of the livestock which copy of the permit shall accompany the shipment and be delivered to the state stock inspector at the livestock market or shipping point where the livestock is delivered.

(4) Upon application of an owner or his agent, when it appears with reasonable certainty that the applicant is the owner of the livestock or has lawful right to the possession thereof, a state stock inspector shall issue a transportation permit which will allow the movement of the livestock into an immediately adjoining county to land owned or controlled by the owner or his agent for purposes of grazing. The transportation permit shall state the breed, description, marks and brands if any, head count, and descrip-

HeinOnline -- 1977 Vol. I 929 1977

tion of land to and from which the livestock will be moved. The permit will be valid for 6 months. A state stock inspector may enter the premises where livestock so moved have been transported and inspect any livestock moved under the transportation permit or any livestock commingled therewith. Any person transporting strays or livestock not lawfully under his control is guilty of a misdemeanor and punishable as provided in 46-806.

(5) The department may adopt rules necessary to carry out this act."

Approved April 5, 1977.

CHAPTER NO. 313

THE MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977; REPEALING SECTIONS 42-201 AND 42-204, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 42-401 that reads as follows:

42-401. Short title. This chapter may be cited as "The Montana Residential Landlord and Tenant Act of 1977".

Section 2. There is a new R.C.M. section numbered 42-402 that reads as follows:

42-402. Purposes and rules of construction. (1) This chapter shall be liberally construed and applied to promote its underlying purposes and policies.

(2) Underlying purposes and policies of this chapter are:

(a) to simplify, clarify, modernize, and revise the law governing the rental of dwelling units and the rights and obligations of landlords and tenants; and

(b) to encourage landlords and tenants to maintain and improve the quality of housing.

Section 3. There is a new R.C.M. section numbered 42-403 that reads as follows:

42-403. Supplementary principles of law applicable. Unless displaced by the provisions of this chapter, the principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating causes, supplement its provisions.

Section 4. There is a new R.C.M. section numbered 42-404 that reads as follows:

42-404. Construction against implicit repeal. No part of this

HeinOnline -- 1977 Vol. I 930 1977

chapter is to be construed as impliedly repealed by subsequent legislation if that construction can reasonably be avoided.

Section 5. There is a new R.C.M. section numbered 42-405 that reads as follows:

42-405. Administration of remedies — enforcement. (1) The remedies provided by this chapter shall be so administered that an aggrieved party may recover appropriate damages. The aggrieved party has a duty to mitigate damages.

(2) A right or obligation declared by this chapter is enforceable by action unless the provision declaring it specifies a different and limited effect.

Section 6. There is a new R.C.M. section numbered 42-406 that reads as follows:

42-406. Settlement of disputed claim or right. A claim or right arising under this chapter or on a rental agreement, if disputed in good faith, may be settled by agreement.

Section 7. There is a new R.C.M. section numbered 42-407 that reads as follows:

42-407. Territorial application. This chapter applies to, regulates, and determines rights, obligations, and remedies under a rental agreement, wherever made, for a dwelling unit located within this state.

Section 8. There is a new R.C.M. section numbered 42-408 that reads as follows:

42-408. Exclusions from application of chapter. Unless created to avoid the application of this chapter, the following arrangements are not governed by this chapter:

(1) residence at a public or private institution if incidental to detention or the provision of medical, geriatric, educational, counseling, religious, or similar service;

(2) occupancy under a contract of sale of a dwelling unit or the property of which it is a part if the occupant is the purchaser or a person who succeeds to his interest;

(3) occupancy by a member of a fraternal or social organization in the portion of a structure operated for the benefit of the organization;

(4) transient occupancy in a hotel or motel;

(5) occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

(6) occupancy under a rental agreement covering premises used by the occupant primarily for commercial or agricultural purposes;

(7) occupancy by an employee of a landlord whose right to occupancy is conditional upon employment in and about the premises; and

(8) occupancy outside a municipality under a rental agreement which

HeinOnline -- 1977 Vol. I 931 1977

includes hunting, fishing, or agricultural privileges along with the use of the dwelling unit.

Section 9. There is a new R.C.M. section numbered 42-409 that reads as follows:

42-409. General definitions. Subject to additional definitions contained in subsequent sections and unless the context otherwise requires, in this chapter the following definitions apply:

(1) "Action" includes recoupment, counterclaim, set-off suit in equity, and any other proceeding in which rights are determined, including an action for possession.

(2) "Dwelling unit" means a structure or the part of a structure that is used as a home, residence, or sleeping place by a person who maintains a household or by two or more persons who maintain a common household. "Dwelling unit", in the case of a person who rents space in a mobile home park but does not rent the mobile home, means the space rented and not the mobile home itself.

(3) "Good faith" means honesty in fact in the conduct of the transaction concerned.

(4) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the building of which it is a part and also means a manager of the premises who fails to disclose his managerial position.

(5) "Organization" includes a corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, two or more persons having a joint or common interest, and any other legal or commercial entity.

(6) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) all or part of the legal title to property; or

(b) all or part of the beneficial ownership and a right to present use and enjoyment of the premises, including a mortgagee in possession.

(7) "Person" includes an individual or organization.

(8) "Premises" means a dwelling unit and the structure of which it is a part, the facilities and appurtenances therein, and the grounds, areas, and facilities held out for the use of tenants generally or promised for the use of a tenant.

(9) "Rent" means all payments to be made to the landlord under the rental agreement.

(10) "Rental agreement" means all agreements, written or oral, and valid rules adopted under 42-423 embodying the terms and conditions concerning the use and occupancy of a dwelling unit and premises.

(11) "Roomer" means a person occupying a dwelling unit that does not include a toilet, a bathtub or a shower, a refrigerator, a stove, or a kitchen sink, all of which are provided by the landlord and one or more of these facilities are used in common by occupants in the structure.

HeinOnline -- 1977 Vol. I 932 1977

(12) "Single family residence" means a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it is a single family residence if it has direct access to a street or thoroughfare and shares neither heating facilities, hot water equipment, nor any other essential facility or service with another dwelling unit.

(13) "Tenant" means a person entitled under a rental agreement to occupy a dwelling unit to the exclusion of others.

Section 10. There is a new R.C.M. section numbered 42-410 that reads as follows:

42-410. Obligation of good faith. Every duty under this chapter and every act which must be performed as a condition precedent to the exercise of a right or remedy under this chapter imposes an obligation of good faith in its performance or enforcement.

Section 11. There is a new R.C.M. section numbered 42-411 that reads as follows:

42-411. Unconscionability. (1) If the court, as a matter of law, finds that:

(a) a rental agreement or any provision thereof is unconscionable, the court may refuse to enforce the agreement or enforce the remainder of the agreement without the unconscionable provision to avoid an unconscionable result; or

(b) a settlement in which a party waives or agrees to forego a claim or right under this chapter or under a rental agreement is unconscionable, the court may refuse to enforce the settlement, enforce the remainder of the settlement without the unconscionable provision, or limit the application of any unconscionable provision to avoid an unconscionable result.

(2) If unconscionability is put into issue by a party or by the court upon its own motion, the parties shall be afforded a reasonable opportunity to present evidence as to the setting, purpose, and effect of the rental agreement or settlement to aid the court in making the determination.

Section 12. There is a new R.C.M. section numbered 42-412 that reads as follows:

42-412. Notice. (1) A person has notice of a fact if:

(a) he has actual knowledge of it;

(b) in the case of a landlord, it is delivered at the place of business of the landlord through which the rental agreement was made; or

(c) in the case of a landlord or tenant, it is delivered in hand to the landlord or tenant or mailed by registered or certified mail to him at the place held out by him as the place for receipt of the communication or, in the absence of such designation, to his last known address.

(2) Notice received by an organization is effective for a particular

HeinOnline -- 1977 Vol. I 933 1977

transaction from the time it is brought to the attention of the individual conducting that transaction and, in any event, from the time it would have been brought to his attention if the organization had exercised reasonable diligence.

Section 13. There is a new R.C.M. section numbered 42-413 that reads as follows:

42-413. Terms and conditions of rental agreement. (1) A landlord and a tenant may include in a rental agreement terms and conditions not prohibited by this chapter or other rule or law, including rent, term of the agreement, and other provisions governing the rights and obligations of the parties.

(2) Unless the rental agreement provides otherwise:

(a) the tenant shall pay as rent the fair rental value for the use and occupancy of the dwelling unit as determined by the landlord;

(b) rent is payable at the landlord's address;

(c) periodic rent is payable at the beginning of a term of a month or less and otherwise in equal monthly installments at the beginning of each month;

(d) rent is uniformly apportionable from day to day; and

(e) the tenancy is week to week in the case of a roomer who pays weekly rent and in all other cases month to month.

(3) Rent is payable without demand or notice at the time and place agreed upon by the parties or provided for by subsection (2) of this section.

Section 14. There is a new R.C.M. section numbered 42-414 that reads as follows:

42-414. Effect of unsigned or undelivered rental agreement. (1) If the landlord does not sign and deliver a written rental agreement signed and delivered to him by the tenant, acceptance of rent without reservation by the landlord gives the rental agreement the same effect as if it had been signed and delivered by the landlord.

(2) If the tenant does not sign and deliver a written rental agreement signed and delivered to him by the landlord, acceptance of possession and payment of rent without reservation gives the rental agreement the same effect as if it had been signed and delivered by the tenant.

(3) If a rental agreement given effect by the operation of this section provides for a term longer than 1 year, it is effective for only 1 year.

Section 15. There is a new R.C.M. section numbered 42-415 that reads as follows:

42-415. Prohibited provisions in rental agreements. (1) A rental agreement may not provide that a party:

(a) agrees to waive or forego rights or remedies under this chapter;

(b) authorizes any person to confess judgment on a claim arising out of the rental agreement; or

HeinOnline -- 1977 Vol. I 934 1977

(c) agrees to the exculpation or limitation of liability resulting from the other party's purposeful misconduct or negligence or to indemnify the other party for that liability or the costs or attorney's fees connected therewith.

(2) A provision prohibited by subsection (1) included in a rental agreement is unenforceable. If a party purposefully uses a rental agreement containing provisions known by him to be prohibited, the other party may recover, in addition to his actual damages, an amount up to 3 months' periodic rent.

Section 16. There is a new R.C.M. section numbered 42-416 that reads as follows:

42-416. Separation of rents and obligations to maintain property forbidden. A rental agreement or a document related thereto may not permit the receipt of rent free of the obligation to comply with 42-420.

Section 17. There is a new R.C.M. section numbered 42-417 that reads as follows:

42-417. Attorney fees. In an action on a rental agreement or arising under this chapter, reasonable attorney fees, together with costs and necessary disbursements, may be awarded to the prevailing party notwithstanding an agreement to the contrary. As used in this section, "prevailing party" means the party in whose favor final judgment is rendered.

Section 18. There is a new R.C.M. section numbered 42-418 that reads as follows:

42-418. Disclosure. (1) A landlord or a person authorized to enter into a rental agreement on his behalf shall disclose to the tenant in writing at or before the commencement of the tenancy the name and address of:

(a) the person authorized to manage the premises; and

(b) the owner of the premises or a person authorized to act for the owner for the purpose of service of process and receiving notices and demands.

(2) The information required to be furnished by this section shall be kept current and in writing, and this section extends to and is enforceable against any successor landlord, owner, or manager.

(3) A person who fails to comply with subsection (1) becomes an agent of each person who is a landlord for:

(a) the purpose of service of process and receiving notices and demands; and

(b) the purpose of performing the obligations of the landlord under this chapter and under the rental agreement and expending or making available for that purpose all rent collected from the premises.

Section 19. There is a new R.C.M. section numbered 42-419 that reads as follows:

HeinOnline -- 1977 Vol. I 935 1977

42-419. Landlord to deliver possession of dwelling unit. At the commencement of the term, a landlord shall deliver possession of the premises to the tenant in compliance with the rental agreement and 42-420. A landlord may bring an action for possession against a person wrongfully in possession.

Section 20. There is a new R.C.M. section numbered 42-420 that reads as follows:

42-420. Landlord to maintain premises. (1) A landlord shall:

(a) comply with the requirements of applicable building and housing codes materially affecting health and safety in effect at the time of original construction in all dwelling units where construction is completed after the effective date of this act;

(b) make repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;

(c) keep all common areas of the premises in a clean and safe condition;

(d) maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by him;

(e) provide and maintain appropriate receptacles and conveniences for the removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal; and

(f) supply running water and reasonable amounts of hot water at all times and reasonable heat between October 1 and May 1, except if the building that includes the dwelling unit is not required by law to be equipped for that purpose or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant.

(2) If the duty imposed by subsection (1)(a) of this section is greater than a duty imposed by subsections (1)(b) through (1)(f), a landlord's duty shall be determined by reference to subsection (1)(a).

(3) A landlord and tenant of a one-, two-, or three-family residence may agree in writing that the tenant perform the landlord's duties specified in subsections (1)(e) and (1)(f) of this section and specified repairs, maintenance tasks, alteration, and remodeling but only if the transaction is entered into in good faith and not for the purpose of evading the obligations of the landlord.

(4) A landlord and tenant of a one-, two-, or three-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only if:

(a) the agreement of the parties is entered into in good faith and not for the purpose of evading the obligations of the landlord and is set forth in a separate writing signed by the parties and supported by adequate consideration;

HeinOnline -- 1977 Vol. I 936 1977

(b) the work is not necessary to cure noncompliance with subsection (1)(a) of this section; and

(c) the agreement does not diminish the obligation of the landlord to other tenants in the premises.

Section 21. There is a new R.C.M. section numbered 42-421 that reads as follows:

42-421. Limitation of liability. (1) Unless otherwise agreed, a landlord who conveys, in a good faith sale to a bona fide purchaser, premises that include a dwelling unit subject to a rental agreement is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the conveyance. He remains liable to the tenant for all security recoverable by the tenant pursuant to 42-301 through 42-309 and all prepaid rent.

(2) Unless otherwise agreed, a manager of premises that include a dwelling unit is relieved of liability under the rental agreement and this chapter as to events occurring after written notice to the tenant of the termination of his management.

Section 22. There is a new R.C.M. section numbered 42-422 that reads as follows:

42-422. Tenant to maintain dwelling unit. (1) A tenant shall:

(a) comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety;

(b) keep that part of the premises that he occupies and uses as reasonably clean and safe as the condition of the premises permit;

(c) dispose from his dwelling unit all ashes, garbage, rubbish, and other waste in a clean and safe manner;

(d) keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;

(e) use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, in the premises;

(f) conduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises; and

(g) use the parts of the premises including the living room, bedroom, kitchen, bathroom, and dining room in a reasonable manner considering the purposes for which they were designed and intended.

(2) A tenant may not destroy, deface, damage, impair, or remove any part of the premises or permit any person to do so.

Section 23. There is a new R.C.M. section numbered 42-423 that reads as follows:

HeinOnline -- 1977 Vol. I 937 1977

42-423. Landlord authorized to adopt rules. (1) A landlord may adopt a rule concerning the tenant's use and occupancy of the premises. A rule is enforceable against the tenant only if:

(a) its purpose is to promote the convenience, safety, or welfare of the occupants in the premises, preserve the landlord's property from abusive use, or make a fair distribution of services and facilities held out for the tenants generally;

(b) it is reasonably related to the purpose for which it is adopted;

(c) it applies to all occupants in the premises in a fair manner;

(d) it is sufficiently explicit in its prohibition, direction, or limitation of the tenant's conduct to fairly inform him of what he must or must not do to comply;

(e) it is not for the purpose of evading the obligations of the landlord; and

(f) the tenant has notice of it at the time he enters into the rental agreement or when it is adopted.

(2) If a rule is adopted after a tenant enters into a rental agreement that works a substantial modification of his bargain, it is not valid until 7 days after notice to the tenant in the case of a week to week tenancy or 30 days' notice in the case of tenancies from month to month.

Section 24. There is a new R.C.M. section numbered 42-424 that reads as follows:

42-424. Access to premises by landlord. (1) A tenant may not unreasonably withhold consent to the landlord or his agent to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, decorations, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors.

(2) A landlord may enter the dwelling unit without consent of the tenant in case of emergency.

(3) A landlord may not abuse the right of access or use it to harass the tenant. Except in case of emergency or unless it is impracticable to do so, the landlord shall give the tenant at least 24 hours' notice of his intent to enter and may enter only at reasonable times.

(4) A landlord has no other right of access except:

(a) pursuant to court order;

(b) as permitted by 42-434 and 42-435(2); or

(c) when the tenant has abandoned or surrendered the premises.

Section 25. There is a new R.C.M. section numbered 42-425 that reads as follows:

42-425. Use and occupancy by tenant — extended absence.

HeinOnline -- 1977 Vol. I 938 1977

Unless otherwise agreed, a tenant shall occupy his dwelling unit only as a dwelling unit. The rental agreement may require that the tenant notify the landlord of an anticipated extended absence from the premises in excess of 7 days no later than the first day of the extended absence.

Section 26. There is a new R.C.M. section numbered 42-426 that reads as follows:

42-426. Noncompliance by the landlord generally. (1) Except as provided in this chapter, if there is a noncompliance with 42-420 affecting health and safety, the tenant may:

(a) deliver a written notice to the landlord specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 30 days after receipt of the notice if the breach is not remedied in 14 days. The rental agreement terminates as provided in the notice subject to the following exceptions:

(i) If the breach is remediable by repairs, the payment of damages, or otherwise and the landlord adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate by reason of the breach.

(ii) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the tenant may terminate the rental agreement upon at least 14 days' written notice specifying the breach and the date of termination of the rental agreement.

(iii) The tenant may not terminate for a condition caused by himself, a member of his family, or other persons on the premises with his consent.

(b) make repairs himself that do not cost more than 1 month's rent and deduct the cost from the rent if he has given the landlord notice and he has not made the repairs within a reasonable time.

(2) Except as provided in this chapter, the tenant may recover actual damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or 42-420.

(3) The remedy provided in subsection (2) of this section is in addition to a right of the tenant arising under subsection (1).

(4) If the rental agreement is terminated, the landlord shall return all security recoverable by the tenant pursuant to 42-301 through 42-309.

Section 27. There is a new R.C.M. section numbered 42-427 that reads as follows:

42-427. Failure to deliver possession. (1) If the landlord fails to deliver possession of the dwelling unit to the tenant as provided in 42-419, rent abates until possession is delivered and the tenant may:

(a) terminate the rental agreement upon at least 5 days' written notice to the landlord and, upon termination, the landlord shall return all prepaid rent and security; or

(b) demand performance of the rental agreement by the landlord and,

HeinOnline -- 1977 Vol. I 939 1977

if the tenant elects, maintain an action for possession of the dwelling unit against the landlord or a person wrongfully in possession and recover the actual damages sustained by him.

(2) If a person's failure to deliver possession is purposeful and not in good faith, an aggrieved party may recover from that person an amount not more than 3 months' periodic rent or treble damages, whichever is greater.

Section 28. There is a new R.C.M. section numbered 42-428 that reads as follows:

42-428. Damages for minor defects. If the landlord fails to comply with the rental agreement or 42-420 and the reasonable cost of compliance is less than the 1 month's rent, the tenant may recover damages for the breach under 42-426(2).

Section 29. There is a new R.C.M. section numbered 42-429 that reads as follows:

42-429. Purposeful failure to supply heat, water, hot water, or essential services. (1) If contrary to the rental agreement or 42-420 the landlord purposefully or negligently fails to supply heat, running water, hot water, electric, gas, or other essential services, the tenant may give written notice to the landlord specifying the breach and may:

(a) procure reasonable amounts of heat, hot water, running water, electricity, gas, and other essential services during the period of the landlord's noncompliance and deduct their actual and reasonable cost from the rent;

(b) recover damages based upon the diminution in the fair rental value of the dwelling unit; or

(c) procure reasonable substitute housing during the period of the landlord's noncompliance, in which case the tenant is excused from paying rent for the period of the landlord's noncompliance.

(2) If the tenant proceeds under this section, he may not proceed under 42-426 or 42-428 as to that breach.

(3) Rights of the tenant under this section do not arise until he has given notice to the landlord and the landlord has had a reasonable opportunity to correct the conditions or if the conditions were caused by the act or omission of the tenant, a member of his family, or other person on the premises with his consent.

Section 30. There is a new R.C.M. section numbered 42-430 that reads as follows:

42-430. Landlord's noncompliance as defense to action for possession or rent. (1) In an action for possession based upon nonpayment of the rent or in an action for rent when the tenant is in possession, the tenant may counterclaim for any amount he may recover under the rental agreement or this chapter. The court from time to time may order the tenant to pay into court all or part of the rent accrued and thereafter accruing and shall determine the amount due to each party. The party

HeinOnline -- 1977 Vol. I 940 1977

to whom a net amount is owed shall be paid first from the money paid into court and the balance by the other party. The court may at any time release money paid into the court to either party if the parties so agree or if the court finds a party entitled to the sums released. If no rent remains due after application of this section, judgment shall be entered for the tenant in the action for possession.

(2) In an action for rent when the tenant is not in possession, he may counterclaim as provided in subsection (1) of this section but is not required to pay any rent into court.

Section 31. There is a new R.C.M. section numbered 42-431 that reads as follows:

42-431. Fire or casualty damage. (1) If the dwelling unit or premises are damaged or destroyed by fire or casualty to an extent that enjoyment of the dwelling unit is substantially impaired, the tenant may:

(a) immediately vacate the premises and notify the landlord in writing within 14 days thereafter of his intention to terminate the rental agreement, in which case the rental agreement terminates as of the date of vacating; or

(b) if continued occupancy is lawful, vacate any part of the dwelling unit rendered unusable by the fire or casualty, in which case the tenant's liability for rent is reduced in proportion to the diminution in the fair rental value of the dwelling unit.

(2) This section does not apply when the fire and casualty damage was caused by the purposeful or negligent act of the tenant, the tenant's family, or guests.

(3) If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to 42-301 through 42-309 and all prepaid rent. Accounting for rent in the event of termination or apportionment shall be made as of the date of the fire or casualty.

Section 32. There is a new R.C.M. section numbered 42-432 that reads as follows:

42-432. Tenant's remedies for landlord's unlawful ouster, exclusion, or diminution of service. If a landlord unlawfully removes or excludes the tenant from the premises or purposefully diminishes services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services, the tenant may recover possession or terminate the rental agreement and, in either case, recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater. If the rental agreement is terminated, the landlord shall return all security recoverable pursuant to 42-301 through 42-309 and all prepaid rent.

Section 33. There is a new R.C.M. section numbered 42-433 that reads as follows:

42-433. Landlord remedies for noncompliance with rental agreement or failure to pay rent. (1) Except as provided in this chapter,

HeinOnline -- 1977 Vol. I 941 1977

if there is a noncompliance by the tenant with the rental agreement or a noncompliance with 42-422 affecting health and safety, the landlord may deliver a written notice to the tenant pursuant to 42-412 specifying the acts and omissions constituting the breach and that the rental agreement will terminate upon a date not less than 14 days after receipt of the notice. If the breach is not remedied within that time, the rental agreement terminates as provided in the notice subject to the following exceptions:

(a) If the breach is remediable by repairs, the payment of damages, or otherwise and the tenant adequately remedies the breach before the date specified in the notice, the rental agreement does not terminate.

(b) If substantially the same act or omission which constituted a prior noncompliance of which notice was given recurs within 6 months, the landlord may terminate the rental agreement upon at least 5 days' written notice specifying the breach and the date of the termination of the rental agreement.

(2) If rent is unpaid when due and the tenant fails to pay rent within 3 days after written notice by the landlord of nonpayment and his intention to terminate the rental agreement if the rent is not paid within that period, the landlord may terminate the rental agreement.

(3) Except as provided in this chapter, the landlord may recover actual damages and obtain injunctive relief for any noncompliance by the tenant with the rental agreement or 42-422. If the tenant's noncompliance is purposeful, the landlord may recover treble damages.

Section 34. There is a new R.C.M. section numbered 42-434 that reads as follows:

42-434. Failure of tenant to maintain dwelling. If there is noncompliance by the tenant with 42-422 affecting health and safety that can be remedied by repair, replacement of a damaged item, or cleaning and the tenant fails to comply as promptly as conditions require in case of emergency or within 14 days after written notice by the landlord specifying the breach and requesting that the tenant remedy it within that period of time, the landlord may enter the dwelling unit and cause the work to be done in a workmanlike manner and submit an itemized bill for the actual and reasonable cost, the fair and reasonable cost, or the fair and reasonable value thereof as rent on the next date periodic rent is due or, if the rental agreement has terminated, for immediate payment.

Section 35. There is a new R.C.M. section numbered 42-435 that reads as follows:

42-435. Remedies for absence, nonuse, and abandonment. (1) If the rental agreement requires the tenant to give notice to the landlord of an anticipated extended absence in excess of 7 days, as provided for in 42-425, and the tenant fails to do so, the landlord may recover actual damages from the tenant.

(2) During an absence of the tenant in excess of 7 days, the landlord may enter the dwelling unit at times reasonably necessary.

HeinOnline -- 1977 Vol. I 942 1977

(3) If the tenant abandons the dwelling unit, the landlord shall make reasonable efforts to rent it at a fair rental. If the landlord rents the dwelling unit for a term beginning before the expiration of the rental agreement, the rental agreement terminates as of the date of the tenancy. If the landlord fails to use reasonable efforts to rent the dwelling unit at a fair rental or if the landlord accepts the abandonment as a surrender, the rental agreement is terminated by the landlord as of the date the landlord has notice of the abandonment. If the tenancy is from month to month or week to week, the term of the rental agreement for this purpose is a month or a week, as the case may be.

Section 36. There is a new R.C.M. section numbered 42-436 that reads as follows:

42-436. Waiver of landlord's right to terminate. Acceptance by the landlord of full payment of rent due with knowledge of a tenant's default or acceptance by the landlord of a tenant's performance that varies from the terms of the rental agreement constitutes a waiver of the landlord's right to terminate the rental agreement for that breach unless otherwise agreed after the breach has occurred. The acceptance of partial payment of rent due does not constitute a waiver of any right.

Section 37. There is a new R.C.M. section numbered 42-437 that reads as follows:

42-437. Disposition of personal property abandoned by tenant. (1) If a tenancy terminates in any manner except by court order and the landlord reasonably believes the tenant has abandoned all personal property which the tenant has left on the premises, the landlord shall:

(a) make reasonable attempts to notify the tenant in writing that the property must be removed:

(i) from the premises; or

(ii) from the place of safekeeping if the landlord has stored the goods as provided in subsection (3) of this section; and

(b) specify a day not less than 15 days after delivery of a notice mailed by certified mail to the last known address of the tenant, at which specified time the property will be disposed of if not removed.

(2) The landlord may dispose of the property by:

(a) selling all or part of the property at a public or private sale; or

(b) destroying or otherwise disposing of all or part of the property if he reasonably believes the value of the property is so low that the cost of storage or sale exceeds the reasonable value thereof.

(3) After notifying the tenant as required by subsection (1) of this section, the landlord shall store all goods, chattels, and personal property of the tenant in a place of safekeeping and shall exercise reasonable care for the property. The landlord may store the property in a commercial storage company, in which case the storage cost includes the actual storage charge plus the cost of removal of the property to the place of storage.

HeinOnline -- 1977 Vol. I 943 1977

(4) If the tenant, upon receipt of the notice provided in subsection (1) of this section, responds in writing to the landlord on or before the day specified in the notice that he intends to remove his property and does not do so within 15 days after delivery of the tenant's response, the tenant's property shall be conclusively presumed to be abandoned. If the tenant removes the property, the landlord is entitled to reasonable or actual storage costs for the period the property remains in safekeeping plus the cost of removal of the property to the place of storage.

(5) The landlord is not responsible for any loss to the tenant resulting from storage unless the loss is caused by the landlord's purposeful or negligent act. On the event of purposeful violation, the landlord is liable for double damages.

(6) A public or private sale authorized by this section shall be conducted under the provisions of 87A-9-504(3).

(7) The landlord may deduct from the proceeds of the sale the reasonable costs of notice, storage, and sale and must remit to the tenant the remaining proceeds, if any, together with an itemized accounting. If the tenant cannot after due diligence be found, the remaining proceeds shall be deposited with the county treasurer of the county in which the sale occurred and, if not claimed within 3 years, shall revert to the general fund of the county available for general purposes.

Section 38. There is a new R.C.M. section numbered 42-438 that reads as follows:

42-438. Remedy after termination. If the rental agreement is terminated, the landlord has a claim for possession and for rent and a separate claim for actual damages for any breach of the rental agreement.

Section 39. There is a new R.C.M. section numbered 42-439 that reads as follows:

42-439. Recovery of possession limited. Except in the case of abandonment, surrender, or as permitted in this chapter, a landlord may not recover or take possession of the dwelling unit by action or otherwise, including purposeful diminution of services to the tenant by interrupting or causing the interruption of heat, running water, hot water, electricity, gas, or other essential services.

Section 40. There is a new R.C.M. section numbered 42-440 that reads as follows:

42-440. Termination of tenancy — holdover remedies. (1) The landlord or the tenant may terminate a week-to-week tenancy by a written notice given to the other at least 7 days before the termination date specified in the notice.

(2) The landlord or the tenant may terminate a month-to-month tenancy by giving to the other at any time during the tenancy at least 30 days' notice in writing prior to the date designated in the notice for the termination of the tenancy. The tenancy terminates on the date designated and without regard to the expiration of the period for which, by the terms of the tenancy, rents are to be paid. Unless otherwise agreed, rent is uniformly apportionable from day to day.

HeinOnline -- 1977 Vol. I 944 1977

(3) If the tenant remains in possession without the landlord's consent after expiration of the term of the rental agreement or its termination, the landlord may bring an action for possession. If the tenant's holdover is purposeful and not in good faith, the landlord may recover an amount not more than 3 months' periodic rent or treble damages, whichever is greater. If the landlord consents to the tenant's continued occupancy, 42-413(2)(e) applies.

Section 41. There is a new R.C.M. section numbered 42-441 that reads as follows:

42-441. Landlord and tenant remedies for refusal or abuse of access. (1) If the tenant refuses to allow lawful access, the landlord may either obtain injunctive relief to compel access or terminate the rental agreement. In either case the landlord may recover actual damages.

(2) If the landlord makes an unlawful entry or a lawful entry in an unreasonable manner or makes repeated demands for entry otherwise lawful but which have the effect of unreasonably harassing the tenant, the tenant may either obtain injunctive relief to prevent the recurrence of the conduct or terminate the rental agreement. In either case the tenant may recover actual damages.

Section 42. There is a new R.C.M. section numbered 42-442 that reads as follows:

42-442. Retaliatory conduct prohibited. (1) Except as provided in this section, a landlord may not retaliate by increasing rent, decreasing services, or by bringing or threatening to bring an action for possession after the tenant:

(a) has complained of a violation applicable to the premises materially affecting health and safety to a governmental agency charged with responsibility for enforcement of a building or housing code;

(b) has complained to the landlord in writing of a violation under 42-420; or

(c) has organized or become a member of a tenant's union or similar organization.

(2) If the landlord acts in violation of subsection (1) of this section, the tenant is entitled to the remedies provided in 42-432 and has a defense in any retaliatory action against him for possession. In an action by or against the tenant, evidence of a complaint within 6 months before the alleged act of retaliation creates a rebuttable presumption that the landlord's conduct was in retaliation. The presumption does not arise if the tenant made the complaint after notice of a proposed rent increase or diminution of services. For purposes of this section, "rebuttable presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(3) Notwithstanding subsections (1) and (2) of this section, a landlord may bring an action for possession if:

HeinOnline -- 1977 Vol. I 945 1977

(a) the violation of the applicable building or housing code was caused primarily by lack of reasonable care by the tenant, a member of his family, or other persons on the premises with his consent;

(b) the tenant is in default in rent; or

(c) compliance with the applicable building or housing code requires alteration, remodeling, or demolition which would effectively deprive the tenant of use of the dwelling unit.

(4) The maintenance of an action under subsection (3) of this section does not release the landlord from liability under 42-427(2).

Section 43. **Saving clause.** Transactions entered into before July 1, 1977, and not extended or renewed on or after that date and the rights, duties, and interests flowing from them remain valid and may be terminated, completed, consummated, or enforced as required or permitted by any statute or other law amended or repealed by this chapter as though the repeal or amendment had not occurred.

Section 44. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 45. **Repealer.** Sections 42-201 and 42-204, R.C.M. 1947, are repealed.

Section 46. **Summary of act — publication.** The department of community affairs shall prepare a simplified summary version of the major provisions of this act and publish such summary in each daily newspaper of the state twice between 30 and 60 days before July 1, 1977.

Section 47. **Effective date.** This act is effective on July 1, 1977. It applies to rental agreements entered into, extended, or renewed on and after that date.

Approved April 6, 1977.

CHAPTER NO. 314

AN ACT TO AMEND SECTION 89-1607, R.C.M. 1947, BY DELETING THE PROVISION WHICH PERMITS SALE OR ASSIGNMENT OF EXCESS WATER BY AN OWNER OF WATER IN AN IRRIGATION DISTRICT; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-1607, R.C.M. 1947, is amended to read as follows:

"**89-1607. Board to apportion water.** The board of commissioners shall apportion the water for irrigation among the lands in the district in a just and equitable manner, and the maximum amount apportioned

HeinOnline -- 1977 Vol. I 946 1977

to any land shall be the amount that can be beneficially used on said land, and such amount of water shall become and shall be appurtenant to the land and inseparable from the same, but subject to reduction as hereinafter provided. *All* water, the right to the use of which is acquired by the district under any contract with the United States, shall be distributed and apportioned by the district in accordance with the acts of Congress, and rules and regulations of the secretary of the interior, and the provisions of said contract in relation thereto."

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved April 7, 1977.

CHAPTER NO. 315

AN ACT FOR THE GENERAL REVISIONS OF LAWS RELATING TO SEED WAREHOUSES; AMENDING SECTIONS 3-310, 3-311, 3-313, 3-316, 3-802.4, 3-1902, 3-1907, AND 3-1908, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-310, R.C.M. 1947, is amended to read as follows:

"**3-310. Definitions.** When used in this act *the following definitions apply*:

(1) "Department" means the department of agriculture.

(2) "Agricultural seed" means the seeds of grass, forage, cereal, and fiber crops and any other kinds of seeds commonly recognized within this state as agricultural seeds and includes lawn seeds and mixtures of seeds.

(3) "Montana certified seed grower" means a member of an authorized Montana seed certifying agency who has consented to *produce* seed under the rules for certified classes of seed, with respect to the maintenance of genetic purity and variety identity, set forth by the certifying agency.

(4) "Person" means any individual, firm, *partnership*, corporation, or association.

(5) "Public agricultural seed warehouse" means any warehouse or structure in which agricultural seed is received from the public for storage, assembling, or cleaning.

(6) "Screening" means chaff, sterile florets, immature seed, weed seed, inert matter, and any other materials removed from seed by any kind of cleaning or processing.

(7) "Seed buyer" means any person engaged in the business of buying agricultural seed for shipment, cleaning, processing, or resale and who does not own, control, or operate a public agricultural seed warehouse. Any individual employed by a "seed buyer" is not included in this term.

(8) "Seed dealer" means any person who offers for sale, sells, or barters agricultural seeds to the ultimate consumer.

HeinOnline -- 1977 Vol. I 947 1977

(9) "Seed labeler" means any person affixing labels to agricultural seeds with his name and address listed as required in 3-802.2 when such seed is distributed in Montana.

(10) "Seed processing plant" means any place of business that repackages, cleans, blends, treats, or otherwise manipulates agricultural seeds.

(11) "Seed warehouseman" means any person owning, controlling, or operating a public agricultural seed warehouse.

(12) *Bin-run* seed sales from one farmer to another farmer mean buyer beware."

Section 2. Section 3-311, R.C.M. 1947, is amended to read as follows:

"3-311. Licensing — issuance — application — fee — bonding — insurance. (1) All seed processing plants, seed labelers, seed buyers, and public agricultural seed warehouses shall obtain a license from the department before doing business in this state; however, a Montana certified seed grower, when processing or labeling certified seed from his own production is not required to be licensed under this section. *Bin-run seed sales from one farmer to another are exempt from this chapter.*

(2) All licenses are issued on a *fiscal-year* basis *and* expire on June 30 of each year. A license may cover any or as many as all four activities: processing plant, seed labeler, seed buyer, and public agricultural seed warehouse.

(3) Application for license is made in a manner and on forms provided by the department. *A* nonresident shall file a written power of attorney designating the secretary of state as *his* agent, and *the* power of attorney shall be so prepared and in such form as to render effective the jurisdiction of the courts of the state of Montana over *the* nonresident applicant. A nonresident who has a duly appointed resident agent upon whom process may be serviced as provided by law is not required to designate the secretary of state as *his* agent. The department shall be furnished with a certified copy of the designation of the secretary of state or of a resident agent.

(4) The department may establish by rule minimum standards for equipment and handling procedures for facilities to be licensed and may carry out inspections during normal business hours to determine that these standards are being adhered to.

(5) Each license *shall cost no more than $50 a* year. *The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this chapter.*

(6) Failure on the part of a licensee to comply with the rules issued under the authority of this section is sufficient cause for cancellation of a license by the department, provided the licensee is given a reasonable opportunity to correct inadvertent and nonrecurring deficiencies.

(7) The department may by rule establish bonding and insurance requirements for each class of license."

HeinOnline -- 1977 Vol. I 948 1977

Section 3. Section 3-313, R.C.M. 1947, is amended to read as follows:

"**3-313. Dealer's license — exception — fee — application — violation.** (1) No person may distribute seed without obtaining a dealer's license *from the department* for each place of business. No license is required of a person who distributes seeds only in sealed packages of less than *10 pounds*, packed by a licensed seed labeler and bearing his name and address. Each dealer's license *shall cost no more than $20 a* year and expires on June 30 of each year. *The department may by rule establish license fees which bear a reasonable relationship to the cost of administering this chapter.* Any licensed processing plant, seed labeler, seed buyer, or public agricultural seed warehouse may obtain a dealer's license without additional fee.

(2) Application for a dealer's license shall be made in a manner and on forms provided by the department. Such forms shall require among other things the name of a person domiciled in this state authorized to receive and accept service or legal notices of all kinds.

(3) Violation of provisions of this section or the distribution of agricultural seeds not legally labeled constitutes adequate grounds for cancelling a license or *denying a* license *to* a dealer."

Section 4. Section 3-316, R.C.M. 1947, is amended to read as follows:

"**3-316. Cancellation of license — misdemeanor — enforcement proceedings.** (1) The department may cancel any license issued by it when the provisions of this act have been violated by the holder of the license.

(2) Any person convicted of violating the provisions of this act or rules promulgated under the authority of this act is guilty of a misdemeanor and shall be fined not less than $100 or more than $300 for the first violation and not less than $500 or more than $1,000 for each subsequent violation.

(3) Nothing in this act shall be construed as requiring the department or its representatives to report violations of this act when it believes that the public interest will be best served by a suitable notice of warning.

(4) It is the duty of each county attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted in a court of competent jurisdiction without delay.

(5) The department is authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule promulgated under *this* act notwithstanding the existence of other remedies at law. An injunction is issued without bond.

(6) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this act may within 30 days bring action in the district court of the county or any county where the alleged violation occurred for trial of the issues bearing upon such act."

Section 5. Section 3-802.4, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 949 1977

"3-802.4. **Prohibitions.** A person, firm, corporation, *partnership,* or association may not sell or transport for use in planting in this state any agricultural, vegetable, or flower seed that:

(1) *contains* prohibited noxious weed seeds;

(2) *contains* restricted noxious weed seeds in excess of the maximum numbers per pound as follows:

Common name	Species	Number per pound
dodder	(Cuscuta spp.)	18
blue lettuce	(Lactuca pulchella)	27
St.-Johnswort	(Hypericum perforatum)	27
oxeye daisy	(Chrysanthemum leucanthemum)	90
spotted knapweed	(Centaurea maculosa)	18
hoary alyssum	(Berteroa incana)	9
wild oats	(Avena fatua)	45
buckhorn plantain	(Plantago lanceolata)	90
chickweed	(Stellaria spp.)	9
curly dock	(Rumex crispus)	45

(3) *contains* in excess of 2% or more of weed seed;

(4) *is* offered or exposed for sale more than *12* calendar months from the last day of the month in which the germination test was completed. This *12-month* limitation does not apply when seed is packaged in hermetically sealed containers within 12 months after harvest. The container must be conspicuously labeled in not less than eight point type to indicate *that:*

(a) the container is hermetically sealed;

(b) the seed has been preconditioned as to moisture content;

(c) the germination test is valid for a period not to exceed 18 months from the date of the germination test for seeds offered for sale on a wholesale basis, and for a period not to exceed 36 months for seeds offered for sale at retail;

(d) the germination of vegetable seed at the time of packaging was equal to or above standards prescribed in the Federal Seed Act of August *1939, 7 U.S.C. 1551 through 1610 amended October 15, 1967,* with subsequent revisions.

(5) *is* represented in any manner to be for lawn seeding purposes, unless it contains at least 50% pure seed of perennial fine-textured species which shall be specified by rules under this act. However, grass mixtures which do not contain 50% pure seed of perennial fine-textured grasses may be sold. When these grass mixtures are contained in packages of 25 pounds or less, they shall carry the statements: "Not recommended for a fine-textured perennial turf. Satisfactory for a temporary ground cover or where coarse grass is not objectionable." A definition of fine-textured varieties to be adopted in the rules is as follows:

HeinOnline -- 1977 Vol. I 950 1977

(a) *bluegrasses*—all varieties except Canada *bluegrass* (Poa compressa), *annual bluegrass* (Poa annua), and *rough bluegrass* (Poa trivialis);

(b) *chewings red fescue* and all improved varieties;

(c) *creeping red fescue* and all improved varieties;

(d) *bentgrass*—all varieties;

(e) *fine-textured ryegrasses.*

(6) *is represented* to be certified seed of any class thereof unless:

(a) it has been determined by a seed certifying agency that such seed *conforms* to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety; and

(b) the seed bears an official label issued for such seed by a seed certifying agency certifying that *the* seed is of a specified class and a specified kind, species (and subspecies, if appropriate), or variety;

(7) *is* labeled with a variety name for which a U.S. certificate of plant variety protection has been issued or applied for under the provisions of the Plant Variety Protection Act (7 U.S.C. 2321 et. seq.), without the authority of the owner of the variety; or is labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which the certificate or application for "protection" specifies sale only as a class of certified seed; provided, that seed from a certified lot may be labeled as to variety name when used in a mixture by or with approval of the owner of the variety."

Section 6. Section 3-1902, R.C.M. 1947, is amended to read as follows:

"**3-1902. Definitions and specifications.** The following definitions and specifications are hereby adopted and made legal:

(1) Damaged seeds shall be all seeds and pieces of seeds of mustard seed, which are completely covered with *mold*, very green, sprouted, frosted, badly ground damaged, badly weather damaged, or otherwise distinctly damaged.

(2) Heat damaged seeds *include* seeds and pieces of seeds of mustard seed which have been distinctly discolored by external heat or as a result of heating caused by fermentation.

(3) Dockage includes sand, dirt, weed seeds, weed stems, chaff, straw, mustard seed other than tame mustard, and any other foreign material, which can be removed readily from the mustard by the use of appropriate sieves, cleaning devices, or other practical means suited to separate the foreign material present, *including* undeveloped, shriveled, and small pieces of mustard seeds removed in properly separating the foreign material, which cannot be recovered by properly rescreening or recleaning. The quantity of dockage shall be calculated in terms of percentage. When less than *½ of 1%* it shall be disregarded. The percentage of dockage so determined and stated shall be added to the grade designation. Dockage is to be calculated by the *½ of 1%*, that is to say 0% to 0.4% will be designated

HeinOnline -- 1977 Vol. I 951 1977

as no dockage, 0.5% to 0.9% will be designated as ½% dockage, 1% to 1.4% will be designated as 1% dockage, 1.5% to 1.9% will be designated as 1 ½% dockage, and so on.

(4) Foreign material other than dockage *includes* all matter other than tame cultivated mustard seed, which is not separated in the proper determination of dockage; however, rapeseed, common wild mustards, and other seeds that blend with class 2 and class 3 mustard seed, and thus are not readily identified, and the total of which is not in excess of 2 ½%, shall not be considered foreign material, and shall not be considered in grading *such* classes of mustard seed.

(5) Each determination of dockage, temperature, *moisture,* odor, and live weevil or other insects injurious to stored mustard seed shall be upon the basis of the seed as a whole.

(6) Percentages, except in the case of moisture, shall be percentages ascertained by weight.

(7) Percentage of moisture shall be that ascertained by use of the equipment and procedure prescribed by the Montana department of agriculture.

(8) Percentage of dockage shall be that ascertained by use of the equipment and procedure prescribed by the Montana department of agriculture.

(9) The test weight per bushel shall be the weight per *winchester* bushel as determined by the testing apparatus and the method of use thereof described in Bulletin 1065 U.S.D.A. dated May 18, 1922, or as determined by any device and method which give equivalent results in the determination of test weight per bushel.

(10) The percentage of damage, heat damage, sound cultivated mustard seed, *and* foreign material and determinations of all other factors not otherwise provided for shall be on the basis of a portion cut from the original sample and separated by hand picking."

Section 7. Section 3-1907, R.C.M. 1947, is amended to read as follows:

"**3-1907. Penalty.** Anyone violating any of the terms of this act shall upon conviction be guilty of a misdemeanor and shall be fined not less than $25 *or* more than $100."

Section 8. Section 3-1908, R.C.M. 1947, is amended to read as follows:

"**3-1908. License and bond for persons contracting for purchase of mustard seed — when required — deposit of fees — revocation of licenses.** (1) All persons, firms, *partnerships,* corporations, and associations engaging in the business of contracting in advance of harvesting for the purchase of mustard seed crops to be paid for on delivery of the crops shall, before March 1 of each year, pay to the state treasurer a license fee of $10 and shall, before March 1 of each year, give a bond, with sureties approved by the department, in an amount the department may require but not less than $10,000. The bond shall be conditioned upon the payment for the contracted seed at the price specified in the contract

HeinOnline -- 1977 Vol. I 952 1977

and upon the payment of the license fee. Upon the approval of the bond, the department shall issue the license for a period of 1 year.

(2) A person who begins the business described in subsection (1) of this section after March 1 of any year shall pay the license fee and furnish the bond before engaging in the business.

(3) A licensee under this section shall, at the request of the department, report the amount of seed contracted.

(4) All funds collected from license fees shall be deposited by the department with the state treasurer for credit to the general fund.

(5) The department may revoke for cause any license issued under this section."

Approved April 7, 1977.

CHAPTER NO. 316

AN ACT TO AUTHORIZE THE BOARD OF INVESTMENTS TO PURCHASE MORTGAGES INSURED BY A QUALIFIED PRIVATE MORTGAGE INSURER, AND FIRST MORTGAGE PARTICIPATIONS; REVISING DOWN PAYMENT AND INSURANCE REQUIREMENTS FOR ELIGIBLE MORTGAGE PAPER; AMENDING SECTION 79-310, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 79-310, R.C.M. 1947, is amended to read as follows:

"**79-310. Permissible investments.** (1) The following securities are permissible investments for all investment funds referred to in 79-309, except as indicated:

(a) any securities authorized to be pledged to secure deposits of public funds under 79-307 of this act;

(b) bonds, notes, debentures, equipment obligations, or any other kind of absolute obligation of any corporation organized and operating in any state of the United States, or in Canada if the obligations purchased are payable in United States dollars; provided that all investments under subsection (b) must be rated by one nationally recognized rating agency among the top third of their quality categories, not applicable to defaulted bonds;

(c) commercial paper of prime quality, as defined by one (1) nationally recognized rating agency, issued by any corporation organized and operating in any state of the United States, provided that:

(i) such securities mature in 270 days or less; and

(ii) the issuing corporation, or the parent company of a finance subsidiary issuing commercial paper, at the time of the last financial reporting period, had a ratio of current assets to current liabilities, including among

HeinOnline -- 1977 Vol. I 953 1977

current liabilities long-term debt maturing within 1 year, of at least 1 ½ to 1; and had received net income averaging *$1* million or more annually for the preceding 5 years; and

(iii) no investment may be made at any time under subsection (c) which would cause the book value of such investments in any investment fund to exceed 10% of the book value of such fund, or would cause the commercial paper of any one corporation to exceed 2% of the book value of such fund;

(d) bankers' acceptances guaranteed by any bank having its principal office in any state of the United States and having deposits in excess of *$500 million*;

(e) interest-bearing deposits in banks, building and loan associations, and savings and loan associations located in the state of Montana, provided, however, that the board of investments shall require pledged securities as specified in section 79-301; interest on said deposits shall not be less than the prevailing rate of interest being paid on deposits of private funds;

(f) unencumbered real property, first mortgages *and participations in first mortgages* on unencumbered real property, provided that:

(i) no such mortgage *or mortgage participation may* be purchased unless:

(A) the principal amount of the loan secured by the mortgage *or mortgage participation* is *80%* or less of the appraised value of the property; or

(B) the principal amount of the loan secured by the mortgage or mortgage participation exceeds 80% of the appraised value of the property but the amount of the loan in excess of 80%, determined at the time the loan was made, is guaranteed or insured by a mortgage insurance company which the board of investments has determined to be a qualified private insurer; or

(C) 25% or more of the loan *or participation therein* secured is guaranteed or insured in the event of default by the United States of America or an agency thereof; or

(D) the mortgagor has leased the mortgaged property to a person, firm, or corporation whose rental payments under the lease are guaranteed for the full term of the loan *or participation therein* by an agency of the United States; and

(ii) no investment shall be made at any time under subsection (f) which would cause the book value of such investments in any investment fund to exceed 50% of the book value of such fund.

(2) Investments from the pooled investment fund, shall be restricted to fixed income securities described in subsections (a) to (e) above.

(3) Retirement funds, only, may be invested in preferred and common stocks of any corporation organized and operating in any state of the United States, provided that:

HeinOnline -- 1977 Vol. I 954 1977

(a) the corporation has assets of a value not less than *$10 million*; and

(b) if the investment is preferred stock, the corporation's aggregate earnings available for payment of interest and preferred dividends, for a period of five (5) consecutive years immediately before the date of investment, have been at least 1 ½ times the aggregate of interest and preferred dividends required to be paid during this period; and

(c) if the investment is common stock,

(i) the stock has paid cash dividends in each of at least 5 years immediately before it is purchased; and

(ii) the aggregate earnings of the corporation during this period which were available for payment of dividends on common stock were at least equal to the aggregate of the cash dividends paid thereon; and

(iii) not more than 2% of the assets of any retirement fund may be invested in common stocks or in fixed income securities convertible into common stock not conforming to the dividend and earnings standards stated in paragraphs (i) and (ii) above, so long as the corporation maintains the asset value required in subsection (a) and evidences appropriate growth potential and probable earnings gain; and

(d) no investment may be made at any time under subsection (3) which would cause the book value of such investments in any retirement fund to exceed 20% of the book value of such fund, or would cause the stock of one corporation to exceed 1% of the book value of such retirement fund.

(4) The state board of investments shall endeavor to direct the state's investment business to those investment firms, and/or banks, which maintain offices in the state and thereby make contributions to the state economy. Further, due consideration shall be given to investments which will benefit the smaller communities in the state of Montana. The state's investment business will be directed to out-of-state firms only when there is a distinct economic advantage to the state of Montana."

Approved April 7, 1977.

CHAPTER NO. 317

AN ACT PROVIDING THAT A QUORUM OF THE BOARD OF PROFESSIONAL ENGINEERS AND LAND SURVEYORS IS FOUR MEMBERS; ALLOWING THE BOARD TO ESTABLISH A FEE FOR FURNISHING THE ROSTER TO THE PUBLIC; REVISING AND CLARIFYING PROVISIONS RELATING TO APPLICATION FOR REGISTRATION AND FEES; AND PROVIDING THAT NO MUNICIPALITY OR POLITICAL SUBDIVISION OF THE STATE MAY IMPOSE AN ADDITIONAL REGISTRATION, LICENSE FEE, OR TAX ON A REGISTRANT OF THIS BOARD; AMENDING SECTIONS 66-2352, 66-2356, AND 66-2358, R.C.M. 1947; REPEALING SECTION 66-2364, R.C.M. 1947.

HeinOnline -- 1977 Vol. I 955 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-2352, R.C.M. 1947, is amended to read as follows:

"**66-2352. Board — organization — meetings.** The board shall hold at least two regular meetings each year. Special meetings shall be held at such time as the rules of the board may provide. Notice of all meetings shall be given in such manner as the rules may provide. The board shall elect annually the following officers: A chairman, a vice-chairman, and a secretary. A quorum of the board shall consist of not less than *four* members."

Section 2. Section 66-2356, R.C.M. 1947, is amended to read as follows:

"**66-2356. Roster.** A roster showing the names and addresses of registered professional engineers and registered land surveyors shall be published by the department during the month of April each year. Copies of this roster shall be mailed to each person registered. *Copies shall also be* placed on file with the secretary of state, the clerk of each incorporated city and town, and in the office of each county clerk and recorder within the state and furnished to the public on request *at a fee established by the board.*"

Section 3. Section 66-2358, R.C.M. 1947, is amended to read as follows:

"**66-2358. Application for registration — fees.** (1) Applications for registration shall be on forms prescribed by the board and furnished by the department, shall contain statements made under oath, showing the applicant's education and a detailed summary of his technical work, and shall contain not less than five (5) references, of whom three (3) or more shall be engineers or land surveyors having personal knowledge of his engineering or land surveying experience.

(2) *The fee for engineer-in-training is $20, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.*

(3) *The application fee for registration as a professional engineer is $20 for those holding an engineer-in-training certificate validated for Montana. For those holding a valid engineer-in-training certificate from some other state, the application fee is $30, which includes cost of transfer of engineer-in-training certification and one examination. Upon approval of application for registration as a professional engineer, payment of an additional fee equal to the existing yearly renewal fee must be paid before issuance of a certificate as a professional engineer.*

(4) *The department, subject to approval by the board, may, on application and payment of a fee of $40, issue a certificate of registration as a professional engineer to a person who holds a certificate of qualification or registration issued to him by the national council of engineering examiners or by a state, territory, or possession of the United States or by another country, if the applicant's qualifications meet the requirements of this act and the rules of the board.*

HeinOnline -- 1977 Vol. I 956 1977

(5) *The fee for land surveyor-in-training is $20, which shall accompany the application and shall include the cost of one examination. No additional fee is required for issuance of a certificate.*

(6) The application fee for registration as a land surveyor is $20 for those holding a land surveyor-in-training certificate validated in Montana. For those holding a valid land surveyor-in-training certificate from some other state, the application fee is $30, which includes cost of transfer of the certification. No additional fee is required for issuance of a certificate. Upon approval of application for registration as a land surveyor, payment of an additional fee equal to the existing yearly renewal fee must be paid before issuance of a certificate as a land surveyor.

(7) The application fee for registration as both a professional engineer and land surveyor is $40 for those holding engineer-in-training and land surveyor-in-training certificates validated in Montana. For those holding valid engineer-in-training and land surveyor-in-training certificates from another state, the application fee is $60. The fee shall accompany the application. Upon approval of application for registration as a professional engineer and land surveyor, payment of an additional fee equal to the existing yearly renewal fee must be paid before issuance of certificate.

(8) If the board denies issuance of a certificate of registration to any applicant, the initial fee deposited shall be retained as an application fee.

(9) No registration or license fee or tax may be imposed by a municipality or by any other political subdivision of the state on a person registered under this act."

Section 4. **Repealer.** Section 66-2364, R.C.M. 1947, is repealed.

Approved April 7, 1977.

CHAPTER NO. 318

AN ACT TO AMEND SECTION 79-109, R.C.M. 1947, TO REVISE THE PROVISIONS FOR ISSUING A DUPLICATE WARRANT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 79-109, R.C.M. 1947, is amended to read as follows:

"**79-109. Issuance of duplicate warrant.** *(1)* The state auditor *may* issue a duplicate warrant whenever any warrant drawn by him upon the treasurer of the state of Montana *is* lost or destroyed. This duplicate warrant must be in the same form as the original, except that it must have plainly printed across its face the word "duplicate," and, except as herein provided, no such warrant *may* be issued or delivered *unless* the person entitled to receive the same *deposits* with the state auditor a bond in double the amount for which the duplicate warrant is issued, conditioned to save the state of Montana and its officers harmless on account of the issuance of *the* duplicate warrant.

HeinOnline -- 1977 Vol. I 957 1977

(2) No bond of indemnity *is* required:

(a) *when* the payee is the United States government, a state of the United States, any agency, instrumentality, or officer of the United States government or of a state, county, city, city and county, town, district, or other political subdivision of a state or any officer thereof;

(b) *when* the owner or custodian is the state of Montana or any agency or officer thereof;

(c) *when* the owner or custodian is a bank, savings and loan association, admitted insurer, or trust company whose financial condition is regulated by the United States government or by the state of Montana;

(d) *when* the amount of the lost or destroyed warrant is less than *$100*;

(e) when it can be established that a crime has been committed and as a result of such crime that a state of Montana warrant has been stolen or destroyed;

(f) when it can be established that a state of Montana warrant has been mailed to an incorrect payee; or

(g) when the payee is a vendor or contractor doing business with the state of Montana.

(3) Whenever the owner or custodian applies under the provisions of subsections (2)(e), (2)(f), or (2)(g), a stop-payment order shall be placed on the original warrant by the state auditor.

(4) *Whenever* the owner or custodian applies under the provisions of subsection *(2)(c), (2)(d), (2)(e), (2)(f), or (2)(g),* the application shall include an agreement to indemnify and hold harmless the state *or* its officers and employees from any loss resulting from the issuance of a duplicate warrant. Any loss incurred in connection with the issuance of a duplicate warrant shall be charged against the account from which the payment was derived."

Approved April 7, 1977.

CHAPTER NO. 319

AN ACT TO AMEND SECTION 40-2807, R.C.M. 1947, TO INCREASE THE CAPITAL AND SURPLUS REQUIREMENTS FOR INSURANCE COMPANIES TRANSACTING BUSINESS IN MONTANA AND TO PROVIDE A 3-YEAR SAVING CLAUSE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-2807, R.C.M. 1947, is amended to read as follows:

"**40-2807. Capital funds required.** (1) To qualify for authority to transact any one kind (as defined in chapter 29) of insurance, or combi-

HeinOnline -- 1977 Vol. I 958 1977

nations of kinds of insurance as shown below, an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or surplus (if a foreign mutual or foreign reciprocal insurer) in amount not less than as applicable under the schedule below and shall possess when first so authorized such additional funds as surplus as required under section 40-2808:

Kind or kinds of insurance	Minimum capital or surplus required
Life	$200,000
Disability	200,000
Life and disability	300,000
Property	400,000
Marine	400,000
Casualty	
All lines except workmen's compensation	400,000
All lines, including workmen's compensation	600,000
Surety	500,000
Title	200,000
Multiple lines (two or more: property, marine, casualty or surety)	800,000

Except, that an insurer holding a valid certificate of authority to transact insurance in this state immediately prior to the effective date of this code may, if otherwise qualified therefor, continue to be so authorized for a period of five (5) years from such effective date by maintaining the same amount of paid-in capital stock (if a stock insurer) or the same amount of surplus (if a mutual or reciprocal insurer) as required by the laws of this state for such authority immediately prior to such effective date, and shall after expiration of such five-year period have or receive authority to transact insurance in this state only if otherwise qualified therefor while having and maintaining paid-in capital stock (if a stock insurer) or surplus (if a mutual or reciprocal insurer) in applicable amount as otherwise required under this section; except, further, that any such insurer shall not, within such five-year period, be granted authority to transact any other or additional kind of insurance unless it then fully complies with the requirements as to capital and surplus, as applied to all kinds of insurance it then proposes to transact, as provided by this code as to insurers applying for original certificates of authority under this code.

(2) As to surplus required for qualification to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual insurers shall be governed by chapter 47, and domestic reciprocal insurers shall be governed by chapter 50.

(3) Capital and surplus requirements shall be based upon all the kinds of insurance actually transacted or to be transacted by the insurer in any and all areas in which it operates, whether or not only a portion of such kinds are to be transacted in this state.

(4) A life insurer may also grant annuities without additional capital or additional surplus."

HeinOnline -- 1977 Vol. I 959 1977

Section 2. **Saving clause.** Insurers transacting business immediately prior to the effective date of this act have 3 years from the effective date of this act to comply with the increased capital and surplus requirements. Such insurers may not be granted authority to transact additional kinds of insurance during this 3-year period unless they comply with the requirements of this act.

Approved April 7, 1977.

CHAPTER NO. 320

AN ACT TO GENERALLY REVISE THE LAWS ON UNFAIR INSURANCE CLAIM SETTLEMENT, FAVORED AGENT PRACTICES, AND ENFORCEMENT PROCEDURES AND PENALTIES; AMENDING SECTIONS 40-3501, 40-3512, AND 40-3514, R.C.M. 1947; REPEALING SECTION 40-3516, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 40-3502.1 that reads as follows:

40-3502.1. Unfair claim settlement practices. No person may, with such frequency as to indicate a general business practice, do any of the following:

(1) misrepresent pertinent facts or insurance policy provisions relating to coverages at issue;

(2) fail to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies;

(3) fail to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies;

(4) refuse to pay claims without conducting a reasonable investigation based upon all available information;

(5) fail to affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed;

(6) neglect to attempt in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

(7) compel insureds to institute litigation to recover amounts due under an insurance policy by offering substantially less than the amounts ultimately recovered in actions brought by such insureds;

(8) attempt to settle a claim for less than the amount to which a reasonable man would have believed he was entitled by reference to written or printed advertising material accompanying or made part of an application;

HeinOnline -- 1977 Vol. I 960 1977

(9) attempt to settle claims on the basis of an application which was altered without notice to or knowledge or consent of the insured;

(10) make claims payments to insureds or beneficiaries not accompanied by statements setting forth the coverage under which the payments are being made;

(11) make known to insureds or claimants a policy of appealing from arbitration awards in favor of insureds or claimants for the purpose of compelling them to accept settlements or compromises less than the amount awarded in arbitration;

(12) delay the investigation or payment of claims by requiring an insured, claimant, or physician of either to submit a preliminary claim report and then requiring the subsequent submission of formal proof of loss forms, both of which submissions contain substantially the same information;

(13) fail to promptly settle claims, if liability has become reasonably clear, under one portion of the insurance policy coverage in order to influence settlements under other portions of the insurance policy coverage; or

(14) fail to promptly provide a reasonable explanation of the basis in the insurance policy in relation to the facts or applicable law for denial of a claim or for the offer of a compromise settlement.

Section 2. There is a new R.C.M. section numbered 40-3502.2 that reads as follows:

40-3502.2. Failure to maintain complaint handling procedures. (1) An insurer shall maintain a complete record of all the complaints which it has received since the date of its last examination under 40-2713. This record shall indicate the total number of complaints, their classification by line of insurance, the nature of each complaint, the disposition of the complaints, and the time it took to process each complaint.

(2) For purposes of this section, "complaint" means any written communication primarily expressing a grievance.

Section 3. There is a new R.C.M. section numbered 40-3502.3 that reads as follows:

40-3502.3. Power of the commissioner. The commissioner may examine and investigate the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this chapter.

Section 4. There is a new R.C.M. section numbered 40-3514.1 that reads as follows:

40-3514.1. Penalty for violation of cease and desist orders. (1) Any person who violates a cease and desist order issued pursuant to 40-3514 is subject to a civil penalty not to exceed $1,000. Each day of violation constitutes a separate violation. The total penalty may not exceed a $10,000 aggregate. The department may institute and maintain in the

HeinOnline -- 1977 Vol. I 961 1977

name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county in which the violation occurred shall petition the district court to impose, assess, and recover the civil penalty.

(2) An action under subsection (1) of this section is not a bar to enforcement of this chapter or rules or orders made under it by injunction or other appropriate remedies.

(3) Moneys collected hereunder shall be deposited in the state general fund.

Section 5. There is a new R.C.M. section numbered 40-3516.1 that reads as follows:

40-3516.1. Favored agent or insurer — coercion of debtors. (1) No person may require as a condition precedent to the lending of money or extension of credit or any renewal thereof that the person to whom such money or credit is extended or whose obligation a creditor is to acquire or finance negotiate any contract of insurance or renewal thereof through a particular insurer or group of insurers or agent or solicitor or group of agents or solicitors.

(2) No person who lends money or extends credit may:

(a) solicit insurance for the protection of real property, after a person indicates interest in securing a first-mortgage credit extension, until such person has received a commitment in writing from the lender as to a loan or credit extension;

(b) unreasonably reject a contract of insurance furnished by the borrower for the protection of the property securing the credit or lien. A rejection is not unreasonable if it is based on reasonable standards, uniformly applied, relating to the extent of coverage required and the financial soundness and the services of an insurer. Such standards may not discriminate against any particular type of insurer or call for rejection of an insurance contract because the contract contains coverage in addition to that required by the credit transaction.

(c) require that any borrower, mortgagor, purchaser, insurer, solicitor, or agent pay a separate charge in connection with the handling of any contract of insurance required as security for a loan on real estate or pay a separate charge to substitute the insurance policy of one insurer for that of another. This subsection (2)(c) does not include the interest which may be charged on premium loans or premium advancements in accordance with the terms of the loan or credit document.

(d) use or disclose, without the prior written consent of the borrower, mortgagor, or purchaser, information taken at a time other than the making of the loan or extension of credit relative to a contract of insurance which is required by the credit transaction, for the purpose of replacing such insurance;

(e) require any procedures or conditions of licensed agents, solicitors, or insurers not customarily required of those agents, solicitors, or insurers affiliated or in any way connected with the person who lends money or extends credit.

HeinOnline -- 1977 Vol. I 962 1977

(3) Each person who lends money or extends credit and who solicits insurance on real and personal property subject to subsection (2) of this section must explain to the borrower in writing that the insurance related to such credit extension may be purchased from an insurer or agent of the borrower's choice, subject only to the lender's right to reject a given insurer or agent as provided in subsection (2)(b). Compliance with disclosures as to insurance required by truth-in-lending laws or comparable state laws shall be compliance with this subsection.

(4) The commissioner may examine and investigate those insurance-related activities of any person which may be in violation of this section. Any affected person may submit to the commissioner a complaint or material pertinent to the enforcement of this section.

(5) Nothing herein prevents a person who lends money or extends credit from placing insurance on real or personal property in the event the mortgagor, borrower, or purchaser has failed to provide required insurance in accordance with the terms of the loan or credit document.

(6) Nothing contained in this section applies to credit life or credit accident and health insurance.

Section 6. Section 40-3501, R.C.M. 1947, is amended to read as follows:

"**40-3501. Purposes of trade practices law.** The purpose of *this chapter* is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in *P.L. 79-15, which was approved March 9, 1945,* by defining or providing for determination of all such practices in this state which constitute unfair *methods of competition or unfair* or deceptive acts or practices and by prohibiting the trade practices so defined or determined."

Section 7. Section 40-3514, R.C.M. 1947, is amended to read as follows:

"**40-3514. Desist orders for prohibited practices.** (1) If, after a hearing thereon of which notice of such hearing and of the charges against him were given such person, the commissioner finds that any person in this state has engaged or is engaging in any act or practice defined in or prohibited under this chapter, the commissioner shall order such person to desist from such acts or practices.

(2) Such desist order shall become final upon expiration of the time allowed for appeals from the commissioner's orders, if no such appeal is taken, or, in event of such an appeal, upon final decision of the court if the court affirms the commissioner's order or dismisses the appeal. An intervenor in such hearing shall have the right to appeal as provided in section 40-3515 (3).

(3) In event of such an appeal, to the extent that the commissioner's order is affirmed the court shall issue its own order commanding obedience to the terms of the commissioner's order.

(4) No order of the commissioner pursuant to this section or order of

HeinOnline -- 1977 Vol. I 963 1977

court to enforce it shall in any way relieve or absolve any person affected by such order from any other liability, penalty, or forfeiture under law.

(5) This section shall not be deemed to affect or prevent the imposition of any penalty provided by this code or by other law for violation of any other provision of this chapter, whether or not any such hearing is called or held or such desist order issued."

Section 8. Section 40-3512, R.C.M. 1947, is amended to read as follows:

"**40-3512. Unfair discrimination, rebates prohibited — property, casualty, surety insurances.** (1) No *title,* property, casualty or surety insurer or any employee or representative thereof, and no agent, or solicitor shall pay, allow, or give, or offer to pay, allow or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit or reduction of the premium named in the policy of insurance, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any valuable consideration or inducement whatever, not specified in the policy, except to the extent provided for in an applicable filing with the commissioner as provided by law.

(2) No insured named in a policy, nor any employee of such insured shall knowingly receive or accept directly or indirectly, any such rebate, discount, abatement, credit or reduction of premium, or any such special favor or advantage or valuable consideration or inducement.

(3) No such insurer shall make or permit any unfair discrimination either between insureds or property having like insuring or risk characteristics, or between insureds because of race, color, creed, or national origin, in the premium or rates charged for insurance, or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of the insurance.

(4) Nothing in this section shall be construed as prohibiting the payment of commissions or other compensation to duly licensed agents, or solicitors, or as prohibiting any insurer from allowing or returning to its participating policyholders, members or subscribers, lawful dividends, savings or unabsorbed premium deposits."

Section 9. **Repealer.** Section 40-3516, R.C.M. 1947, is repealed.

Approved April 7, 1977.

CHAPTER NO. 321

AN ACT TO INCREASE THE FEE CHARGED BY THE COMMISSIONER OF INSURANCE WHEN SERVED WITH COPIES OF LEGAL PROCESS; AMENDING SECTION 40-2819, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-2819, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 964 1977

"**40-2819. Serving process — time to plead.** (1) Duplicate copies of legal process against an insurer for whom the commissioner is attorney pursuant to section 40-2818, shall be served upon the commissioner, or upon his deputy or other person in charge of his office during his absence. At the time of service the plaintiff shall pay to the commissioner *$10*, taxable as costs in the action. Upon receiving such service the commissioner shall promptly forward a copy thereof by certified or registered mail to the person last so designated by the insurer to receive the same.

(2) Where process is served upon the commissioner as an insurer's attorney, the insurer shall have thirty (30) days within which to appear, answer, or plead after date of mailing of the copy thereof by the commissioner, exclusive of date of mailing, as provided by subsection (1).

(3) Process served upon the commissioner and copy thereof forwarded as in this section provided shall constitute service thereof upon the insurer."

Approved April 7, 1977.

CHAPTER NO. 322

AN ACT TO AMEND SECTION 40-2726, R.C.M. 1947, TO PROVIDE FOR A NONRESIDENT INSURANCE AGENT'S LICENSE FEE AND INCREASE THE FEE REQUIRED FOR THE INSURANCE COMMISSIONER'S CERTIFICATE UNDER SEAL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-2726, R.C.M. 1947, is amended to read as follows:

"**40-2726. Fees and licenses.** (1) The commissioner shall collect in advance, and the persons so served shall so pay to the commissioner, the following fees and licenses:

(a) Certificates of authority.

(i) Application for original certificate of authority: For filing applications for certificate of authority, articles of incorporation (except as provided in subsection (b), below) and other charter documents, bylaws, financial statement, examination report, power of attorney to the commissioner, and all other documents and filings required in connection with such application, and for issuance of an original certificate of authority, if issued:

Domestic insurers	$ 30.00
Foreign insurers	300.00
(ii) Annual continuation of certificate of authority	300.00
(iii) Reinstatement of certificate of authority	25.00

HeinOnline -- 1977 Vol. I 965 1977

(b) Articles of incorporation:

(i) Filing original articles of incorporation of domestic insurer, exclusive of fees required to be paid by the corporation to the secretary of state 20.00

(ii) Filing amendment of articles of incorporation, domestic and foreign insurers, exclusive of fees required to be paid to the secretary of state by a domestic corporation 10.00

(c) Filing bylaws or amendment thereto, where required 5.00

(d) Filing annual statement of insurer, other than as part of application for original certificate of authority 25.00

(e) Agent's license, property, casualty, surety, title insurance agents, and including disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the agent:

(i) Application for original license, and including issuance of license, if issued 10.00

(ii) Appointment of agent, each insurer 5.00

(iii) Annual renewal or appointment of agent, each insurer 5.00

(iv) Temporary license 10.00

(f) Nonresident agent's license, property, casualty, title insurance agents, and disability insurance without additional license or fee when written by property, casualty, or surety insurer otherwise represented by the agent:

(i) application for original license including issuance of license, if issued 100.00

(ii) appointment of agent, each insurer 5.00

(iii) annual renewal or appointment of agent, each insurer 100.00

(g) Solicitor's license:

(i) Application for original license, including issuance of license, if issued 5.00

(ii) Annual continuation of license 5.00

(h) Agent's license, life, disability insurance:

(i) Application for original license, each insurer 5.00

(ii) Annual continuation or renewal of license, each insurer 5.00

(iii) Temporary license, each insurer 5.00

(i) Nonresident agent's license, life, disability insurance:

(i) application for original license, including issuance of license, if issued, each insurer 100.00

HeinOnline -- 1977 Vol. I 966 1977

(ii) annual continuation or renewal of license, each insurer 100.00

(j) Examination for license as agent or solicitor, each examination 10.00

(k) Surplus line agent's license:

(i) Application for original license and for issuance of license, if issued 25.00

(ii) Annual renewal or continuation of license 25.00

(l) Adjuster's license:

(i) Application for original license and for issuance of license, if issued 10.00

(ii) Annual continuation or renewal of license 10.00

(m) Insurance vending machine license, each machine, each year 10.00

(n) Commissioner's certificate under seal (except when on certificates of authority or licenses) *3.00*

(o) Copies of documents on file in the commissioner's office, per page ..... .50

(p) Policy forms:

(i) Filing each policy form 25.00

(ii) Filing each application, rider, endorsement, amendment, insert page, schedule or rates and clarification of risks 10.00

(iii) Maximum charge if policy and all forms submitted at one time, or resubmitted for approval within 180 days 50.00

(2) The commissioner shall promptly deposit with the state treasurer to the credit of the general fund of this state all fees and licenses received by him under this section.

(3) The fees provided for in this section shall be in lieu of all fees heretofore payable with respect to insurance or insurers under section 25-101."

Approved April 7, 1977.

CHAPTER NO. 323

AN ACT TO AMEND SECTIONS 89-3602, 89-3604, 89-3605, 89-3606, AND 89-3608, R.C.M. 1947, TO TRANSFER CERTAIN ADMINISTRATIVE DUTIES FROM THE DEPARTMENT OF ADMINISTRATION TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION UNDER THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM.

HeinOnline -- 1977 Vol. I 967 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-3602, R.C.M. 1947, is amended to read as follows:

"**89-3602. Definitions.** Unless the context requires otherwise, in this act:

(1) "Renewable resource development program" means such developments in the public interest of renewable natural resources of the state as shall from time to time be acquired, constructed, and financed from funds appropriated to the accounts referred to in this section, and from the proceeds of bonds issued in anticipation of the receipt of these funds. Renewable resource developments shall, whenever practicable, be multiple use projects, and shall not significantly diminish the quality of existing public resources such as land, air, water, fish, wildlife and recreational opportunities.

(2) "Renewable resource development bonds" mean all series of bonds authorized by law to be issued pursuant to section 89-3606 to finance any part of the renewable resource development program, or to refund any such bonds.

(3) "Renewable resource development account", or "clearance fund account", mean a separate account which is created within the bond and insurance clearance fund established in section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the state treasury and used only to pay costs of the renewable resource development program, upon order of the board of natural resources and conservation under authority and within limitations provided by law.

(4) "Renewable resource development bond account", or "sinking fund account", mean a separate account which is created within the sinking fund established in section 79-410, and shall be segregated by the treasurer from all other money in that or any other fund in the treasury and used only as provided for herein.

(5) "Treasurer" means the state treasurer."

Section 2. Section 89-3604, R.C.M. 1947, is amended to read as follows:

"**89-3604. State renewable resource development grants.** (1) The department of *natural resources and conservation* may recommend to the governor that grants from the renewable resource development account provided for by this act be made to any department, agency, board, commission, or other division of state government. Unless specifically authorized by the legislature, no bond proceeds shall be used for the purpose of making grants; grants may only be made in such sums as may be deposited in the sinking fund account from the collection of the strip coal mines license tax payable under the provisions of section 84-1302 as provided in section 89-3607.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards,

HeinOnline -- 1977 Vol. I 968 1977

agencies and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those grant proposals having his approval to the legislature by the twentieth day of any legislative session. Those grant proposals approved by the legislature shall be administered by the department.

(4) The grants provided for by this section may be made for the purchase, lease, or construction of projects for the conservation, management, utilization, development or preservation of the land, water, fish, wildlife, recreational and other renewable resources in the state; for the purpose of feasibility and design studies for such projects; for development of plans for the rehabilitation, expansion or modification of existing projects; and for such other and further similar purposes as the legislature may approve.

(5) The department may adopt rules as required to govern the terms and conditions for making grants pursuant to this section."

Section 3. Section 89-3605, R.C.M. 1947, is amended to read as follows:

"**89-3605. State and local renewable resource development loans.** (1) The department of *natural resources and conservation* may recommend to the governor that loans be made from the renewable resource development account established by this act to any department, agency, board, commission or other division of state government, or to any city, county, or other political subdivision or local government body of the state.

(2) The department shall solicit and consider in its evaluation of proposed projects the views of interested and affected departments, boards, agencies and other subdivisions of state and federal government and of other interested and affected persons.

(3) The governor shall submit those loan proposals having his approval to the legislature by the twentieth day of any legislative session. Those loan proposals approved by the legislature shall be administered by the department.

(4) The provisions of section 89-3603, subsection (2) and subsections (4) through (9) shall govern and apply to the local renewable resource loans herein provided for.

(5) Both the loans provided for by this section and the grants provided for by section 89-3604 may be submitted to the governor and approved by the legislature as may be necessary to jointly finance any project."

Section 4. Section 89-3606, R.C.M. 1947, is amended to read as follows:

"**89-3606. Renewable resource development bonds.** (1) Within the limits authorized by section 89-3609, and within the further limitations in this section, the state board of examiners may issue and sell bonds of the state in such manner as it considers necessary and proper to finance the renewable resource development program. The full faith and credit

HeinOnline -- 1977 Vol. I 969 1977

and taxing powers of the state shall be pledged for the prompt and full payment of all bonds so issued and interest and redemption premiums payable thereon according to their terms.

(2) Each series of such bonds shall be issued by the state board of examiners upon request of the board of natural resources and conservation, in such denominations and forms, whether payable to bearer with attached interest coupons or registered as to principal or as to both principal and interest, with such provisions for conversion or exchange and for the issuance of notes in anticipation of the issuance of definitive bonds, bearing interest at such rate or rates, maturing at such time or times not exceeding 30 years from date of issue, subject to optional or mandatory redemption at such earlier times and prices and upon such notice, with such provisions for payment and discharge by the deposit of funds or securities in escrow for that purpose, and payable at the office of such banking institution or institutions within or outside the state, as the board shall determine subject to the limitations contained in this section.

(3) In the issuance of each series of such bonds the interest rates and the maturities and any mandatory redemption provisions thereof shall be established in such manner that the funds then specifically pledged and appropriated by law to the sinking fund account will in the judgment of the board be received in an amount sufficient in each year to pay all principal, redemption premiums, and interest due and payable in that year with respect to that and all prior series of such bonds, except outstanding bonds as to which the obligation of the state has been discharged by the deposit of funds or securities sufficient for their payment in accordance with the terms of the resolutions by which they are authorized to be issued.

(4) In all other respects the state board of examiners is authorized to prescribe the form and terms of the bonds, and shall do whatever is lawful and necessary for their issuance and payment. Such bonds and any interest coupons appurtenant thereto shall be signed by the members of the state board of examiners, and the bonds shall be issued under the great seal of the state of Montana. The bonds and coupons may be executed with facsimile signatures and seal in the manner and subject to the limitations prescribed by law. The state treasurer shall keep a record of all such bonds issued and sold.

(5) All proceeds of bonds issued hereunder, other than refunding bonds, shall be deposited in the clearance fund account, except that any principal and accrued interest received in repayment of the loans provided for in this act shall be deposited in the sinking fund account. All proceeds of refunding bonds shall be deposited in the sinking fund account and applied to the payment and redemption of outstanding bonds issued hereunder as directed by the board, whether at maturity or on any previous date on which they may be prepaid according to their terms.

(6) The state board of examiners is authorized to issue refunding bonds at such times and in such amounts, if any, as may be necessary to pay principal or interest due which cannot be paid from funds then on hand in the sinking fund account. It may also issue refunding bonds to refund outstanding bonds before maturity, for the purpose of extending the

HeinOnline -- 1977 Vol. I 970 1977

maturities thereof so far as determined by the board to be necessary to assure that the funds then pledged to the sinking fund account will be sufficient for payment of principal and interest due in subsequent years. It may also issue refunding bonds to refund outstanding bonds before maturity for the purpose of reducing the interest cost or the total amount of principal and interest payable thereon.

(7) No refunding bonds may be issued and sold more than 3 months before all bonds refunded thereby mature or are called for redemption unless the proceeds thereof, with any other funds in the sinking fund account which are needed and available for the purpose, or securities purchased from such proceeds and other funds, are deposited with a suitable banking institution within or outside the state, in escrow for the retirement of the refunded bonds at maturity or at a prior date or dates on which they have been called for redemption in accordance with their terms, in an amount and in a manner sufficient under the provisions securing the refunded bonds so that the state's obligation to pay the same, from sources other than the escrow fund, is discharged.

(8) No new debt may be created by the issuance of refunding bonds in accordance with this section, but such refunding bonds shall evidence the debt previously created and shall be secured by the pledge of the full faith and credit and taxing powers of the state and by the further provisions of this act in the same manner as the bonds refunded thereby."

Section 5. Section 89-3608, R.C.M. 1947, is amended to read as follows:

"**89-3608. Clearance fund account.** (1) In addition to any funds herein provided for the clearance fund account, the state may by enactment of the legislature or the people levy, impose, assess and pledge and appropriate to the clearance fund account any tax, charge, fee, rental or other income from any source.

(2) The state pledges and appropriates and directs to be credited from the general fund to the clearance fund account three hundred ninety thousand, nine hundred seventy-four dollars ($390,974) for its initial funding to be used and administered as provided for in this act. When sufficient funds have been accumulated in the clearance fund account from bond proceeds or as otherwise provided for in this act, the legislature directs that three hundred ninety thousand, nine hundred seventy-four dollars ($390,974) be appropriated from the clearance fund account and credited to the general fund.

(3) The costs of the board of examiners, the board of natural resources and conservation, *and* the department of natural resources and conservation incurred in the administration of this act shall be met from the clearance fund account *moneys* which shall from time to time as needed be transferred to an earmarked revenue fund established for that purpose.

(4) The board of examiners *and* the department of natural resources may, within the limits of appropriation made therefore, make necessary expenditures for the purchase or hire of such personnel, facilities, and services as they may from time to time find necessary for the proper administration of this act."

Approved April 7, 1977.

HeinOnline -- 1977 Vol. I 971 1977

CHAPTER NO. 324

AN ACT AMENDING SECTION 92-1002, R.C.M. 1947, REGARDING THE ELECTION OF AN EMPLOYER TO BE BOUND BY COMPENSATION PLAN NO. 2, BY REQUIRING THAT WORKERS' COMPENSATION POLICIES WRITTEN BY PRIVATE INSURANCE CARRIERS BE WRITTEN ON A CONTINUOUS BASIS UNTIL PRIOR NOTICE HAS BEEN SUBMITTED TO THE DIVISION THAT THE POLICY WILL BE TERMINATED; AND REPEALING SECTIONS 92-1006 AND 92-1009, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-1002, R.C.M. 1947, is amended to read as follows:

"**92-1002. Duty of employer electing plan No. 2 — amount of insurance necessary.** *(1)* Any employer electing to become bound by compensation plan No. 2 shall make his election on the form and in the manner prescribed by the division.

(2) The insurer shall, within 30 days after the issuance of the policy of workers' compensation insurance, submit to the division the notice of coverage stating the effective date of the policy insuring the employer and such other information as may be required by the division. The policy remains in effect until cancelled, and cancellation may take effect only by written notice to the named insured and to the division at least 20 days prior to the date of cancellation. However, the policy terminates on the effective date of a replacement or succeeding workers' compensation insurance policy issued to the insured. Nothing in this subsection prevents an insurer from cancelling a policy of workers' compensation insurance before a replacement policy is issued to the insured.

(3) The division may, in its discretion, assess a penalty of no more than $200 against an insurer which as a general business practice does not comply with the 30-day notice requirement as set forth in subsection (2) of this section."

Section 2. **Repealer.** Sections 92-1006 and 92-1009, R.C.M. 1947, are repealed.

Approved April 7, 1977.

CHAPTER NO. 325

AN ACT TO AMEND SECTION 34-302, R.C.M. 1947, TO CLARIFY THE DEFINITION OF ROOMING HOUSES AND OTHER SIMILAR ACCOMMODATIONS; TO PROHIBIT SUCH ACCOMMODATIONS

HeinOnline -- 1977 Vol. I 972 1977

FROM PROVIDING NURSING SERVICE ON A FULL-TIME BASIS; AND TO PROVIDE FOR COMPLIANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 34-302, R.C.M. 1947, is amended to read as follows:

"**34-302. Definitions.** Unless the context requires otherwise in this act:

(a) "Person" includes an individual, partnership, corporation, association, county, municipality, co-operative group, or other entity engaged in the business of operating, owning, or offering the services of a hotel, motel, tourist home, retirement home or rooming house.

(b) "Board" means board of health and environmental sciences.

(c) "Department" means the department of health and environmental sciences.

(d) "Hotel or motel" includes a building or structure kept, used, or maintained as or advertised as, or held out to the public to be a hotel, motel, inn, motor court, tourist court, public lodging house or place where sleeping accommodations are furnished for a fee to transient guests with or without meals.

(e) "Tourist home" means an establishment or premises where sleeping accommodations are furnished to transient guests for hire or rent on a daily or weekly rental basis in a private home when the accommodations are offered for hire or rent for the use of the traveling public.

(f) "Transient guest" means a guest for only a brief stay, such as the traveling public.

(g) "Rooming house or retirement home" means buildings in which separate sleeping rooms are rented providing sleeping accommodations for three or more persons on a weekly, semimonthly, monthly or permanent basis; *whether or not meals or central kitchens are provided,* but without *separated* cooking facilities *or kitchens within each room; and whose occupants do not need professional nursing services on a full-time basis.*"

Section 2. There is a new R.C.M. section numbered 34-311 that reads as follows:

34-311. Provision of full-time nursing services prohibited. Hotels, motels, boarding houses, rooming houses, or similar accommodations may not provide professional nursing services to residents on a full-time basis.

Section 3. There is a new R.C.M. section numbered 34-312 that reads as follows:

34-312. Complaints — monitoring — placement. Whenever a complaint is filed with the department of health and environmental sciences that a person in need of professional nursing services is residing in a rooming house or other similar accommodation not licensed to provide such service, the department shall investigate and provide for appropriate placement of such person if it is found that professional nursing services are needed.

Approved April 7, 1977.

HeinOnline -- 1977 Vol. I 973 1977

CHAPTER NO. 326

AN ACT TO REMOVE THE STATUTORY QUALIFICATIONS FOR THE DIRECTOR OF HEALTH AND ENVIRONMENTAL SCIENCES; AMENDING SECTIONS 82A-601 AND 82A-608, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-601, R.C.M. 1947, is amended to read as follows:

"**82A-601. Department of health and environmental sciences — head.** There is a department of health and environmental sciences. The department head is the director of health and environmental sciences appointed by the governor in accordance with section 82A-106, and in addition shall have the qualifications required in section 82A-608."

Section 2. Section 82A-608, R.C.M. 1947, is amended to read as follows:

"**82A-608. Director of health and environmental sciences — qualifications.** The director of health and environmental sciences shall:

(1) Have a degree of doctor of medicine.

(2) Be eligible for a license by the board of medical *examiners.*

(3) Receive a license from the board of medical *examiners* not later than 6 months after his appointment."

Approved April 7, 1977.

CHAPTER NO. 327

AN ACT TO AMEND SECTION 71-1520, R.C.M. 1947, TO ALLOW COUNTY DETERMINATION OF ELIGIBILITY FOR MEDICAID.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-1520, R.C.M. 1947, is amended to read as follows:

"**71-1520. Investigation and determination of eligibility.** (a) The county department shall promptly investigate and determine the eligibility of each applicant under this act in accordance with the rules and regulations of the state department. Each applicant shall be informed of his right to a fair hearing and of the confidential nature of the information given. The county department shall determine whether or not the applicant is eligible for assistance under this act, and aid shall be fur-

HeinOnline -- 1977 Vol. I 974 1977

nished promptly to eligible persons. The county public welfare board shall review the determination of the eligibility or noneligibility made by the county department. Each applicant shall receive written notice of the decision concerning his application and right of appeal shall be secured to the applicant under the procedures of section 71-223.

(b) Provided, however, the county departments of public welfare and the state department of social and rehabilitation services are hereby authorized to accept the federal social security administration's determination of eligibility for *supplemental security income*, Title XVI of the Social Security Act, as qualifying such eligible individuals to receive medical assistance under this act."

Approved April 7, 1977.

CHAPTER NO. 328

AN ACT ENTERING INTO THE INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL AND FOR RELATED PURPOSES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-6012 that reads as follows:

75-6012. Enactment. The interstate agreement on qualification of educational personnel is enacted into law and entered into with all jurisdictions legally joining therein in the form substantially as follows:

Article 1. Purpose — findings — policy. (1) The states party to this agreement, desiring by common action to improve their respective school systems by utilizing the teacher or other professional educational person wherever educated, declare that it is the policy of each of them, on the basis of cooperation with one another, to take advantage of the preparation and experience of such persons wherever gained, thereby serving the best interests of society, of education, and of the teaching profession. It is the purpose of this agreement to provide for the development and execution of such programs of cooperation as will facilitate the movement of teachers and other professional educational personnel among the states party to it and to authorize specific interstate educational personnel contracts to achieve that end.

(2) The party states find that included in the large movement of population among all sections of the nation are many qualified educational personnel who move for family and other personal reasons but who are hindered in using their professional skill and experience in their new locations. Variations from state to state in requirements for qualifying educational personnel discourage such personnel from taking the steps necessary to qualify in other states. As a consequence, a significant number of professionally prepared and experienced educators are lost to our school systems. Facilitating the employment of qualified educational personnel,

HeinOnline -- 1977 Vol. I 975 1977

without reference to their states of origin, can increase the available educational resources. Participation in this compact can increase the availability of educational manpower.

Article II. Definitions. As used in this agreement and contracts made pursuant to it, unless the context clearly requires otherwise, the following definitions apply:

(1) "Educational personnel" means persons who must meet requirements pursuant to state law as a condition of employment in educational programs.

(2) "Designated state official" means the educational official of a state selected by that state to negotiate and enter into, on behalf of his state, contracts pursuant to this agreement.

(3) "Accept", or any variant thereof, means to recognize and give effect to one or more determinations of another state relating to the qualifications of educational personnel in lieu of making or requiring a like determination that would otherwise be required by or pursuant to the laws of a receiving state.

(4) "State" means a state, territory, or possession of the United States, the District of Columbia, or the commonwealth of Puerto Rico.

(5) "Originating state" means a state (and the subdivisions thereof, if any) whose determination that certain educational personnel are qualified to be employed for specific duties in schools is acceptable in accordance with the terms of a contract made pursuant to Article III.

(6) "Receiving state" means a state (and the subdivisions thereof) which accept educational personnel in accordance with the terms of a contract made pursuant to Article III.

Article III. Interstate educational personnel contracts. (1) The designated state official of a party state may make one or more contracts on behalf of his state with one or more other party states providing for the acceptance of educational personnel. Any such contract for the period of its duration shall be applicable to and binding on the states whose designated state officials enter into it, and the subdivisions of those states, with the same force and effect as if incorporated in this agreement. A designated state official may enter into a contract pursuant to this article only with states in which he finds that there are programs of education, certification standards, or other acceptable qualifications that assure preparation or qualification of educational personnel on a basis sufficiently comparable even though not identical to that prevailing in his own state.

(2) Any such contract shall provide for:

(a) its duration;

(b) the criteria to be applied by an originating state in qualifying educational personnel for acceptance by a receiving state;

(c) such waivers, substitutions, and conditional acceptance as shall aid the practical effectuation of the contract without sacrifice of basic educational standards; and

HeinOnline -- 1977 Vol. I 976 1977

(d) any other necessary matters.

(3) No contract made pursuant to this agreement shall be for a term longer than 5 years but any such contract may be renewed for like or lesser periods.

(4) Any contract dealing with acceptance of educational personnel on the basis of their having completed an educational program shall specify the earliest date or dates on which originating state approval of the program or programs involved can have occurred. No contract made pursuant to this agreement shall require acceptance by a receiving state of any persons qualified because of successful completion of a program prior to January 1, 1954.

(5) The certification or other acceptance of a person who has been accepted pursuant to the terms of a contract shall not be revoked or otherwise impaired because the contract has expired or been terminated. However, any certificate or other qualifying document may be revoked or suspended on any ground which would be sufficient for revocation or suspension of a certificate or other qualifying document initially granted or approved in the receiving state.

(6) A contract committee composed of the designated state officials of the contracting states or their representatives shall keep the contract under continuous review, study means of improving its administration, and report not less than once a year to the heads of the appropriate education agencies of the contracting states.

Article IV. Approved and accepted programs. (1) Nothing in this agreement shall be construed to repeal or otherwise modify any law or regulation of a party state relating to the approval of programs of educational preparation having effect solely on the qualification of educational personnel within that state.

(2) To the extent that contracts made pursuant to this agreement deal with the educational requirements for the proper qualification of educational personnel, acceptance of a program of educational preparation shall be in accordance with such procedures and requirements as may be provided in the applicable contract.

Article V. Interstate cooperation. The party states agree that:

(1) they will, so far as practicable, prefer the making of multilateral contracts pursuant to Article III of this agreement; and

(2) they will facilitate and strengthen cooperation in interstate certification and other elements of educational personnel qualification and for this purpose shall cooperate with agencies, organizations, and associations interested in certification and other elements of educational personnel qualification.

Article VI. Agreement evaluation. The designated state officials of any party states may meet from time to time as a group to evaluate progress under the agreement and to formulate recommendations for changes.

HeinOnline -- 1977 Vol. I 977 1977

Article VII. Other arrangements. Nothing in this agreement shall be construed to prevent or inhibit other arrangements or practices of any party state or states to facilitate the interchange of educational personnel.

Article VIII. Effect — withdrawal. (1) This agreement shall become effective when enacted into law by two states. Thereafter it shall become effective as to any state upon its enactment of this agreement.

(2) Any party state may withdraw from this agreement by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states.

(3) No withdrawal shall relieve the withdrawing state of any obligation imposed upon it by a contract to which it is a party. The duration of contracts and the methods and conditions of withdrawal therefrom shall be those specified in their terms.

Article IX. Construction — severability. This agreement shall be liberally construed so as to effectuate the purpose thereof. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement is held to be contrary to the constitution of any state participating therein, the agreement shall remain in full force and effect as to the state affected as to all severable matters.

Section 2. There is a new R.C.M. section numbered 75-6013 that reads as follows:

75-6013. Designated official. The "designated state official" for this state is the state superintendent of public instruction. The state superintendent of public instruction shall enter into contracts pursuant to Article III of the agreement only after approval of the specific text thereof by the board of public education.

Section 3. There is a new R.C.M. section numbered 75-6014 that reads as follows:

75-6014. Preservation and publication of contracts. True copies of all contracts made on behalf of this state pursuant to the agreement shall be kept on file in the office of the state superintendent of public instruction. The state superintendent of public instruction shall publish all such contracts in convenient form.

Section 4. **Effective date.** This act is effective on its passage and approval.

Approved April 7, 1977.

HeinOnline -- 1977 Vol. I 978 1977

CHAPTER NO. 329

AN ACT TO RESTORE THE SPENDING AUTHORITY OF A SCHOOL DISTRICT UPON THE DEPOSIT OF A REFUND OR REBATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-6811.2 that reads as follows:

75-6811.2. Credit of refund. Whenever a school district deposits with the county treasurer a refund or rebate, the county treasurer shall credit the budgeted fund to which it is deposited and restore the school district's spending authority in that fund in the amount of the refund or rebate.

Approved April 7, 1977.

CHAPTER NO. 330

AN ACT TO REVISE THE LAW REGARDING THE GAME WARDENS' RETIREMENT SYSTEM TO CLARIFY FUNDING FOR THAT SYSTEM, TO AMEND THE PROVISIONS REGARDING CONTINUATION IN THAT SYSTEM OR IN THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM, AND TO CLARIFY THE NOMINATION OF A BENEFICIARY; AMENDING SECTIONS 68-1401, 68-1402, 68-1405, 68-1407, 68-1410, 68-1421, AND 68-1429, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-1401, R.C.M. 1947, is amended to read as follows:

"**68-1401. Definition of terms.** Unless the context requires otherwise, in this act:

(1) "Accumulated deductions" means the total of the amount deducted from the salary of a contributor and paid into the account, and standing to his credit in the account together with the regular interest thereon.

(2) "Beneficiary" means a person or persons having an insurable interest in his life as he shall nominate by written designation, duly acknowledged and filed with the board.

(3) "Retired state game warden" means any person in receipt of a retirement allowance under this act.

(4) "Board" means the Montana state game wardens' retirement board.

(5) "Contributor" means any person who has accumulated deductions in the account, standing to his credit.

(6) "Final salary" means the average annual compensation received by a contributor before any deductions have been made, and exclusive of maintenance, allowances, and expenses, for any three (3) years of continu-

HeinOnline -- 1977 Vol. I 979 1977

ous service upon which contributions have been made, or, in the event a member has not served three (3) years, the total retirement compensation earned, divided by the number of years served.

(7) "Actuarial equivalent" means the accumulated contributions and the present value of the member's state service based on length of service and member's attained age used to provide a life or temporary life income to the legally designated person, based on the person's attained age and sex at the time the option becomes available.

(8) "Account" means the Montana state game wardens' retirement account in the agency fund.

(9) "Involuntary retirement" means a retirement not for cause and before retirement age.

(10) "Member's annuity" means payments for life derived from contributions made by the contributor.

(11) "Optional retirement age" means the age at which a contributor may retire after twenty (20) years service or more; provided that the contributor has reached the age of fifty-five (55) years.

(12) "Retirement age" means the age at which a member retires after twenty-five (25) years of creditable service as a state game warden of the department of fish and game. All members must retire at age sixty (60).

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "State annuity" means payments for life derived from contributions made by the state of Montana fish and game moneys."

Section 2. Section 68-1402, R.C.M. 1947, is amended to read as follows:

"**68-1402. State game warden defined.** Whenever used in this act, state game warden means all state fish and game wardens hired by the state fish and game commission and shall include all warden supervisory personnel whose salaries or compensation is paid out of the Montana fish and game moneys."

Section 3. Section 68-1405, R.C.M. 1947, is amended to read as follows:

"**68-1405. Payments into the Montana game wardens' retirement system.** All contributions by the state fish and game moneys and all contributions by the state game wardens as designated by section 1 [68-1401] above, in the amount hereinafter specified, and all interest on and increase of the investments and moneys under this account shall be paid to the board, who shall credit such payments to the Montana state game wardens' retirement account in the agency fund. Such board shall have exclusive control of the administration of such account. The state treasurer shall be custodian of the account, subject to the exclusive control of the board as to the administration thereof and the board of investments as to the investment thereof. Whenever there is on deposit in the Montana state game wardens' retirement account a sum in excess of twenty-five

HeinOnline -- 1977 Vol. I 980 1977

thousand dollars ($25,000), such excess will be invested by the board of investments as part of the long-term investment fund and any of the account less than twenty-five thousand dollars ($25,000) in amount shall be invested by the board of investments as part of the short-term investment fund when so directed by the Montana game wardens' retirement board."

Section 4. Section 68-1407, R.C.M. 1947, is amended to read as follows:

"**68-1407. Membership.** *Except as provided in 68-1429, each* state game warden, including all warden supervisory personnel, whose salary or compensation for services is paid out of the Montana fish and game moneys and who is assigned to law enforcement in the department of fish and game, shall become a member of the retirement system when first becoming a state game warden. If a person becomes a state game warden after July 1, 1963, who was at any time before July 1, 1963, a state game warden, he shall receive credit for any such service prior to July 1, 1963, upon complying with the provisions of this act. *Except as provided in 68-1429, all* state game wardens shall be members of the retirement system so long as actively employed in that capacity."

Section 5. Section 68-1410, R.C.M. 1947, is amended to read as follows:

"**68-1410. Contributions by the state of Montana.** (a) There shall be paid out of the Montana fish and game moneys, monthly, by the state treasurer, a sum equal to seven per cent (7%) of the total amount of each Montana game wardens' retirement system member's salary, the same to be credited to the retirement account created by this act. (b) The expense of the administration of this act, exclusive of the payment of retirement allowances and other benefits shall be paid by the state of Montana out of the fish and game moneys, made on the basis of budgets submitted by the board."

Section 6. Section 68-1421, R.C.M. 1947, is amended to read as follows:

"**68-1421. Nomination of beneficiary.** Every contributor shall have the authority to name his beneficiary by written designation duly acknowledged and filed with the board, and to change the beneficiary in like manner. Such designation and all changes must be filed with the board."

Section 7. Section 68-1429, R.C.M. 1947, is amended to read as follows:

"**68-1429. State public employees' retirement system — transfer of membership.** *(1)* Each state game warden shall, after July 1, 1963, become a member of this retirement system and thereafter no *new state employee appointed as a* state game warden shall be eligible to membership to the state public employees' retirement system and the provisions of said law shall not apply to Montana state game wardens.

(2) A person who is a member of the retirement system assigned to law enforcement who transfers to a position involving duties other than law

HeinOnline -- 1977 Vol. I 981 1977

enforcement in the fish and game department may retain membership in the retirement system by filing a written election of intent with the board no later than August 1, 1977, or no later than 30 days after transfer to the new position, whichever is later.

(3) A person who is a member of the public employees' retirement system who transfers to a position as a state game warden may elect to become a member of the retirement system or may continue membership in the public employees' retirement system by filing a written election of intent with the board no later than August 1, 1977, or no later than 30 days after transfer to the new position, whichever is later."

Approved April 7, 1977.

CHAPTER NO. 331

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE TEACHERS' RETIREMENT SYSTEM AND TO ENSURE FAVORABLE ADVANCE DETERMINATION FROM THE UNITED STATES INTERNAL REVENUE SERVICE WITH RESPECT TO QUALIFIED TAX STATUS; AMENDING SECTIONS 75-6201, 75-6205, 75-6206, 75-6207, 75-6208, 75-6209, 75-6212, 75-6214, AND 75-6216, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6201, R.C.M. 1947, is amended to read as follows:

"**75-6201. Definitions.** As used in this title, unless the context clearly indicates otherwise, *the following definitions apply:*

(1) "Retirement system" means the teachers' retirement system of the state of Montana provided for in section 75-6202.

(2) "Retirement board" means the retirement system's governing board provided by section 82A-212.

(3) "Employer" means the state of Montana, trustees of any district, or other agency or subdivision of the state which employs a person who is designated a member of the retirement system.

(4) "Member" means any person who has an individual account in the annuity savings fund; an active member is any person included under the provisions of section 75-6209; an inactive member is any person included under the provisions of section 75-6210.

(5) "Beneficiary" means any person in receipt of a pension, annuity, a retirement allowance, or other benefit as provided by the retirement system.

(6) "Service" means the performance of such instructional duties or related activities as would entitle the person to active membership in the retirement system under the provisions of section 75-6209.

HeinOnline -- 1977 Vol. I 982 1977

(7) "Prior service" means employment of the same nature as service defined in subsection (6) of this section but rendered before September 1, 1937.

(8) "Creditable service" is that service defined by section 75-6212.

(9) "Regular interest" means interest at four per cent (4%) per annum compounded annually, or at such other rate as may be set by the retirement board in accordance with subsection (2) of section 75-6206.

(10) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member or paid by a member and credited to his individual account in the annuity savings fund, together with interest. Regular interest shall be computed and allowed to provide a benefit at the time of retirement.

(11) "*Earned* compensation" means the full compensation, pay, or salary *actually paid to a member and reported to the retirement system, including irregular forms of remuneration, such as amounts paid for special duty or under a salary reduction agreement, and amounts paid in kind, such as maintenance. The employer shall fix the value of any compensation paid in kind. The earned compensation of a member who had less than 3 consecutive years of full-time service during the 5 years preceding his retirement is the compensation, pay, or salary which he would have earned had his part-time service been full-time service. The earned compensation of a member who is awarded a disability retirement allowance prior to the completion of a full year is the compensation, pay, or salary which he would have received had he completed the full year.*

(12) "Average final compensation" means the average of the *earned* compensation of *a member during the* 3 consecutive years *of full-time service which yield the highest average and* on which contributions have been made *as required by 75-6207(1)(a).*

(13) "Annuity" means the payments made to a beneficiary for life which are derived from a member's accumulated contributions. All annuities shall be paid in equal monthly installments. The retirement board may make an annual payment to the beneficiaries of the difference between the rate of interest used in calculating the benefit from the annuity reserve fund and the interest earned on investments.

(14) "Pension" means the payments made to a beneficiary for life which are paid into the pension fund derived from money accumulated by employers. All pensions shall be paid in equal monthly installments.

(15) "Retirement allowance" means the annuity plus the pension.

(16) "Annuity reserve" means the present value of all payments to be made on account of a member's annuity and computed upon the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

(17) "Pension reserve" means the present value of all payments to be made on account of a pension and computed on the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

HeinOnline -- 1977 Vol. I 983 1977

(18) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables as shall be adopted by the retirement board with regular interest.

(19) "Former retirement system" means the retirement system established under sections 1113 to 1132 inclusive, of the Revised Codes of Montana, 1935.

(20) "Full-time service" means service which is full-time and which extends over a normal academic year of at least 9 months. With respect to those members employed by the office of the superintendent of public instruction, any other state agency or institution, or the office of a county superintendent, "full-time service" means service which is full-time and which totals at least 9 months in any one year.

(21) "Part-time service" means service which is less than full-time or which totals less than 9 months in any one year. Part-time service shall be credited in the proportion that the actual time worked bears to full-time service."

Section 2. Section 75-6205, R.C.M. 1947, is amended to read as follows:

"**75-6205. Powers and duties.** The retirement board shall have the power and it shall be its duty to administer and operate the retirement system within the limitations prescribed by this Title. To this end, it shall be the duty of the retirement board to:

(1) establish rules and regulations necessary for the proper administration and operation of the retirement system;

(2) elect a chairman from its membership;

(3) appoint a secretary who may be one (1) of its members;

(4) employ technical or administrative employees who are necessary for the transaction of the business of the retirement system;

(5) approve or disapprove all expenditures necessary for the proper operation of the retirement system;

(6) keep a record of all its proceedings which shall be open to public inspection;

(7) publish a biennial report by the first day of January of each year the legislative assembly meets that shall report in detail the fiscal transactions for the two (2) fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system and the last fiscal year balance sheet showing the assets and liabilities of the retirement system, and submit such biennial report to the governor and furnish copies to the legislative assembly;

(8) when the retirement board deems it necessary, designate a medical board to be composed of three physicians, who are not eligible to participate in the retirement system to investigate and report to the retirement board on all medical matters related to the administration of the retirement system;

HeinOnline -- 1977 Vol. I 984 1977

(9) keep in convenient form that data which is necessary for actuarial valuation of the various funds of the retirement system and for checking the experience of the retirement system;

(10) designate an actuary to assist the retirement board with the technical actuarial aspects of the operation of the retirement system, which shall include establishing mortality and service tables and making an actuarial investigation at least once every five (5) years into the mortality, service, and compensation experience of the members and beneficiaries of the retirement system;

(11) prepare an annual valuation of the assets and liabilities of the retirement system;

(12) determine the eligibility of a person to become a member of the retirement system in accordance with the provisions of section 75-6209;

(13) prescribe a form for membership application which will provide adequate and necessary information for the proper operation of the retirement system;

(14) adopt policies for the determination of creditable service in the retirement system implementing the following guidelines:

(a) One (1) year's creditable service shall be awarded for each year of full-time service, outside of vacation periods, but no more than one (1) year's creditable service shall be awarded for service during the same school fiscal year.

(b) Not more than one (1) month's creditable service shall be awarded for one (1) or more continuous months of absence without pay.

(15) grant retirement, disability, and other benefits under the provisions of section 75-6208;

(16) annually determine the rate of regular interest as prescribed in section 75-6206;

(17) establish and maintain the funds of the retirement system in accordance with the provisions of section 75-6207; and

(18) perform such other duties and functions as are required to properly administer and operate the retirement system."

Section 3. Section 75-6206, R.C.M. 1947, is amended to read as follows:

"**75-6206. Financial administration of moneys.** The retirement board shall be the trustees of all moneys collected for the retirement system and as such trustees they shall provide for the financial administration of the moneys in the following manner:

(1) The moneys shall be invested and re-invested by the state board of investments.

(2) The retirement board annually shall establish the rate of regular interest.

HeinOnline -- 1977 Vol. I 985 1977

(3) The retirement board annually shall divide among the several funds of the retirement system an amount equal to the average balance of such funds during the preceding fiscal year multiplied by the rate of regular interest. In accordance with the provisions of subsection (3)(e) of section 75-6207, the amount to be credited to each fund shall be allocated from the interest and other earnings on the moneys of the retirement system actually realized during the preceding fiscal year, less the amount allocated to the expense fund under the provisions of subsection (5)(b) of section 75-6207.

(4) The state treasurer is the custodian of the collected retirement system moneys and of the securities in which said moneys are invested. All expenditures from such moneys shall be made only upon claims signed by two (2) persons designated by the retirement board. A properly attested copy of a resolution of the retirement board designating such persons and bearing on its face specimen signatures of each person shall be filed with the department of administration as his authority for approving such claims.

(5) Except as herein provided no member of the retirement board nor any of its employees shall have an interest, direct or indirect, in the gains or profits of any investment of moneys of the retirement system. No member of the retirement board nor any of its employees shall directly or indirectly for himself or as an agent in any manner use the moneys or deposits of the retirement system except to make such current and necessary expenditures as are authorized by the retirement board. No member of the retirement board nor any of its employees shall become an endorser or surety or in any manner an obligor for moneys loaned by or borrowed from the retirement system.

(6) The retirement board may in its discretion transfer the amount in the annuity savings account of an inactive member to the pension accumulation fund if the account has been dormant for a period of seven (7) years. No right of the member shall be jeopardized by such transfer and the amount shall be transferred back to the member's annuity savings account upon his request.

(7) All the funds established by section 75-6207, except the expense fund, shall be accounts in the agency fund of the treasury fund structure of the state. The expense fund shall be an account in the earmarked revenue fund of the same treasury fund structure.

(8) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(9) Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded."

HeinOnline -- 1977 Vol. I 986 1977

Section 4. Section 75-6207, R.C.M. 1947, is amended to read as follows:

"**75-6207. Method of financing.** The retirement board shall establish and maintain the following funds in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

(1) Annuity savings fund. The annuity savings fund shall be a fund in which the contributions from the members to provide for their annuities shall be accumulated in individual accounts for each member. Contributions to and payments from the annuity savings fund shall be made in the following manner.

(a) Each employer shall deduct from the compensation of each active member on each and every payroll of such member for each and every payroll period *on and* subsequent to the date on which such member became a member an amount equal to six and one-eighth percent (6 ⅛%) of such member's *earned* compensation.

(b) Such deductions shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member shall be deemed to consent and agree to the deductions prescribed by this section; and payment of salary or compensation less the deductions shall be a full and complete discharge of all claims whatsoever for the services rendered by such person during the period covered by such payment except as to the benefits provided by the retirement system.

(c) In addition to the contributions deducted from compensation and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to *any* accumulated contributions *which he has previously withdrawn,* plus interest in the amount the contributions would have earned had the contributions not been withdrawn. The accumulated contributions of a member withdrawn by him, or paid to his estate or to his designated beneficiary in event of his death shall be paid from the annuity savings fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(2) Annuity reserve fund. The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(3) Pension accumulation fund. The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

HeinOnline -- 1977 Vol. I 987 1977

(a) Each employer shall pay into the pension accumulation fund an amount equal to six and one-fourth percent (6 ¼%) of the *earned* compensation of each member employed during the whole or part of the preceding payroll period.

(b) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of section 75-7204.

(c) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system or the Montana state deaf and blind school, the legislative assembly shall appropriate to each employer an adequate amount to allow the payment of the employer's contribution.

(d) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under such budget.

(e) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund and the amounts required to allow regular interest on the annuity savings fund, and the annuity reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(f) All pensions and benefits in lieu thereof, including pensions payable under section 75-6218, shall be paid from the pension accumulation fund.

(g) The retirement board may in its discretion transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also such expenses as hereinafter provided.

(4) Expense fund. The expense fund shall be the fund to which shall be credited all moneys for the administrative expenses of the retirement system and from which the expenses of administration of the retirement system shall be paid exclusive of amounts payable as retirement allowances or other benefits. The retirement board shall determine annually the amount required for the expense fund to defray the administrative expense in the ensuing fiscal year and shall credit such an amount to the expense fund *out of the pension accumulation fund* from interest and other earnings realized on the moneys of the retirement system."

Section 5. Section 75-6208, R.C.M. 1947, is amended to read as follows:

"**75-6208. Benefits.** The retirement, disability and other benefits of the retirement system shall be granted on the basis of the following provisions:

(1) Superannuation member retirement:

(a) *A* member *who has at least* 5 *full* years of creditable service, *whose* last 5 years of *creditable service were* in this state, and who has attained

HeinOnline -- 1977 Vol. I 988 1977

the age of 60 or has *been credited with full-time or part-time service in* 30 *or more* years may retire from service if he files with the retirement board his written application setting forth the fact of his retirement.

(b) Any member in service who has attained the age of seventy (70) years during any school year shall be retired on the first day of September following his seventieth birthday, except that this provision shall not apply to teachers in the Montana university system who may be employed beyond the age of seventy (70) upon the recommendation of the president of the employing unit to the board of regents. Members over seventy (70) years of age shall not: (1) be allowed creditable service for services rendered after the end of the school year in which the age of seventy (70) is attained, (2) contribute to the retirement system after the end of such school year, and (3) have the compensation received after the end of such school year used in computing average final salary. Initial employment of teachers in the Montana university system beyond the age of seventy (70) may be made upon the recommendation of the president of the employing unit and the approval of the board of regents but such employees shall be denied membership in the retirement system.

(c) Any retired member may be employed as a part-time or substitute teacher in Montana and may earn, *without loss of retirement benefits, the greater of* an amount not to exceed one-fourth of his average final compensation *and one-fourth of the median of the average final compensation for members retired during the preceding fiscal year as determined by the retirement board.*

(2) Allowance for superannuation retirement. Upon superannuation retirement a member shall receive a retirement allowance *consisting* of:

(a) A pension which, together with an annuity, *provides* a retirement allowance equal to one-sixtieth of his average final compensation multiplied by the number of years of creditable service.

(b) The minimum annual retirement allowance for a member who has 30 or more years of *creditable* service shall be twenty-four hundred dollars ($2,400) and the minimum retirement allowance for a member whose *creditable* service is less than thirty (30) years shall be based on the proportionate amount of twenty-four hundred dollars ($2,400) that his service bears to thirty (30) years of service.

(c) Any member who has completed five (5) years of creditable service, the last five years of which shall have been in this state, and who has attained the age of fifty-five (55) may retire from service and be eligible to an early retirement allowance if he files with the retirement board his written application setting forth the fact of his retirement. The early retirement allowance shall be determined as prescribed in subsections (a) through (f) above, with the further provision that such allowance will be reduced by one half of one percent (.5%) multiplied by the number of months which the retirement date precedes the date on which he would have retired had he attained sixty (60) years of age or had he completed thirty (30) years of creditable service.

(d) In the event of death of a member after retirement, a death benefit of five hundred dollars ($500) will be payable to his designated beneficiary.

HeinOnline -- 1977 Vol. I 989 1977

(e) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) Disability member retirement:

(a) Upon the application of an active member or of his employer, any active member who has five (5) or more years of creditable service may be retired by the retirement board the month immediately following the month in which his disability caused his retirement upon filing an application for a disability retirement allowance. Before any member shall be eligible for a disability retirement, the board of the retirement system shall certify that he is mentally or physically incapacitated for the further performance of his duties, that such incapacity is likely to be permanent and that he should be retired.

(b) Re-examination of beneficiaries retired on account of disability. Once each year during the first five (5) years following the retirement of a member on disability retirement allowance, and once in every three (3) year period thereafter the retirement board may, and upon his application shall, require a disability beneficiary who has not yet attained the age of sixty (60) to undergo a medical examination by the medical board or a physician or physicians designated by the medical board. The examination shall be made at the place of residence of the beneficiary or other place mutually agreed upon. Should any disability beneficiary who has not yet attained the age of sixty (60) refuse to submit to at least one (1) medical examination in any year by the medical board or its representative, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his disability pension may be revoked by the retirement board.

(c) Should the medical board report and certify to the retirement board that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and should the retirement board concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be changed later, the amount of his pension may be further modified but the new pension shall not exceed the amount of the pension originally granted, nor an amount which when added to the amount earnable by the beneficiary, together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired shall not become a member of the retirement system while receiving a reduced benefit.

(d) Should a disability beneficiary under age sixty (60) be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, and he shall again become an active member of the retirement system. Any prior service certificate

HeinOnline -- 1977 Vol. I 990 1977

on the basis of which his service was computed at the time of his disability retirement shall be restored to full force and effect an addition upon his subsequent retirement, and he shall be credited with all his subsequent service as a member. Should he be restored to active service on or after the attainment of the age of fifty-five (55) years, his pension upon subsequent retirement shall not exceed the pension that he would have received had he remained in service during the period of his previous retirement nor the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new member.

(4) Allowance for disability retirement. Upon retirement for disability, a member shall receive a superannuation allowance prescribed under subsection (2) above if he is eligible; otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement.

(b) A pension which together with his annuity, shall provide a total retirement allowance equal to one sixtieth (1/60) of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-quarter (¼) of his average final compensation; otherwise, a pension which, together with his annuity, shall provide a total retirement allowance equal to one-quarter (¼) of his average final compensation, provided, however, that no such allowance shall exceed one sixtieth (1/60) of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

(c) In the event payments made to a person retired because of disability do not equal the amount of his accumulated contributions prior to his death, the difference between the total retirement allowance paid and the amount of the accumulated contributions of the member shall be paid to the beneficiary.

(5) Withdrawal of accumulated contributions. Any inactive member electing to do so or any person whose membership terminates may withdraw his accumulated contributions to his annuity account in the retirement system in accordance with the following provisions:

(a) An inactive member under the provisions of subsections (1) or (3) of section 75-6210 may elect, without right of revocation to withdraw his accumulated contributions, and if he does not withdraw his accumulated contributions he shall thereafter remain an inactive member of the retirement system with the right to qualify for the benefits of the retirement system;

(b) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of subsection (2) of section 75-6210 may withdraw his accumulated contributions unless he returns to active membership.

HeinOnline -- 1977 Vol. I 991 1977

(c) Any person whose membership terminates under the provisions of subsection (4) of section 75-6211 may withdraw his accumulated contributions.

(6) Allowances for death of member.

(a) Should a member die before retirement the amount of the member's accumulated contributions shall be paid to his estate or such person as he may have designated in the manner prescribed by the retirement board which shall be filed with the board prior to the member's death.

(b) In lieu of benefits provided in (a) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in subsections (2)(a) through (2)(h) assuming the member had elected option A as prescribed in subsection (7)(a) below. In addition, if the deceased member had five (5) or more years of creditable service and was an active member in the state of Montana within one (1) year prior to his death, a lump sum death benefit of $500 will be payable to his designated beneficiary.

(c) If *a* deceased member had five (5) or more years of creditable service and was an active member in the state of Montana within one (1) year prior to his death *or was retired at the time of his death*, the sum of one hundred dollars ($100) per month shall be paid to each minor child of the deceased member until such child reaches his eighteenth (18th) birthday.

(7) Optional allowances. With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of his death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement or disability allowance payable throughout life as hereinabove provided. This benefit shall be referred to as the normal form of retirement allowance. In lieu of normal form of retirement allowance, the member may elect an optional allowance which would be the actuarial equivalent at the time of his retirement or disability allowance and would provide an allowance payable throughout his lifetime and upon his death continue to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement with the provision that:

(a) Option A. The optional allowance will continue to the member during his lifetime and upon his death, continue throughout the lifetime of his designated beneficiary; or

(b) Option B. The optional allowance will continue throughout his lifetime and upon his death, one-half (½) of his optional allowance will be continued throughout the lifetime of his designated beneficiary; or

(c) Option C. The optional benefit will continue throughout his lifetime and upon his death, two-thirds (⅔) of the optional allowance shall be continued throughout the lifetime of his designated beneficiary; or

HeinOnline -- 1977 Vol. I 992 1977

(d) Option D. The optional allowance shall continue while both the member and his designated beneficiary are living and upon the death of either, one-half (½) of the optional allowance shall be continued throughout the lifetime of the survivor; or

(e) Option E. The optional allowance will be payable while both the member and his designated beneficiary are living and upon the death of either, two-thirds (⅔) of the optional allowance shall be continued throughout the lifetime of the survivor; or

(f) Option F. Some other benefit or benefits shall be paid either to the member or his surviving designated beneficiary. The provisions of this retirement allowance shall be approved by the retirement board.

(8) There may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member."

Section 6. Section 75-6209, R.C.M. 1947, is amended to read as follows:

"**75-6209. Active membership.** Any of the following persons shall be active members of the retirement system unless otherwise provided by this Title, except for those persons who became eligible for membership on the first day of September, nineteen hundred and thirty-seven (1937) or on the first day of September, nineteen hundred and thirty-nine (1939) and who elected not to be a member under the provisions of the law at that time:

(1) Any person who is a teacher, principal or district superintendent as defined under the provisions of section 75-6101.

(2) Any person who is an administrative officer or a member of the instructional or scientific staff of a unit of the Montana university system.

(3) Any person employed in an instructional services capacity by the office of the superintendent of public instruction, the office of a county superintendent, a public institution of the state of Montana, the Montana state deaf and blind school, or a district.

(4) Any person who shall have elected not to become a member of the retirement system and is re-entering service in a capacity prescribed by subsections (1), (2) and (3) above.

(5) Any person who shall have elected not to become a member of the retirement system, who has been continuously employed in a capacity prescribed by subsection (1), (2) or (3) above since the time of such election and who may thereafter elect to become a member of the retirement system.

Any person who is designated a member by this section shall be employed in the capacity prescribed for his eligibility *for at least 30 days in any fiscal year.* The compensation for the creditable service of any person who is designated a member by this section shall be totally paid by an employer as defined herein. At any time a person's eligibility to become a member of the retirement system is in doubt, the retirement board shall determine his eligibility for membership. *All persons in similar circumstances shall be treated alike.*"

HeinOnline -- 1977 Vol. I 993 1977

Section 7. Section 75-6212, R.C.M. 1947, is amended to read as follows:

"**75-6212. Membership application and creditable service.** Whenever a person becomes *a member of* the retirement system *as required by 75-6209*, he shall *complete an* application form prescribed by the retirement board. The creditable service of a member *begins* on the *date of his employment in a capacity prescribed for his eligibility in 75-6209* and *accumulates* to the member's credit on the basis of the retirement board's policy governing creditable service.

The creditable service of any member shall include the following:

(1) each year of service of a member for which contributions to the retirement system were deducted from his compensation under the provisions of chapter 87, Laws of 1937, chapter 215, Laws of 1939, this act, and their subsequent amendments, except that no credit shall be awarded for those years of service for which the contributions have been withdrawn and not replaced; plus

(2) any out-of-state employment service awarded by the retirement board under the provisions of section 75-6213; plus

(3) any service awarded by a prior service certificate issued under the provisions of chapter 87, Laws of 1937, chapter 215, Laws of 1939 and their subsequent amendments, or under the provisions of section 75-6213; plus

(4) the creditable service established by the retirement board under the provisions of this section shall be final and conclusive for the purposes of the retirement system unless, at any time, the retirement board discovers an error or fraud in the establishment of the creditable service, in which case the retirement board shall re-establish the creditable service; plus

(5) any service awarded for employment while on leave under section 75-6213."

Section 8. Section 75-6214, R.C.M. 1947, is amended to read as follows:

"**75-6214. Duties of employer.** It shall be the duty of each employer to:

(1) deduct the contribution of each member employed by him at the rate prescribed by subsection (1) of section 75-6207 from each salary payment for each payroll period, and transmit the contribution each month to the secretary of the retirement board;

(2) pay to the secretary of the retirement board the employer's contribution prescribed by subsection (3) of section 75-6207 at the time that the employee contributions are transmitted to the secretary of the retirement board;

(3) keep records and, as required by the retirement board, furnish information to the retirement board that is required in the discharge of the retirement board's duties;

HeinOnline -- 1977 Vol. I 994 1977

(4) upon the employment of any person who is required to become a member of the retirement system, inform him of his rights and obligations related to the retirement system. Each person accepting such employment shall be deemed to consent to membership and to the withholding of the contributions from his compensation;

(5) at the request of the retirement board, certify the names of all persons who are eligible for membership or are members of the retirement *system*; and

(6) notify the retirement board of the employment of a person eligible for membership and forward his membership application to the retirement board."

Section 9. Section 75-6216, R.C.M. 1947, is amended to read as follows:

"**75-6216. Guarantee by state.** Regular interest charges payable, the creation and maintenance of reserves in the pension accumulation fund and the maintenance of annuity reserves in the annuity reserve fund as provided for in this Title and the payment of all annuities, pensions, refunds, and other benefits granted under the retirement system are hereby made obligations of the state of Montana."

Section 10. **Effective date.** This act is effective on its passage and approval.

Approved April 7, 1977.

CHAPTER NO. 332

AN ACT DEFINING THE TRUSTEE AND FIDUCIARY RESPONSIBILITIES OF THE RETIREMENT BOARDS OF THE HIGHWAY PATROLMEN'S RETIREMENT SYSTEM, THE GAME WARDENS' RETIREMENT SYSTEM, THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM, THE SHERIFFS' RETIREMENT SYSTEM, AND THE JUDGES' RETIREMENT SYSTEM; REVISING AND CLARIFYING THE LAW PERTAINING TO THESE TRUSTEE AND FIDUCIARY RESPONSIBILITIES AND THE CALCULATION AND PAYMENT OF RETIREMENT ALLOWANCES; AMENDING SECTIONS 31-201, 31-206, 31-220, 68-1401, 68-1405, 68-1406, 68-1419, 68-1503, 68-1803, 68-1901, 68-2002, 68-2003, 68-2004, 68-2104, 68-2203, 68-2501, 68-2602, 68-2604, 68-2619, 93-1112, AND 93-1125, R.C.M. 1947; AND REPEALING SECTION 68-1425, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 31-201, R.C.M. 1947, is amended to read as follows:

"**31-201. Definitions.** Unless the context requires otherwise, *the following definitions apply* in this act:

(1) "Accumulated deductions" means the total of the amounts deducted

from the salary of a contributor, paid into the fund, and standing to his credit in the fund, together with the regular interest thereon.

(2) "Department" means the *public employees' retirement division of the* department of administration.

(3) "Beneficiary" means a person *nominated to receive benefits under this chapter* by *a member's* written designation, duly acknowledged and filed with the department.

(4) "Retired patrolman" means a person in receipt of a retirement allowance under this act.

(5) "Board" means the board of administration provided for in 82A-210.

(6) "Compulsory retirement age" means *60* years of age.

(7) "Contributor" means a person who has accumulated deductions in the fund standing to his credit.

(8) "Final salary" means the average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total compensation earned divided by the number of years served. *Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.*

(9) "Actuarial equivalent" means *a benefit of equal value when computed on the basis of the actuarial tables in use by the system.*

(10) "Account" means the Montana highway patrolmen's retirement account in the agency fund.

(11) "Involuntary retirement" means a retirement not for cause and before retirement age.

(12) "Member's annuity" means payments for life derived from contributions made by the contributor.

(13) "Optional retirement age" means the age at which a contributor may retire after 20 years' service.

(14) "Retirement age" means the age at which a member retires after 25 years of creditable service with the Montana highway patrol.

(15) "Retirement allowance" means the state annuity plus the member's annuity.

(16) "State annuity" means payments for life derived from contributions made by the state of Montana."

HeinOnline -- 1977 Vol. I 996 1977

Section 2. Section 31-206, R.C.M. 1947, is amended to read as follows:

"**31-206. Rules — actuarial data — protection of funds.** *(1)* The board *is the trustee of all moneys collected for the retirement system. It* may establish *such* rules *as* it considers necessary to carry out its functions under this act. The board shall determine the conditions under which persons may *become members of* and receive benefits under the retirement system. *All persons in similar circumstances shall be treated alike. The board* shall keep such data as shall be necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the account, and shall adopt for the retirement system one or more mortality tables.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(3) Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded."

Section 3. Section 31-220, R.C.M. 1947, is amended to read as follows:

"**31-220. Monthly payments of retirement allowances.** The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and *may* not be increased, decreased, revoked or repealed unless by act of the *legislature* of the state of Montana. *However, there may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member.*"

Section 4. Section 68-1401, R.C.M. 1947, is amended to read as follows:

"**68-1401. Definitions.** Unless the context requires otherwise, *the following definitions apply* in this act:

(1) "Accumulated deductions" means the total of the amount deducted from the salary of a contributor, paid into the account, and standing to his credit in the account, together with the regular interest thereon.

(2) "Beneficiary" means a person *nominated to receive benefits under this chapter* by *a member's* written designation, duly acknowledged and filed with the board.

(3) "Retired state game warden" means any person in receipt of a retirement allowance under this act.

(4) "Board" means the Montana state game wardens' retirement board.

(5) "Contributor" means any person who has accumulated deductions in the account standing to his credit.

HeinOnline -- 1977 Vol. I 997 1977

(6) "Final salary" means the average annual compensation received by a contributor, before any deductions have been made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service upon which contributions have been made or, in the event a member has not served 3 years, the total retirement compensation earned divided by the number of years served. *Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.*

(7) "Actuarial equivalent" means *a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.*

(8) "Account" means the Montana state game wardens' retirement account in the agency fund.

(9) "Involuntary retirement" means a retirement not for cause and before retirement age.

(10) "Member's annuity" means payments for life derived from contributions made by the contributor.

(11) "Optional retirement age" means the age at which a contributor may retire after 20 years service or more, provided that the contributor has reached the age of 55 years.

(12) "Retirement age" means the age at which a member retires *as prescribed in 68-1411.*

(13) "Retirement allowance" means the state annuity plus the member's annuity.

(14) "State annuity" means payments for life derived from contributions made by the state *from department of* fish and game moneys in the earmarked revenue fund."

Section 5. Section 68-1405, R.C.M. 1947, is amended to read as follows:

"**68-1405. Retirement account.** *(1) The following shall be paid to the board and shall be credited by the board to the account:*

(a) all contributions by the state *from department of* fish and game moneys in the earmarked revenue fund*;*

(b) all contributions by the state game wardens*;* and

(c) all interest on and increase of the investments and moneys *in the* account.

(2) The board *is the trustee of all moneys collected for the retirement system and has* exclusive control of the administration of *the* account. The state treasurer *is* custodian of the account, subject to the exclusive control of the board as to the administration thereof and the board of investments as to the investment thereof.

HeinOnline -- 1977 Vol. I 998 1977

(3) Whenever there is on deposit in the account a sum in excess of $25,000, such excess *shall* be invested by the board of investments as part of the long-term investment fund. *The part* of the account *not in excess of* $25,000 shall be invested by the board of investments as part of the short-term investment fund when so directed by the board.

(4) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(5) Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded."

Section 6. Section 68-1406, R.C.M. 1947, is amended to read as follows:

"68-1406. Board to make rules — actuarial data. *(1)* The board is charged *with the* proper administration, operation, and enforcement *of this act. The board may make such rules as it considers necessary* and shall *determine* the conditions under which persons may *become members of* and receive benefits under the retirement system. *All persons in similar circumstances shall be treated alike.*

(2) The board shall keep such data as *is* necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors *and* the beneficiaries and shall adopt for the retirement system one or more mortality tables."

Section 7. Section 68-1419, R.C.M. 1947, is amended to read as follows:

"68-1419. Monthly payments of retirement allowances. The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and *may* not be increased, decreased, revoked or repealed unless by act of the *legislature* of the state of Montana. *However, there may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member."*

Section 8. Section 68-1503, R.C.M. 1947, is amended to read as follows:

"68-1503. Definitions. Unless the context requires otherwise, in this act:

(1) "Retirement system" means the public employees' retirement system created by this act.

(2) "Head of department" means the head of any department, institution or branch of the state service which directly pays salaries out of

HeinOnline -- 1977 Vol. I 999 1977

its income or which prepares, approves and submits salary statements of its employees to the department of administration, state auditor and state treasurer for payment.

(3) "Member" means any person included in the membership of the retirement system set forth in section 68-1601 and not excluded in section 68-1602, 68-1603 or 68-2510.

(4) "Board" means the board of administration provided for in section 82A-210.

(5) "Employee" means any person employed by an employer in any capacity whatever and whose salary is paid either by warrant of the employer or from the fees or income of any department or agency of the employer. "Employee" means further any person deemed such pursuant to section 68-2510.

(6) "Retirement fund" means the public employees' retirement account in the agency fund.

(7) "Service" means employment of an employee, except as provided in sections 68-1604 and 68-1605.

(8) "Prior service" shall mean all service rendered as an employee of the state before July 1, 1945, and all service rendered as an employee of a contracting employer before July 1, 1947. Prior service includes all service rendered prior to July 1, 1945, as a member of the legislative assembly or lieutenant governor of the state of Montana.

(9) "Beneficiary" means the person so designated pursuant to section 68-2401.

(10) "Compensation" means remuneration paid out of funds controlled by an employer. The compensation of each member of the legislative assembly and the lieutenant governor of the state of Montana for any year shall be deemed to be that portion of the product of the daily compensation for such position multiplied by three hundred sixty (360), upon which such member elects to pay normal contributions during the year.

(11) "Final compensation" means a member's highest average annual compensation during any three (3) consecutive years of membership service. *Lump-sum payments for sick leave and annual leave paid to the employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.*

(12) "Regular interest" means interest at the rate set from time to time by the board.

(13) "Normal contributions" means contributions required by members under this act and any optional contributions, made under the provisions of sections 68-1605 and 68-1906.

(14) "Additional contributions" means contributions by members under the provisions of section 68-1903.

HeinOnline -- 1977 Vol. I 1000 1977

(15) "Accumulated normal contributions" means the sum of all the normal contributions standing to the credit of a member's individual account without interest.

(16) "Accumulated additional contributions" means the sum of all the additional contributions standing to the credit of a member's individual account, together with the regular interest thereon.

(17) "Accumulated contributions" means the sum of accumulated normal contributions and accumulated additional contributions.

(18) "Pension" means payments for life derived from contributions made from the state controlled funds, or in the case of members from contracting employers, from the funds of such contracting employers, as provided in this act.

(19) "Annuity" means payments for life derived from contributions made by a member as provided in this act.

(20) "Retirement allowance" means the periodic benefit payable following service, early or disability retirement.

(21) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the actuarial tables in use by the system.

(22) "Actuary" means the actuary retained by the board in accordance with section 68-1804.

(23) "Benefit" means the retirement allowance, survivorship allowance, death benefit or refund of accumulated contributions provided by this act.

(24) "Contracting employer" means any political subdivision or governmental entity which has contracted to come into the system.

(25) "Employer" means the state of Montana, its university or any of the colleges, schools, components or units thereof for the purposes of this act, or any political subdivision or governmental entity which has contracted to come into the system.

(26) "Membership service" means service with respect to which normal contributions and employer contributions are paid. A member of the legislative assembly and a lieutenant governor of the state of Montana shall be credited with membership service for that portion of each year for which he pays normal contributions pursuant to section 68-1503 (10).

(27) "Survivorship allowance" means payments for life to the beneficiary of a deceased member as provided in Title 68, chapter 23.

(28) "Creditable service" means the aggregate of membership service and prior service. A member employed on a part-time basis shall receive credit for a year of service for each fiscal year during which such member was employed throughout the year and was engaged in his duties the full amount of time he was required by his employment to be so engaged.

(29) "Employer contributions" means payments to the retirement fund from appropriations of the state of Montana pursuant to section 68-2504 and from contracting employers pursuant to the contracts between them and the board.

HeinOnline -- 1977 Vol. I 1001 1977

(30) "Written application" means a written instrument duly executed and filed with the board and containing all information required by the board, including such proofs of age as the board shall deem necessary.

(31) "Retirement" means withdrawal from active service with a retirement allowance granted under the provisions of this act.

(32) "Disability" and "incapacity for performance of duty" referred to herein as a basis of retirement, means disability of permanent duration or disability of extended and uncertain duration, as determined by the board on the basis of competent medical opinion.

(33) "Fiscal year" means any year commencing with July 1 and ending June 30 next following."

Section 9. Section 68-1803, R.C.M. 1947, is amended to read as follows:

"**68-1803. Rules and regulations — records — annual report by board.** (1) The board of administration may establish such rules and regulations as it deems proper for the administration and operation of the retirement system and enforcement of this act, subject to its limitation. The board shall determine who are employees within the meaning of this act. The board shall be the sole authority under this act as to the conditions under which persons may become members *of* and receive benefits under the retirement system. The board shall determine and may modify allowances for service and disability under this act. The board shall establish those uniform rules and regulations as are necessary to determine credit for fractional years of service. *All persons in similar circumstances shall be treated alike.* The board shall maintain such records and accounts it determines necessary for the administration of this act. Upon the basis of the findings of the actuary pursuant to section 68-1804, the board shall adopt those actuarial tables and those rates of regular interest it determines appropriate to comply with the provisions of this act.

(2) As soon as practical after the close of each fiscal year, the department of administration shall file with the governor a report of its work for that fiscal year. The report shall include a statement as to the accumulated cash and securities in the retirement fund as certified by the state treasurer and the board of investment. The report shall also include the most recent unpublished report of the actuary of the actuarial valuation of the assets and liabilities of the system."

Section 10. Section 68-1901, R.C.M. 1947, is amended to read as follows:

"**68-1901. Management of fund.** The retirement fund shall be managed as follows:

(1) The board *is the trustee of all moneys collected for the retirement system and has* exclusive control of the administration of the fund except as otherwise provided *by law.*

(2) The fund shall be invested by the state board of investments as part of the long-term investment fund.

HeinOnline -- 1977 Vol. I 1002 1977

(3) The department of administration shall deposit monthly in the state treasury all amounts received by it as provided in this act.

(4) The state treasurer *is* custodian of the retirement fund, subject to the exclusive control of the board as to the administration thereof and the board of investments as to the investment thereof.

(5) Interest earned on any cash *deposited* in a bank by the state treasurer and income on other assets constituting a part of the fund shall be paid into the fund as received. Income, of whatever nature, earned on the retirement fund during any fiscal year, in excess of the interest credited to contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies.

(6) Except as herein provided, no member and no employee of the department of administration *may:*

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing therefrom;

(b) directly or indirectly, for himself or as an agent or partner of others, borrow any of its funds or deposits;

(c) in any manner use the same except to make such current and necessary payments as are authorized by the department; *or*

(d) become an endorser or surety as to or in any manner an obligor for investments for the retirement system.

(7) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(8) Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded."

Section 11. Section 68-2002, R.C.M. 1947, is amended to read as follows:

"68-2002. Time for commencement of allowance. The board shall grant a retirement allowance to any member who has fulfilled the eligibility requirements of section 68-2001 and filed the appropriate written application. The retirement allowance shall commence on the *first* day *of the month* following the member's last day of membership service or on the first day of the month in which his application is filed with the board, whichever is later."

Section 12. Section 68-2003, R.C.M. 1947, is amended to read as follows:

"68-2003. Annual amount of retirement allowance payable. *(1)*

The annual amount of retirement allowance payable to a member following his service retirement is the sum of *(a)*, *(b)* and *(c)* as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) one sixtieth (1/60) of his final compensation multiplied by the number of years of his creditable service;

(c) any retirement allowance payable under section 68-2004.

(2) If a member dies after retirement and has not elected an optional retirement allowance provided for in 68-2203, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member."

Section 13. Section 68-2004, R.C.M. 1947, is amended to read as follows:

"**68-2004. Excess allowance to members on July 1, 1973.** The annual amount of retirement allowance payable to a person who was a member on July 1, 1973, shall be increased by the excess, if any, of the greater of (1) or (2) as follows over 68-2003*(1)(b)*:

(1) the sum of a pension for prior service equal to one sixtieth (1/60) of his final compensation multiplied by the number of years of his prior service, an annuity which is the actuarial equivalent of his accumulated normal contributions with regular interest to the day his retirement allowance commences, and a pension for membership service equal to such annuity;

(2) if the member attained age seventy (70) in service, the lesser of four hundred eighty dollars ($480) or one-half (½) of his final compensation."

Section 14. Section 68-2104, R.C.M. 1947, is amended to read as follows:

"**68-2104. Annual allowance for nonduty-related disability — reduction for misconduct.** *(1)* The annual amount of retirement allowance payable to a member eligible for disability retirement for other than duty-related reasons is the sum of *(a)*, *(b)* and *(c)* as follows:

(a) an annuity which is the actuarial equivalent of his accumulated additional contributions on the day his retirement allowance commences;

(b) an annuity which is the actuarial equivalent of his accumulated normal contributions with normal interest to the day his retirement allowance commences;

(c) if, in the opinion of the board, the disability is not due to intemperance, willful misconduct or violation of law on the part of the member, a pension which is the *greater* of *(i)* or *(ii)* as follows:

(i) a pension which, together with the annuity provided under *(b)*, shall make the retirement allowance equal to ninety percent (90%) of *one-sixtieth* of his final compensation multiplied by his years of creditable service;

HeinOnline -- 1977 Vol. I 1004 1977

(ii) a *retirement allowance* equal to twenty-five percent (25%) of his final compensation.

(2) Except as provided in 68-2301, if a member dies after retirement and has not elected an optional retirement allowance provided for in 68-2203, his beneficiary will be paid the excess, if any, of the member's accumulated contributions on the day his retirement allowance commenced over the total of the retirement allowance payments made to the retired member."

Section 15. Section 68-2203, R.C.M. 1947, is amended to read as follows:

"**68-2203. Optional retirement allowance.** (1) The retirement allowance of a member who so elects shall be converted, in lieu of all other benefits under this act, into an optional retirement allowance which is the actuarial equivalent of *the regular retirement* allowance. The optional retirement allowance is a reduced amount payable during the member's lifetime with a subsequent benefit as follows:

(a) option 1—a continuation of the reduced retirement allowance during the lifetime of his named contingent annuitant;

(b) option 2—a continuation of one-half of the reduced retirement allowance during the lifetime of his named contingent annuitant;

(c) option 3—such other actuarially equivalent benefit as *may* be approved by the board.

(2) Election of *an* optional retirement allowance *must* be by written application filed prior to the first payment of the regular retirement allowance.

(3) If either the member or his contingent annuitant *dies* before the member has received the first payment under option *1* or *2*, the election of *the* option *is* automatically canceled.

(4) If a member dies after retirement and within 30 days from the date his election or changed election of an optional retirement allowance is received by the board, then *the* election is void and the death *is* considered as that of a member before retirement."

Section 16. Section 68-2501, R.C.M. 1947, is amended to read as follows:

"**68-2501. Monthly payments — combining installments.** *(1)* A retirement allowance or survivorship allowance granted under the provisions of this act shall be payable in monthly installments, except that the board at its discretion may convert payments of less than $20 per month to larger periodic payments which are the actuarial equivalent of such smaller payments, but which occur less frequently. If payments of at least $20 per year are not so payable, the payment may be commuted into a single sum. A smaller pro rata amount may be paid for part of a month when the retirement allowance ends before the last day of the month.

HeinOnline -- 1977 Vol. I 1005 1977

(2) There may not be any duplication of retirement allowances to a member or beneficiary due to there being more than one period of service of the member."

Section 17. Section 68-2602, R.C.M. 1947, is amended to read as follows:

"**68-2602. Definitions.** *Unless the context requires otherwise, the following definitions apply in this chapter:*

(1) "Accumulated contributions" — *or "accumulated deductions" means* the total amount deducted from the salary of a member during a period of membership service *plus the total amount deducted during a period of prior service and* transferred from the public employees' retirement system, standing to *the member's* credit in the account, together with the accrued interest.

(2) "Beneficiary" — *means* a person who is nominated in an acknowledged document by the member, which is filed with the board.

(3) "Retired sheriff" — *means* a person receiving a retirement allowance under this act.

(4) "Board" — *means* the sheriffs' retirement board.

(5) "Member" — *means* any person who has accumulated deductions in the account to his credit.

(6) "Final salary" — *means* the average annual salary received by a member, before any deductions are made and exclusive of maintenance, allowances, and expenses, for any 3 years of continuous service from which contributions were deducted *or, in* the event that a member has not served 3 years, the total salary earned divided by the number of years served. *Lump-sum payments for sick leave and annual leave paid to an employee upon termination of employment may be used in the calculation of a retirement allowance only to the extent that they are used to replace, on a month for month basis, the normal compensation for a month or months included in the calculation of the final salary. A lump-sum payment may not be added to a single month's compensation.*

(7) "Actuarial equivalent" — *means* a benefit computed using the mortality tables and interest rates adopted by the board, compounded annually.

(8) "Account" — *means* the Montana sheriffs' retirement account administered by the sheriffs' retirement board.

(9) "Vested retirement" — *means* a retirement not for cause and before retirement age.

(10) "Member's annuity" — *means* payments for life derived from contributions made by the contributor while employed.

(11) "Retirement allowance" — *means* the state annuity plus the member's annuity.

(12) "State annuity" — *means* payments for life derived from county contributions into the sheriffs' retirement account, together with any supplemental legislative appropriations to *the* account.

HeinOnline -- 1977 Vol. I 1006 1977

(13) "Creditable service" — *means* the aggregate of all of a member's current and prior service.

(14) "Membership service" — *means* service for which an amount is deducted from the salary of a member and paid into the account.

(15) "Prior service" — *means* service for which credit was granted by the public employees' retirement system of the state of Montana.

(16) "Service" — *means* employment as a sheriff.

(17) "Sheriff" — *means* any elected or appointed county sheriff, undersheriff, or regularly appointed and acting deputy sheriff."

Section 18. Section 68-2604, R.C.M. 1947, is amended to read as follows:

"68-2604. Functions of the board — protection of funds. *(1)* The board *is the trustee of all moneys collected for the retirement system and* is charged with the proper administration, operation, and enforcement of this act. *It may establish such rules as it considers necessary.* The board shall prescribe the conditions under which persons may *become members of* and receive benefits under the retirement system. *All persons in similar circumstances shall be treated alike.* It shall keep the data necessary for actuarial valuation purposes. It shall have biennial actuarial investigations made into the mortality and service experience of the members and the beneficiaries of the account and shall adopt one or more mortality tables.

(2) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(3) Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded."

Section 19. Section 68-2619, R.C.M. 1947, is amended to read as follows:

"68-2619. Payments to be monthly and fixed. The retirement allowances granted under the provisions of this act shall be paid in monthly annuities and shall not be increased, decreased, revoked, or repealed unless by an act of the legislative assembly of the state of Montana. *However, there may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of the member."*

Section 20. Section 93-1112, R.C.M. 1947, is amended to read as follows:

"93-1112. Powers and duties of board — protection of funds. *(1)*

HeinOnline -- 1977 Vol. I 1007 1977

The board *is the trustee of all moneys collected for the retirement system and* may establish such rules as it *considers* necessary. *Within* the limitations of this act, *the board is charged with and is the authority as to* its proper administration, operation, and enforcement. *The board is* the authority as to the conditions under which persons may *become members of* and receive benefits under the retirement system. *All persons in similar circumstances shall be treated alike.*

(2) The board shall keep such data as *is* necessary for actuarial valuation purposes. It shall cause to be made periodic actuarial investigations into the mortality and service experience of the contributors to and the beneficiaries of the fund and shall adopt for the retirement system one or more mortality tables.

(3) The assets of the retirement system may not be used for or diverted to any purpose other than for the exclusive benefit of the members and their beneficiaries and for paying the reasonable expenses of administering the retirement system.

(4) Upon termination of the retirement system, termination of employment of a substantial number of members which would constitute a partial termination of the retirement system, or complete discontinuance of contributions to the retirement system, the retirement allowance accrued to each member directly affected by such occurrence becomes fully vested and nonforfeitable to the extent funded."

Section 21. Section 93-1125, R.C.M. 1947, is amended to read as follows:

"**93-1125. Monthly payments of retirement allowances.** The retirement allowances granted under the provisions of this act shall be paid in equal monthly installments and *may* not be increased, decreased, revoked or repealed unless by act of the *legislature* of the state of Montana. *However, there may not be any duplication of benefits to a member or beneficiary due to there being more than one period of service of a member.* No retirement allowances *may* be approved by the board while the member is drawing full compensation as a judge or justice."

Section 22. **Repealer.** Section 68-1425, R.C.M. 1947 is repealed.

Approved April 7, 1977.

CHAPTER NO. 333

AN ACT TO PERMIT LEGISLATORS TO CONTINUE TO PARTICIPATE IN PUBLIC RETIREMENT SYSTEMS WHILE SERVING IN THE MONTANA LEGISLATURE; PROVIDING AN IMMEDIATE EFFECTIVE DATE AND RETROACTIVE APPLICATION TO JANUARY 1, 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 43-310.2 that reads as follows:

HeinOnline -- 1977 Vol. I 1008 1977

43-310.2. Continued participation in public retirement systems. (1) The purpose of this section is to provide a means whereby persons serving in the Montana legislature may continue their participation in public retirement systems governed by state law. This section is not intended to provide duplicate credit for the same service in two retirement systems supported wholly or in part by public funds. This section does not affect contribution rates or benefit payments specifically provided for in the laws governing the operation of individual retirement systems.

(2) A person who is engaged in official duties as a member of the Montana legislature and who is otherwise eligible to participate as a member or contributor of a public retirement system governed by state law may, but is not required to, continue his participation in such public retirement system while engaged in his official duties as a legislator.

(3) A legislator who elects to continue participation as provided in subsection (2) shall:

(a) continue his payments into the fund of the retirement system at the rate currently in effect in such system based on his monthly salary as a member of that system; or

(b) continue his payments into the fund of the retirement system at the rate currently in effect in such system based on his monthly salary as a legislator.

(4) The state contribution shall be by legislative appropriation. It shall equal the appropriate employer contribution at the rate currently in effect in the system.

Section 2. **Retroactive effect.** In its application to members of the 45th legislature, this act is retroactive to January 1, 1977.

Section 3. **Effective date.** This act is effective upon its passage and approval.

Approved April 7, 1977.

CHAPTER NO. 334

AN ACT TO GENERALLY AND SUBSTANTIVELY REVISE, REPEAL, AND RECODIFY THE ELECTION LAWS RELATING TO THE CRIMINAL PROVISIONS FOR ELECTION AND CAMPAIGN PRACTICES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 23-47-101 that reads as follows:

23-47-101. Election code not to supersede criminal code — statute of limitations. (1) The penalty provisions of the election laws of this state are intended to supplement and not to supersede the provisions of the Montana Criminal Code.

HeinOnline -- 1977 Vol. I 1009 1977

(2) Unless otherwise provided, the general time limitations for prosecutions for violations of the election laws are those specified in 94-1-106.

Section 2. There is a new R.C.M. section numbered 23-47-102 that reads as follows:

23-47-102. Trivial benefits not covered by criminal provisions. It is not the intent of the election laws of this state to criminalize activities involving trivial benefits incidental to the campaign process which involve no substantial risk of undermining the election process.

Section 3. There is a new R.C.M. section numbered 23-47-103 that reads as follows:

23-47-103. Violations as misdemeanor. A person who knowingly violates a provision of the election laws of this state for which no other penalty is specified is guilty of a misdemeanor.

Section 4. There is a new R.C.M. section numbered 23-47-104 that reads as follows:

23-47-104. Attempt as a violation. An attempt, as defined in 94-4-103, to violate a provision of the election laws of this state is itself a violation of the election laws and is punishable as provided in 94-4-103.

Section 5. There is a new R.C.M. section numbered 23-47-105 that reads as follows:

23-47-105. Aiding and abetting. A person who is legally accountable, as provided in 94-2-107, for the conduct of another which violates a provision of the election laws of this state is also guilty of a violation of that provision.

Section 6. There is a new R.C.M. section numbered 23-47-106 that reads as follows:

23-47-106. Ineligibility to hold office because of conviction. In addition to all other penalties prescribed by law:

(1) a candidate who is convicted of violating any provision of Title 23 or Title 37, except 23-47-115(10), is ineligible to be a candidate for any public office in the state of Montana until his final discharge from state supervision;

(2) a campaign treasurer who is convicted of violating any provision of Title 23 or Title 37, except 23-47-115(10), is ineligible to be a candidate for any public office or to hold the position of campaign treasurer in any campaign in the state of Montana until his final discharge from state supervision;

(3) if an elected official, while a candidate for nomination, was guilty of any act which was wrongful or unlawful or which would be sufficient to cause his removal from office if committed during the general election campaign, he shall, upon conviction, be removed from office in the same manner as though the act had been committed during the general election, even though he may have been regularly elected and was not guilty of a wrongful or unlawful act during the election at which he was elected to office.

HeinOnline -- 1977 Vol. I 1010 1977

Section 7. There is a new R.C.M. section numbered 23-47-107 that reads as follows:

23-47-107. Voiding election. (1) If a court of competent jurisdiction finds that the violation of any provision of Title 23 or Title 37, by any candidate or political committee probably affected the outcome of any election, the result of that election may be held void and a special election held within 60 days of that finding. If the violation occurred during a primary election, the court may direct the appropriate political party to select a new candidate according to the provisions of state law and the custom of the party. Except as provided in subsection (2), an action to void an election shall be commenced within 1 year of the date of the election in question.

(2) An action to void a bond election shall be commenced within 60 days of the date of the election in question.

Section 8. There is a new R.C.M. section numbered 23-47-108 that reads as follows:

23-47-108. Powers of district court. In any action brought under the election laws of this state, the appropriate district court may enjoin any person to prevent the doing of any prohibited act or to compel the performance of any act required by the election laws.

Section 9. There is a new R.C.M. section numbered 23-47-109 that reads as follows:

23-47-109. Electors and ballots. (1) An elector may not show the contents of his ballot to anyone after it is marked. No elector may place any mark upon the ballot by which it may be identified as the one voted by him.

(2) An elector may not receive a ballot from any person other than an election judge and may not vote any ballot except one received from an election judge. No person other than an election judge may deliver a ballot to an elector.

(3) No person may solicit an elector to show his ballot after it is marked.

(4) An elector who does not vote a ballot delivered to him shall, before leaving the polling place, return the ballot to an election judge.

Section 10. There is a new R.C.M. section numbered 23-47-110 that reads as follows:

23-47-110. Conduct of officers and clerks of election. No officer or clerk of election may:

(1) deposit in a ballot box a ballot on which the official stamp, as provided by law, does not appear;

(2) prior to putting the ballot of an elector in the ballot box, attempt to find out any name on the ballot or open or examine the folded ballot of an elector;

HeinOnline -- 1977 Vol. I 1011 1977

(3) look at any mark made by the voter upon the ballot;

(4) make or place any mark or device on any folded ballot with the intent to ascertain the name of any person for whom the elector has voted;

(5) allow any person other than the voter to be present at the marking of the ballot except as provided in 23-3609 and 23-3812(1); or

(6) make a false statement in a certificate regarding affirmation.

Section 11. There is a new R.C.M. section numbered 23-47-111 that reads as follows:

23-47-111. Interference with officials. A person who, in any manner, interferes with the officers holding an election or conducting a canvass so as to prevent the election or canvass from being fairly held and lawfully conducted is guilty of obstruction of a public servant and is punishable as provided in 94-7-302.

Section 12. There is a new R.C.M. section numbered 23-47-112 that reads as follows:

23-47-112. Official misconduct. A person charged with performance of any duty under the provisions of the election laws of this state is guilty of official misconduct and is punishable as provided in 94-7-401 whenever the person:

(1) knowingly neglects or refuses to perform that duty; or

(2) knowingly and fraudulently acts, in his official capacity, in contravention or violation of any provision of the election laws.

Section 13. There is a new R.C.M. section numbered 23-47-113 that reads as follows:

23-47-113. Tampering with election records and information. A person is guilty of tampering with public records or information and is punishable as provided in 94-7-209 whenever the person:

(1) suppresses any declaration or certificate of nomination which has been filed;

(2) purposely causes the vote on a machine to be incorrectly recorded as to the candidate or ballot issue voted on;

(3) in an election return, knowingly adds to or subtracts from the votes actually cast at the election;

(4) changes any ballot after the same has been deposited in the ballot box or adds any ballot to those legally polled at an election, either before or after the ballots have been counted, with the purpose of changing the result of the election;

(5) causes any name to be placed on the registry lists other than in the manner provided by this title; or

(6) changes a poll list or check list.

Section 14. There is a new R.C.M. section numbered 23-47-114 that reads as follows:

HeinOnline -- 1977 Vol. I 1012 1977

23-47-114. Injury to election equipment, materials, and records. A person is guilty of criminal mischief or tampering with public records and information, as appropriate, and is punishable as provided in 94-6-102 or 94-7-209, as applicable, whenever the person:

(1) prior to or on election day, knowingly defaces or destroys any list of candidates posted in accordance with the provisions of the law;

(2) during an election:

(a) removes or defaces the cards printed for the instruction of the voters; or

(b) removes or destroys any of the supplies or other conveniences placed in the booths or compartments for the purpose of enabling a voter to prepare his ballot;

(3) removes any ballots from the polling place before the closing of the polls with the purpose of changing the result of the election;

(4) carries away or destroys any poll lists, check lists, ballots, or ballot boxes for the purpose of disrupting or invalidating an election;

(5) knowingly detains, mutilates, alters, or destroys any election returns;

(6) mutilates, secretes, destroys, or alters election records, except as provided by law;

(7) tampers with, disarranges, defaces, injures, or impairs a voting machine;

(8) mutilates, injures, or destroys any ballot or appliance used in connection with a voting machine; or

(9) fraudulently defaces or destroys a declaration or certificate of nomination.

Section 15. There is a new R.C.M. section numbered 23-47-115 that reads as follows:

23-47-115. Deceptive election practices. A person is guilty of false swearing, unsworn falsification, or tampering with public records or information, as appropriate, and is punishable as provided in 94-7-203, 94-7-204, or 94-7-209, as applicable, whenever the person:

(1) falsely represents his name or other information required upon his registry card and causes registration with the card;

(2) signs a registry card knowingly witnessing any false or misleading statement;

(3) knowingly submits a false report or deliberately fails to include information in a report required by Title 23 or Title 37;

(4) knowingly causes a false statement, certificate, or return of any kind to be signed;

(5) falsely makes a declaration or certificate of nomination;

HeinOnline -- 1977 Vol. I 1013 1977

(6) files or receives for filing a declaration or certificate of nomination knowing that all or part of the declaration or certificate is false;

(7) forges or falsely makes the official endorsement of a ballot;

(8) forges or counterfeits returns of an election purporting to have been held at a precinct, municipality, or ward where no election was in fact held;

(9) knowingly substitutes forged or counterfeit returns of election in place of the true returns for a precinct, municipality, or ward where an election was held;

(10) signs a name other than his own to a petition, signs more than once for the same measure, or signs a petition while not being a qualified elector of the state; or

(11) makes a false oath or affidavit where an oath or affidavit is required by law.

Section 16. There is a new R.C.M. section numbered 23-47-116 that reads as follows:

23-47-116. Deceiving an elector. A person who deceives an elector voting under 23-3609 or 23-3812 is guilty of a misdemeanor.

Section 17. There is a new R.C.M. section numbered 23-47-117 that reads as follows:

23-47-117. Fraudulent registration. (1) No person may knowingly cause, procure, or allow himself to be registered in the official register of any election district of any county knowing himself not to be entitled to such registration.

(2) No person may falsely personate another and cause the person so personated to be registered.

(3) When, on the trial of the person charged with any offense under the provisions of this section, it appears in evidence that the accused stands registered in the register of any county without being qualified for such registration, the court shall order such registration canceled.

Section 18. There is a new R.C.M. section numbered 23-47-118 that reads as follows:

23-47-118. Limits on voting rights. (1) No person may vote who is not entitled to vote. No person may vote more than once at an election.

(2) No person may, for any election, apply for a ballot in the name of some other person, whether it be the name of a living, dead, or fictitious person.

Section 19. There is a new R.C.M. section numbered 23-47-119 that reads as follows:

23-47-119. Electioneering. (1) No person may do any electioneering on election day within any polling place or any building in which an election is being held or within 200 feet thereof.

HeinOnline -- 1977 Vol. I 1014 1977

(2) No officer or clerk of election may do any electioneering on election day.

(3) No person may buy, sell, give, or provide a political badge, button, or other insignia to be worn at or about the polls on the day of an election, and no such political badge, button, or other insignia may be worn at or about the polls on an election day.

Section 20. There is a new R.C.M. section numbered 23-47-120 that reads as follows:

23-47-120. Betting on elections. (1) A person who makes, offers, or accepts any bet or wager upon the result of any election; upon the success or failure of any person or candidate; upon the number of votes to be cast, either in the aggregate or for any particular candidate; or upon the vote to be cast by any person is guilty of a misdemeanor.

(2) If the bet or wager is made for the purpose of influencing the result of the election, the act of betting is grounds to challenge the bettor's right to vote.

(3) A candidate who, before or during an election campaign, makes any bet or wager of anything of pecuniary value; in any manner becomes a party to any bet or wager on the result of the election in his electoral district (or in any part thereof) or on any event or contingency relating to any pending election; or provides money or other valuables to be used by any person in betting or wagering upon the results of any impending election is guilty of a misdemeanor.

Section 21. There is a new R.C.M. section numbered 23-47-121 that reads as follows:

23-47-121. Preventing public meetings of electors. (1) A person who, by threats, intimidations, or violence, willfully hinders or prevents electors from assembling in public meeting for the consideration of public questions is guilty of a misdemeanor.

(2) A person who willfully disturbs or breaks up a public meeting of electors or others, lawfully being held for the purpose of considering public questions, or a public school meeting is guilty of a misdemeanor.

Section 22. There is a new R.C.M. section numbered 23-47-122 that reads as follows:

23-47-122. Illegal influence of voters. No person, directly or indirectly, by himself or by any other person on his behalf, for any election, to or for any person on behalf of any elector or to or for any person, in order to induce any elector to vote or refrain from voting or to vote for or against any particular candidate, political party ticket, or ballot issue, may:

(1) give, lend, agree to give or lend, offer, or promise any money, liquor, or valuable consideration or promise or endeavor to procure any money, liquor, or valuable consideration;

(2) promise to appoint another person or promise to secure or aid in

HeinOnline -- 1977 Vol. I 1015 1977

securing the appointment, nomination, or election of another person to a public or private position or employment or to a position of honor, trust, or emolument, in order to aid or promote his nomination or election, except that he may publicly announce or define what is his choice or purpose in relation to an election in which he may be called to take part, if elected.

Section 23. There is a new R.C.M. section numbered 23-47-123 that reads as follows:

23-47-123. Illegal consideration for voting. No person, directly or indirectly, by himself or by any other person in his behalf may:

(1) before or during any election, for voting or agreeing to vote or for refraining or agreeing to refrain from voting at the election or for inducing another to do so:

(a) receive, agree, or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person; or

(b) approach any candidate or agent or person representing or acting on behalf of any candidate at the election and ask for or offer to agree or contract for any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person;

(2) after an election, for having voted or refrained from voting or having induced any other person to vote or refrain from voting at the election:

(a) receive any money, gift, loan, valuable consideration, office, place, or employment; or

(b) approach any candidate or any agent or person representing or acting on behalf of any candidate and ask for or offer to receive any money, gift, loan, liquor, valuable consideration, office, place, or employment for himself or any other person.

Section 24. There is a new R.C.M. section numbered 23-47-124 that reads as follows:

23-47-124. Illegal assistance to naturalized citizens. No elector, candidate for nomination, nominee, or political committee may pay or offer to pay the fee for any person who is about to or has made his declaration of intention or who has taken out or is about to take out his final papers as a citizen of the United States, with the purpose of influencing that person's vote in an election. No person may receive any money or other valuable thing to pay such fee or permit the same to be paid for him for such a purpose.

Section 25. There is a new R.C.M. section numbered 23-47-125 that reads as follows:

23-47-125. Officers and clerks not to influence voter. No officer or clerk of election, while acting in his official capacity, may, by menace, reward, or promise of reward, induce or attempt to induce any elector to cast a vote contrary to his original intention or desire.

HeinOnline -- 1977 Vol. I 1016 1977

Section 26. There is a new R.C.M. section numbered 23-47-126 that reads as follows:

23-47-126. Coercion or undue influence of voters. (1) No person, directly or indirectly, by himself or any other person in his behalf, in order to induce or compel a person to vote or refrain from voting for any candidate, the ticket of any political party, or any ballot issue before the people, may:

(a) use or threaten to use any force, coercion, violence, restraint, or undue influence against any person; or

(b) inflict or threaten to inflict, by himself or any other person, any temporal or spiritual injury, damage, harm, or loss upon or against any person.

(2) No person who is a minister, preacher, priest, or other church officer or who is an officer of any corporation or organization, religious or otherwise, may, other than by public speech or print, urge, persuade, or command any voter to vote or refrain from voting for or against any candidate, political party ticket, or ballot issue submitted to the people because of his religious duty or the interest of any corporation, church, or other organization.

(3) No person may, by abduction, duress, or any fraudulent contrivance, impede or prevent the free exercise of the franchise by any voter at any election or thereby compel, induce, or prevail upon any elector to give or to refrain from giving his vote at any election.

(4) No person may, in any manner, interfere with a voter lawfully exercising his right to vote at an election so as to prevent the election from being fairly held and lawfully conducted. No person may obstruct the doors or entries of any polling place.

Section 27. There is a new R.C.M. section numbered 23-47-127 that reads as follows:

23-47-127. Demands and requests of candidates. (1) No person may demand, solicit, request, or invite any payment or contribution for any religious, political, charitable, or other cause or organization supposed to be primarily or principally for the public good from a person who seeks to be or has been nominated or elected to any office in return for political support by the donee. No candidate or elected person may make any payment or contribution if it is demanded or asked for such a purpose during the time he is a candidate for nomination or election to or an incumbent of any office. No payment or contribution for any purpose may be made a condition precedent to the putting of a name on any caucus or convention ballot or nomination paper or petition or to the performance of any duty imposed by law on a political committee.

(2) No person may demand, solicit, ask, or invite any candidate to subscribe to the support of any club or organization, buy tickets to any entertainment or ball, or subscribe for or pay for space in any book, program, periodical, or other publication in return for political support by the donee. No candidate may make any such payment or contribution with apparent hope or intent to influence the result of the election.

HeinOnline -- 1977 Vol. I 1017 1977

(3) This section does not apply to the soliciting of any business advertisement for insertion in a periodical in which the candidate was regularly advertising prior to his candidacy, to ordinary business advertising, to his regular payment to any organization (religious, charitable, or otherwise) of which he may have been a member or to which he may have been a contributor for more than 6 months before his candidacy, or to ordinary contributions at church services.

Section 28. There is a new R.C.M. section numbered 23-47-128 that reads as follows:

23-47-128. Bribing members of political gatherings. (1) No person may give or offer a bribe to any officer or member of any legislative caucus, political convention, or political gathering of any kind held for the purpose of nominating candidates for offices of honor, trust, or profit in this state, with intent to influence the person to whom such bribe is given or offered to be more favorable to one candidate than another. No person who is a member of any of the bodies mentioned in this section may receive or offer to receive any such bribe.

(2) A violation of this section is punishable as provided in 94-7-102(2).

Section 29. There is a new R.C.M. section numbered 23-47-129 that reads as follows:

23-47-129. Improper nominations. (1) No person may pay or promise valuable consideration to another, in any manner or form, for the purpose of inducing him to be or to refrain from or to cease being a candidate, and no person may solicit or receive any payment or promise from another for such purpose.

(2) No person, in consideration of any gift, loan, offer, promise, or agreement, as mentioned in subsection (1), may:

(a) allow himself to be nominated or refuse to allow himself to be nominated as a candidate at an election;

(b) become, by himself or in combination with any other person or persons, a candidate for the purpose of defeating the nomination or election of any other person, without a bona fide intent to obtain the office; or

(c) withdraw if he has been so nominated.

(3) Upon complaint made to any district court, the judge shall issue a writ of injunction restraining the officer whose duty it is to prepare official ballots for a nominating election from placing the name of a person thereon as a candidate for nomination to any office if the judge is convinced that:

(a) the person has sought the nomination or seeks to have his name presented to the voters as a candidate for nomination by any political party for any mercenary or venal consideration or motive; and

(b) his candidacy for the nomination is not in good faith.

Section 30. There is a new R.C.M. section numbered 23-47-130 that reads as follows:

HeinOnline -- 1977 Vol. I 1018 1977

23-47-130. Providing money for bribery or corrupt practices. No person may knowingly pay or cause to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery or corrupt practices at any election.

Section 31. There is a new R.C.M. section numbered 23-47-131 that reads as follows:

23-47-131. Illegal contributions. Any person who accepts a contribution prohibited by Title 23 or Title 37, R.C.M. 1947; who makes a contribution in excess of the amounts specified in Title 23 or Title 37, R.C.M. 1947; or who makes a contribution in any manner other than that provided in Title 23 or Title 37, R.C.M. 1947, is guilty of an illegal practice and is punishable by a fine not to exceed $1,000, imprisonment in the county jail for a term not to exceed 6 months, or both, for each separate violation.

Section 32. There is a new R.C.M. section numbered 23-47-132 that reads as follows:

23-47-132. Publications in newspapers and periodicals. (1) No publisher of a newspaper or other periodical may insert, either in its advertising or reading columns, any paid matter which is designed or tends to aid, injure, or defeat any candidate, any political party or organization, or any measure before the people, unless it is stated therein that it is a paid advertisement. The name of the chairman or secretary, the names of the other officers of the political or other organization inserting the same, or the name of some voter who is responsible therefor (with his address) is to appear in such advertisement.

(2) No person may pay the owner, editor, publisher, or agent of any newspaper or other periodical to induce him to editorially advocate or oppose any candidate for nomination or election, and no such owner, editor, publisher, or agent may accept such payment.

(3) A person who violates this section is guilty of a misdemeanor.

Section 33. There is a new R.C.M. section numbered 23-47-133 that reads as follows:

23-47-133. Election materials not to be anonymous. It is unlawful to write, print, publish, mimeograph, type, or otherwise produce or circulate through the mails or otherwise any letter, circular, bill, dodger, pamphlet, placard, poster, or other document relating to any election or to any candidate, political party, political committee, or ballot issue at any election, unless the same bears on its face the name and address of the person paying for the printing or publishing and the name of the printer and publisher. A person writing, printing, publishing, circulating, posting, mimeographing, typing, or causing to be written, printed, circulated, posted, mimeographed, typed, or published any such letter, bill, placard, dodger, pamphlet, circular, poster, or other document which fails to bear on its face the name and address of the person paying for the printing or publishing and the name of the printer or publisher is guilty of an illegal practice and shall on conviction thereof be punished by a fine of not less than $10 or more than $1,000.

HeinOnline -- 1977 Vol. I 1019 1977

Section 34. There is a new R.C.M. section numbered 23-47-134 that reads as follows:

23-47-134. Unlawful acts of employers and employees. (1) It is unlawful for any employer, in paying his employees the salary or wages due them, to enclose their pay in pay envelopes upon which is written or printed the name of any candidate or political mottoes, devices, or arguments containing threats or promises (express or implied) calculated or intended to influence the political opinions or actions of such employees. It is unlawful for an employer to exhibit in a place where his workers or employees may be working any handbill or placard containing any threat, promise, notice, or information that in case any particular ticket or political party, organization, or candidate is elected work in his place or establishment will cease, in whole or in part, or will be continued or increased; his place or establishment will be closed; the salaries or wages of his workers or employees will be reduced or increased; or other threats or promises (express or implied) intended or calculated to influence the political opinions or actions of his workers or employees. This section shall apply to corporations, individuals, and public officers and employees.

(2) No person may attempt to coerce, command, or require a public employee to give money, service, or other thing of value to aid or promote any political committee or to aid or promote the nomination or election of any person to public office.

(3) No public employee may solicit any money, influence, service, or other thing of value or otherwise aid or promote any political committee or the nomination or election of any person to public office while on the job or at his place of employment. However, nothing in this section is intended to restrict the right of a public employee to express his personal political views.

(4) Any person who violates the provisions of this section shall be fined not to exceed $1,000, be imprisoned in the county jail for a term not to exceed 6 months, or both, for each separate offense.

Section 35. There is a new R.C.M. section numbered 23-47-135 that reads as follows:

23-47-135. Prohibition of salary increase contribution. A corporation may not increase the salary of any officer or employee or give an emolument to any officer, employee, or other person with the intention that the increase in salary, the emolument, or any part thereof be contributed to support or oppose a candidate or ballot issue.

Section 36. There is a new R.C.M. section numbered 23-47-136 that reads as follows:

23-47-136. Proceedings against corporations. In like manner as prescribed for the contesting of an election, any corporation organized under the laws of or doing business in the state of Montana may be brought into court on the ground of deliberate, serious, and material violation of the provisions of Title 23 or Title 37. The petition shall be filed in the district court in the county where the corporation has its principal office or where the violation of law is averred to have been committed. The corporation, upon conviction, is punishable:

HeinOnline -- 1977 Vol. I 1020 1977

(1) if it is organized under the laws of this state, by a fine not to exceed $10,000, by cancellation of the certificate of incorporation, or by both fine and cancellation; or

(2) if it is a foreign corporation, by a fine not to exceed $10,000, by enjoining the corporation from further transacting business in this state, or by both fine and injunction.

Section 37. There is a new R.C.M. section numbered 23-47-137 that reads as follows:

23-47-137. Transfer of convention credential. No person may invite, offer, or effect the transfer of any convention credential in return for any payment of money or other valuable thing.

Section 38. There is a new R.C.M. section numbered 23-47-138 that reads as follows:

23-47-138. Unlawful for political party to endorse judicial candidate. A political party which endorses a candidate for justice of the supreme court or district court judge, a person who participates in an endorsement by a political party, or a person who acts on behalf of a political party in endorsing a judicial candidate is guilty of a misdemeanor.

Section 39. There is a new R.C.M. section numbered 23-47-139 that reads as follows:

23-47-139. Prohibition on certain public officers from acting as delegates or members of political committees. No holder of a public position, other than an office filled by the voters, may be a delegate to a convention for the election district that elects the officer or board under whom he directly or indirectly holds such position, nor may he be a member of a political committee for such district.

Section 40. Section 23-3006, R.C.M. 1947, is amended to read as follows:

"23-3006. Method of registering — absent electors in the United States service. (1) An elector may register by appearing before the registrar or deputy registrar in the county in which he resides and:

(a) *answering* any questions asked by the registrar concerning items of information called for by registry cards;

(b) *signing* and verifying or affirming the affidavit or affidavits on the card.

(2) An elector may register by mailing, postage paid, a properly completed registry card to the registrar in the county in which he resides.

(3) The registrar shall send registry cards for mail registrations to all persons requesting them, whether the application is made in writing or by telephone, and shall, in addition, arrange for the cards to be available from city and town clerks within the county and may arrange for them to be available at other locations within the county. The mail registry card shall be in the form prescribed by the secretary of state.

HeinOnline -- 1977 Vol. I 1021 1977

(4) The elector shall complete, sign, and either verify or affirm the registry card before a notary public or other officer empowered to administer oaths or complete and sign the card and obtain the signature, address, and voting precinct of at least one registered voter in the county, who shall witness the facts stated on the registry card.

(5) The registration card must be received on or before the day of the close of registration.

(6) Upon receipt of a properly executed registry card the county registrar shall cause to be sent to the new voter a postcard affirming registration and giving the location of the voter's polling place. On the face of the notification shall be printed the words, "Do Not Forward, Return Postage Guaranteed"

(7) Any elector in the United States service who is absent from the state and the county of which he is a resident may register by:

(a) *mailing* the registry card filled out and signed under oath to the registrar; or

(b) *mailing* the federal post card application filled out and signed under oath to the registrar."

Section 41. Section 23-3605, R.C.M. 1947, is amended to read as follows:

"**23-3605. Preventing obstructions.** An election officer, sheriff, constable, or other peace officer may clear the passageway, prevent any obstruction, and arrest any person obstructing the passageway to a polling place."

Section 42. Section 23-3607, R.C.M. 1947, is amended to read as follows:

"**23-3607. No person except election judge to put ballot or other object in a ballot box.** No person except an election judge *may* put a ballot, any paper resembling a ballot, or anything other than a ballot in a ballot box."

Section 43. Section 23-3812, R.C.M. 1947, is amended to read as follows:

"**23-3812. Assistance to illiterate, blind, or physically disabled voters.** A voter who declares he is unable to vote because he cannot read or write, is blind, or physically disabled shall be assisted as provided in 23-3609."

Section 44. Section 23-3822, R.C.M. 1947, is amended to read as follows:

"**23-3822. Applicability of election laws in general where not in conflict with this chapter.** All laws applicable to elections where voting is not done by machine and all penalties prescribed for violations of those laws apply to elections and precincts where voting machines are used if they are not in conflict with the provisions of 23-3801 through *23-3819*."

Section 45. Section 23-4746, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1022 1977

"**23-4746. Challenging voters — procedure.** *(1)* Whenever any person's right to vote *at a primary election is* challenged and he has taken the oath prescribed by the statutes, then *a clerk* of election *shall* write in the pollbooks at the end of *the* person's name the words "challenged and sworn", with the name of the challenger. Thereupon *an election judge* shall write upon the back of the ballot offered by *the* challenged voter the number of his ballot, in order that the *ballot* may be identified in any future contest of the results of the election and be cast out if it *appears* to the court to have been for any reason wrongfully or illegally voted for any candidate or on any question.

(2) This marking of the name of *the* challenged voter *and* the testimony of any judge or clerk of election in reference thereto or in reference to the manner in which *the* challenged person voted, if *the* testimony *is* given in the course of any contest, investigation, or trial wherein the legality of the vote of such person is questioned for any reason, *is* not a violation of *subsections (2) or (4) of 23-47-110.*"

Section 46. Section 23-4788, R.C.M. 1947, is amended to read as follows:

"**23-4788. Prosecutions and powers of the county attorney.** (1) When the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution *under the election laws of this state,* he shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after he receives notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may at any time prior to the expiration of the *30-day* time period specified in subsection (1) waive his right to prosecute and thereby authorize the commissioner to initiate the appropriate civil or criminal action *under the election law.*

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of Title 23 *or Title 37.*

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution shall be paid by the state of Montana, *and all fines and forfeitures imposed pursuant to a prosecution by the commissioner shall be deposited in the state general fund.*

(5) Nothing in *Title 23 or Title 37* shall prevent a county attorney from inspecting any records, accounts, or books which must be kept pursuant to the provisions of Title 23 *or Title 37,* that are held by *a* political committee or candidate involved in an election to be held within the county. However, *the* inspections must be conducted during reasonable office hours.

(6) A county attorney shall have the authority to administer oaths and affirmations; subpoena witnesses; compel their attendance; take evidence;

HeinOnline -- 1977 Vol. I 1023 1977

and require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of Title 23 *or Title 37.*"

Section 47. Section 37-109, R.C.M. 1947, is amended to read as follows:

"**37-109. Who may petition.** Each qualified elector of the state of Montana may sign a petition for the referendum, for the initiative, or for constitutional referendum or constitutional initiative."

Section 48. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 49. **Repealer.** Sections 23-2606, 23-3025, 23-3029, 23-3317, 23-3717, 23-3820, 23-3821, 23-4511, 23-4701, 23-4702, 23-4703, 23-4704, 23-4705, 23-4706, 23-4707, 23-4708, 23-4709, 23-4710, 23-4711, 23-4712, 23-4713, 23-4714, 23-4715, 23-4716, 23-4717, 23-4718, 23-4719, 23-4720, 23-4721, 23-4723, 23-4724, 23-4732, 23-4738, 23-4740, 23-4741, 23-4742, 23-4743, 23-4744.1, 23-4745, 23-4747, 23-4748, 23-4749, 23-4751, 23-4752, 23-4753, 23-4754, 23-4756, 23-4768, 23-4773, and 23-4793, R.C.M. 1947, are repealed.

Approved April 8, 1977.

CHAPTER NO. 335

AN ACT RELATING TO CIVIL DEFENSE, DISASTER, AND EMERGENCY SERVICES; PROVIDING POWERS, DUTIES, AND AUTHORITY FOR PREPAREDNESS AND ASSISTANCE IN EMERGENCIES AND DISASTERS; AMENDING SECTIONS 77-2301, 77-2302, 77-2303, 77-2304, 77-2306, 77-2309, 77-2310, AND 77-2311, R.C.M. 1947; AND REPEALING SECTIONS 77-2305 AND 77-2307, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 77-2301.1 that reads as follows:

77-2301.1. Short title. This act may be cited as the "Montana Disaster Act of 1977".

Section 2. Section 77-2301, R.C.M. 1947, is amended to read as follows:

"**77-2301. Policy and purpose.** Because of the existing and increasing possibility of the occurrence of disasters or emergencies of unprecedented size and destructiveness resulting from enemy attack, sabotage, or other hostile action and natural disasters and in order *to provide for*

HeinOnline -- 1977 Vol. I 1024 1977

prompt and timely reaction to an emergency or disaster, to insure that preparation of this state will be adequate to deal with such disasters or emergencies, and generally to provide for the common defense and to protect the public peace, health, and safety and to preserve the lives and property of the people of this state, it is hereby found and declared to be necessary:

(1) *to* authorize the creation of local *or interjurisdictional* organizations for *disaster and emergency services* in the political subdivisions of this state;

(2) to reduce vulnerability of people and communities of this state to damage, injury, and loss of life and property resulting from natural or man-made disasters;

(3) to prepare for prompt and efficient search, rescue, recovery, care, and treatment of persons lost, entrapped, victimized, or threatened by emergencies or disasters;

(4) to provide a setting conducive to the rapid and orderly start of restoration and rehabilitation of persons and property affected by disasters;

(5) to clarify and strengthen the roles of the governor, state agencies, and local governments in prevention of, preparation for, response to, and recovery from emergencies and disasters;

(6) to authorize and provide for cooperation in disaster prevention, preparedness, response, and recovery;

(7) to authorize and provide for coordination of activities relating to disaster prevention, preparedness, response, and recovery by agencies and officers of this state and similar state-local, interstate, federal-state, and foreign activities in which the state and its political subdivisions may participate;

(8) to provide an emergency and disaster management system embodying all aspects of emergency or disaster prevention, preparedness, response, and recovery;

(9) to assist in prevention of disasters caused or aggravated by inadequate planning for public and private facilities and land use; and

(10) to supplement, without in any way limiting, authority conferred by previous statutes of this state and increase the capability of the state, local, and interjurisdictional disaster and emergency services agencies to perform disaster and emergency services."

Section 3. There is a new R.C.M. section numbered 79-2301.2 that reads as follows:

79-2301.2. Limitations. Nothing in this chapter may be construed to give any state, local, or interjurisdictional agency or public official authority to:

(1) interfere with the course or conduct of a labor dispute, except that actions otherwise authorized by this act or other laws may be taken when

HeinOnline -- 1977 Vol. I 1025 1977

necessary to forestall or mitigate imminent or existing danger to public health or safety;

(2) interfere with dissemination of news or comment on public affairs; but any communications facility or organization (including but not limited to radio and television stations, wire services, and newspapers) may be required to transmit or print public service messages furnishing information or instructions in connection with an emergency or disaster;

(3) affect the jurisdiction or responsibilities of police forces, firefighting forces, units of the armed forces of the United States, or of any personnel thereof, when on active duty; but state, local, and interjurisdictional disaster and emergency plans shall place reliance upon the forces available for performance of functions related to emergencies and disasters; or

(4) limit, modify, or abridge the authority of the governor to proclaim martial law or exercise any other powers vested in him under the constitution, statutes, or common law of this state independent of or in conjunction with any provisions of this act.

Section 4. Section 77-2302, R.C.M. 1947, is amended to read as follows:

"**77-2302. Definitions.** As used in this chapter, *the following definitions apply:*

(1) "Civil defense" means the nuclear preparedness functions and responsibilities of disaster and emergency services.

(2) "Department" means the department of military affairs.

(3) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from any natural or man-made cause, including tornadoes, windstorms, snowstorms, wind-driven water, high water, floods, wave action, earthquakes, landslides, mudslides, volcanic action, fires, explosions, or air or water contamination requiring emergency action to avert danger or damage, blight, droughts, infestations, riots, sabotage, hostile military or paramilitary action, or accidents involving radiation byproducts or other hazardous materials.

(4) "Disaster and emergency services" means the prevention of, the preparation for, and the carrying out of disaster and emergency functions and responsibilities, other than those for which military forces or other state or federal agencies are primarily responsible, to prevent, prepare for, respond to, and recover from injury and damage resulting from emergencies or disasters.

(5) "Division" means the division of disaster and emergency services of the department of military affairs.

(6) "Emergency" means the imminent threat of a disaster causing immediate peril to life or property which timely action can avert or minimize.

(7) "Political subdivision" means any county, city, town, or other legally constituted unit of local government in this state.

HeinOnline -- 1977 Vol. I 1026 1977

(8) "Principal executive officer" means the mayor, chairman of the county commissioners, or other chief executive officer of a political subdivision.

(9) "Search and rescue" means the employment, coordination, and utilization of available resources and personnel in locating, relieving distress of, preserving life of, or removing survivors from the site of a hazard, emergency, or disaster to a place of safety in case of lost, stranded, entrapped, or injured persons.

(10) "Temporary housing" means unoccupied habitable dwellings, suitable rental housing, mobile homes, or other readily fabricated dwellings."

Section 5. Section 77-2303, R.C.M. 1947, is amended to read as follows:

"77-2303. Responsibility for disaster and emergency services. The department of military affairs, *through the division of disaster and emergency services,* is responsible to the governor for carrying out the *planning and* program for *disaster and emergency services* of this state."

Section 6. Section 77-2304, R.C.M. 1947, is amended to read as follows:

"77-2304. Duties of the governor. *(1)* The governor is responsible for carrying out this chapter.

(2) In addition to any other powers conferred upon the governor by law, he may:

(a) suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or orders or rules of any state agency, if the strict compliance with the provisions of any statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency or disaster;

(b) direct and compel the evacuation of all or part of the population from an emergency or disaster area within the state if he considers this action necessary for the preservation of life or other disaster mitigation, response, or recovery;

(c) control ingress and egress to and from an emergency or disaster area, the movement of persons within the area, and the occupancy of premises therein.

(3) Under this section, the governor may issue executive orders, proclamations, and regulations and amend and rescind them. All executive orders or proclamations declaring or terminating a state of emergency or disaster shall indicate the nature of the emergency or disaster, the area threatened, the conditions which have brought about the declaration or which make possible termination of the state of emergency or disaster.

(4) (a) A state of emergency may be declared by the governor when he determines that an emergency, as defined in 77-2302(6), exists.

(b) An executive order or proclamation of a state of emergency shall activate the emergency response and disaster preparation aspects of the

HeinOnline -- 1977 Vol. I 1027 1977

state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law pertaining to disasters and disaster-related emergencies.

(c) A state of emergency may not continue for longer than 20 days unless continuing conditions of the state of emergency exists, which shall be determined by a declaration of an emergency by the president of the United States or by a declaration of the legislature by joint resolution of continuing conditions of the state of emergency.

(5) (a) A state of disaster may be declared by the governor when he determines that a disaster has occurred.

(b) An executive order or proclamation of a state of disaster shall activate the disaster response and recovery aspects of the state disaster and emergency plan and program applicable to the political subdivision or area and be authority for the deployment and use of any forces to which the plans apply and for the distribution and use of any supplies, equipment, and materials and facilities assembled, stockpiled, or arranged to be made available pursuant to this chapter or any other provision of law pertaining to disaster and disaster-related emergencies.

(c) A state of disaster may not continue for longer than 30 days unless continuing conditions of the state of disaster exist, which shall be determined by a declaration of a major disaster by the president of the United States or by the declaration of the legislature by joint resolution of continuing conditions of the state of disaster.

(6) The governor shall terminate a state of emergency or disaster when:

(a) the emergency or disaster has passed;

(b) the emergency or disaster has been dealt with to the extent that emergency or disaster conditions no longer exist; or

(c) at any time the legislature terminates the state of emergency or disaster by joint resolution. However, after termination of the state of emergency or disaster, disaster and emergency services required as a result of the emergency or disaster may continue.

(7) An executive order or proclamation issued under this section shall be disseminated promptly by means calculated to bring its contents to the attention of the general public. Unless the circumstances attendant upon the emergency or disaster prevent or impede it, the executive order or proclamation will be filed promptly with the division, the secretary of state, and clerk and recorders of the counties involved.

(8) During a state of emergency or disaster, the governor is commander-in-chief of the militia and of all other forces available for emergency or disaster duty. To the greatest extent possible, the governor shall delegate or assign command authority by prior arrangement embodied in the state disaster and emergency plan and program and appropriate executive orders.

HeinOnline -- 1977 Vol. I 1028 1977

(9) The governor shall utilize the services and facilities of the existing officers and agencies of the state, and all officers and agencies shall cooperate with and extend their services and facilities to the governor as he may request in the carrying out of the purposes of this chapter."

Section 7. There is a new R.C.M. section numbered 77-2305.1 that reads as follows:

77-2305.1. Division of disaster and emergency services. (1) A division of disaster and emergency services is established in the department of military affairs. The division shall have an administrator and other professional, technical, secretarial, and clerical employees as necessary for the performance of its functions.

(2) The division shall prepare and maintain a comprehensive plan and program for disaster and emergency services of this state. The plan and program shall be coordinated with the disaster and emergency plans and programs of the federal government, other states, political subdivisions, and Canada to the fullest extent possible. The state disaster and emergency plan and program may provide for:

(a) prevention and minimization of injury and damage caused by disaster;

(b) prompt and efficient response to an emergency or disaster;

(c) emergency relief;

(d) identification of areas particularly vulnerable to disasters;

(e) recommendations for preventive and preparedness measures designed to eliminate or reduce disasters or their impact;

(f) organization of manpower and chains of command;

(g) coordination of federal, state, and local disaster and emergency activities; and

(h) other necessary matters.

(3) In preparing and maintaining the state disaster and emergency plan and program, the division shall seek the advice and assistance of local government, business, labor, industry, agriculture, civic and volunteer organizations, and community leaders. In advising local and interjurisdictional agencies, the division shall encourage them to seek advice from these sources.

(4) The division shall:

(a) coordinate the preparation of the plan and program for disaster and emergency services with the political subdivisions of this state;

(b) coordinate disaster and emergency prevention and preparation activities of all departments, agencies, and organizations within the state;

(c) advise and assist the political subdivisions of this state in executing their disaster and emergency services responsibilities;

HeinOnline -- 1977 Vol. I 1029 1977

(d) make recommendations on the formation of interjurisdictional disaster and emergency services areas when individual political subdivisions are unable to fully and adequately mount an effective local program due to limitations of funding, manpower, or other reasons;

(e) make surveys of industries, resources, and facilities within the state, both public and private, as are necessary to carry out the purposes of this chapter;

(f) periodically review local and interjurisdictional plans and programs for disaster and emergency services;

(g) develop or assist in the development of mutual aid plans and agreements between the federal government, other states, and Canada and among the political subdivisions of this state;

(h) determine the requirements of the state and its political subdivisions for food, clothing, and other necessities in the event of an emergency or disaster;

(i) plan for the procurement of food, clothing, other necessities, supplies, medicines, materials, and equipment that may be necessary in the event of an emergency or disaster and, as funding is authorized, procure and pre-position the same;

(j) plan and make arrangements for the availability and use of any private facilities, services, and property and, if necessary and if in fact used, provide for payment for use under terms and conditions agreed upon;

(k) institute training and public information programs and take all other preparatory steps, including the partial or full mobilization of disaster and emergency services organizations in advance of actual emergency or disaster, to insure the availability of adequately trained and equipped personnel in time of emergency or disaster;

(l) direct emergency response and disaster preparation activities as authorized by the governor;

(m) direct disaster response and recovery activities as authorized by the governor;

(n) prepare, for issuance by the governor, executive orders or proclamations as necessary or appropriate in coping with emergencies and disasters;

(o) maintain liaison with and cooperate with disaster and emergency services agencies and organizations of the federal government, other states, and Canada in achieving any purpose of this chapter and in implementing programs for disaster prevention, preparation, response, and recovery; and

(p) have any additional authority, duties, and responsibilities authorized by this act as may be prescribed by the governor.

(5) In providing assistance under this act, state departments and agencies shall cooperate to the fullest extent possible with each other and with local governments and relief agencies such as the American national red

HeinOnline -- 1977 Vol. I 1030 1977

cross, but nothing contained in this chapter lists or in any way affects the responsibilities of the American national red cross under the act approved January 5, 1905 (33 Stat. 559), as amended.

Section 8. There is a new R.C.M. section numbered 77-2307.1 that reads as follows:

77-2307.1. Local and interjurisdictional emergency and disaster agencies and services. (1) Each political subdivision within this state shall designate a local or interjurisdictional agency responsible for emergency and disaster prevention and preparedness and coordination of response and recovery.

(2) The local or interjurisdictional disaster and emergency services agency shall receive assistance from the division in emergency and disaster prevention, preparedness, response, and recovery to the extent of the division's authority and responsibility.

(3) Each political subdivision shall adhere to the provisions of this act and the state disaster and emergency plan and program regarding the structure and responsibilities of the local or interjurisdictional disaster and emergency service agencies and their relationship to the division.

(4) The principal executive officer of each political subdivision shall notify the division of the manner by which the political subdivision is providing or securing emergency and disaster planning and services, identify the person who heads the agency from which planning and services are obtained, and furnish additional information as the division requires.

(5) Each local and interjurisdictional agency shall prepare and keep current a local or interjurisdictional disaster and emergency plan and program covering the area for which that agency is responsible. This plan shall be in accordance with and in support of the state disaster and emergency plan and program.

(6) The local or interjurisdictional agency shall prepare and distribute on behalf of the principal executive officers, in written form, a clear and complete statement of the emergency responsibilities of all local agencies and officials and of the disaster and emergency chain of command.

Section 9. There is a new R.C.M. section numbered 77-2307.2 that reads as follows:

77-2307.2. Local emergency or disaster. (1) A local emergency proclamation or disaster declaration may be issued only by the principal executive officer of a political subdivision.

(2) An emergency proclamation may be issued by order or resolution whenever the principal executive officer determines there is an emergency.

(a) An emergency proclamation may not continue for longer than 10 days except by consent of the governing body of the political subdivision.

(b) An emergency proclamation may terminate with a disaster declaration or when the principal executive officer determines that the emergency no longer exists.

HeinOnline -- 1977 Vol. I 1031 1977

(3) A disaster declaration may be issued by order or resolution whenever the principal executive officer determines a disaster is occurring or has occurred.

(a) A disaster declaration may not continue for longer than 30 days except by consent of the governing body of the political subdivision.

(b) A disaster declaration may be terminated when the principal executive officer determines that the disaster conditions no longer exist.

(4) An order or resolution declaring or terminating a state of emergency or disaster shall indicate the nature of the emergency or disaster, the area threatened, the conditions which have brought about the proclamation or declaration or which make possible termination of the state of emergency or disaster. Such orders or resolutions shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and shall be filed promptly with the division, the local or interjurisdictional agency, and the agency charged with recording the official records of the political subdivision.

(5) The effect of an emergency proclamation or a disaster declaration is to activate applicable parts of the local or interjurisdictional disaster and emergency plan and program and to authorize the furnishing of aid and assistance in accordance with such plans and programs.

Section 10. Section 77-2306, R.C.M. 1947, is amended to read as follows:

"**77-2306. Mutual aid arrangements.** (1) *Political subdivisions shall be encouraged and assisted by the division to conclude mutual aid* arrangements with other public and private agencies within this state for reciprocal aid and assistance in *coping with emergencies and disasters.*

(2) In reviewing disaster and emergency plans and programs of political subdivisions, the division shall consider whether they contain adequate provisions for the reciprocal mutual aid.

(3) Local and interjurisdictional disaster and emergency agencies may assist in negotiation of reciprocal *mutual aid* agreements between the governor and the adjoining states (including foreign states or provinces) or political subdivisions thereof and shall carry out arrangements *of* any such agreements relating to the local and political subdivision."

Section 11. There is a new R.C.M. section numbered 77-2307.3 that reads as follows:

77-2307.3. Intergovernmental arrangements. (1) This state enacts into law and enters into the interstate civil defense and disaster compact with all states, as defined therein, which states have enacted or shall hereafter enact the compact in the form substantially contained in 77-1403.

(2) The governor may enter into the compact with any state that does not border this state if he finds that joint action with the state is desirable in meeting common intergovernmental problems of emergency and disaster planning, prevention, response, and recovery.

HeinOnline -- 1977 Vol. I 1032 1977

(3) Nothing in subsections (1) and (2) may be construed to limit previous or future entry of this state into the interstate civil defense and disaster compact.

(4) All interstate civil defense and disaster compacts and other interstate agreements dealing with disaster and emergency services shall be reviewed and made current at intervals not to exceed 4 years.

(5) If a person holds a license, certificate, or other permit issued by any state or political subdivision thereof evidencing the meeting of qualifications for professional, mechanical, or other skills, the person may render aid involving that skill in this state to meet an emergency or disaster and this state shall give due recognition to the license, certificate, or other permit.

(6) When considered of mutual benefit, the governor may, subject to limitations of law, enter into intergovernmental arrangements with neighboring provinces of Canada for the purpose of exchanging disaster and emergency services.

Section 12. There is a new R.C.M. section numbered 77-2307.4 that reads as follows:

77-2307.4. Communications. (1) The division shall coordinate whatever means exist for rapid and efficient communications in time of emergency or disaster.

(2) The division shall, in cooperation with the division of communications, department of administration, consider the desirability of supplementing communications resources or of integrating them into a comprehensive state or state-federal telecommunications or other communications system or network.

(3) The division shall, in cooperation with the division of communications and local political subdivisions, evaluate the possibility of multipurpose use of communications systems or networks for general state and local governmental purposes.

(4) The division shall assist political subdivisions in the orderly development of telecommunications systems complementary to the state telecommunications system or network.

Section 13. Section 77-2309, R.C.M. 1947, is amended to read as follows:

"**77-2309. Authority to accept services, gifts, grants, and loans.** Whenever the federal government or any agency or officer thereof or any person, firm, or corporation shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of *emergency or disaster services*, the state, acting through the governor, or the political subdivision, acting through its executive officer or governing body, may accept the offer and upon the acceptance the governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the

HeinOnline -- 1977 Vol. I 1033 1977

case may be, to receive the services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision and subject to the terms of the offer and the rules, if any, of the agency making the offer."

Section 14. Section 77-2310, R.C.M. 1947, is amended to read as follows:

"**77-2310. Political activity prohibited.** An organization for *disaster and emergency services* established under this chapter may not participate in any form of political activity, nor may it be employed directly or indirectly for political purposes."

Section 15. Section 77-2311, R.C.M. 1947, is amended to read as follows:

"**77-2311. Disaster and emergency services personnel.** A person may not be employed in any *disaster and emergency services* organization established under this chapter who advocates a change by force or violence in the constitutional form of the government of the United States or in this state or the overthrow of any government in the United States by force or violence or who has been convicted of or is under indictment or information charging any subversive act against the United States. Each person who is appointed to serve in an organization for *disaster and emergency services* shall, before entering upon his duties, take an oath, in writing, before a person authorized to administer oaths in this state, which oath shall be substantially as follows:

"I ...., swear (or affirm) that I will support and defend *The* Constitution of the United States and *The* Constitution of the State of Montana against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties *of the office on* which I am about to enter. *So help me, God.*""

Section 16. There is a new R.C.M. section numbered 77-2312 that reads as follows:

77-2312. Temporary housing for disaster victims — site acquisition and preparation. (1) Whenever the governor has declared a state of emergency or state of disaster or the president has declared an emergency or a major disaster to exist in this state, the governor is authorized:

(a) to enter into purchase, lease, or other arrangements with any agency of the United States for temporary housing units to be occupied by emergency or disaster victims and to make such units available to any political subdivision of the state;

(b) to assist any political subdivision of this state which is the locus of temporary housing for emergency or disaster victims to acquire sites necessary for such temporary housing and to do all things required to prepare such site to receive and utilize temporary housing units by:

(i) advancing or lending funds available to the governor from any appropriation made for those purposes by the legislature or from any other source;

HeinOnline -- 1977 Vol. I 1034 1977

(ii) "passing through" funds made available for those purposes by any agency, public or private; or

(iii) becoming a copartner with the political subdivision for the execution and performance of any temporary housing project for emergency or disaster victims;

(c) under such regulations as he shall prescribe, to temporarily suspend or modify for not to exceed 60 days any public health, safety, zoning, or transportation (within or across the state) laws or regulations within this state when by proclamation he declares such suspension or modification essential to provide temporary housing for emergency or disaster victims.

(2) Any political subdivision of this state is expressly authorized to acquire, temporarily or permanently, by purchase, lease, or otherwise, sites required for installation of temporary housing units for emergency or disaster victims and to enter into whatever arrangements, including purchase of temporary housing units and payment of transportation charges, which are necessary to prepare or equip such sites to utilize the housing units.

(3) Nothing contained in this chapter shall be construed to limit the governor's authority to apply for, administer, and expend any grants, gifts, or payments in aid of emergency or disaster prevention, preparedness, response, or recovery.

Section 17. There is a new R.C.M. section numbered 77-2313 that reads as follows:

77-2313. Community disaster loans. Whenever, at the request of the governor, the president has declared a major disaster to exist in this state, the governor is authorized:

(1) upon his determination that a political subdivision of the state will suffer a substantial loss of tax and other revenues from an emergency or disaster and has demonstrated a need for financial assistance to perform its governmental functions, to apply to the federal government, on behalf of the political subdivision, for a loan and to receive and disburse the proceeds of any approved loan to any applicant political subdivision;

(2) to determine the amount needed by any applicant political subdivision to restore or resume its governmental functions and to certify the same to the federal government. However, no application amount may exceed 25% of the annual operating budget of the applicant for the fiscal year in which the emergency or disaster occurs.

(3) to recommend to the federal government, based upon his review, the cancellation of all or any part of repayment when, in the first 3 full fiscal years following the emergency or disaster, the revenues of the political subdivision are insufficient to meet its operating expenses, including additional emergency- or disaster-related expenses of a political subdivision operation character.

Section 18. There is a new R.C.M. section numbered 77-2314 that reads as follows:

HeinOnline -- 1977 Vol. I 1035 1977

77-2314. Debris and wreckage removal in emergencies or disasters. (1) Whenever the governor has declared a state of emergency or state of disaster to exist under the laws of this state or the president, at the request of the governor, has declared a major disaster or emergency to exist in this state, the governor is authorized:

(a) notwithstanding any other provision of law, through the use of state departments or agencies or the use of any of the state's instrumentalities, to clear or remove, from publicly or privately owned land or water, debris and wreckage which may threaten public health or safety or public or private property in any state of emergency or state of disaster declared by the governor or major disaster as declared by the president;

(b) to accept funds from the federal government and utilize such funds to make grants to any political subdivision for the purpose of removing debris or wreckage from publicly or privately owned land or water.

(2) (a) Authority under this section shall not be exercised unless the affected political subdivision, corporation, organization, or individual shall first present an unconditional authorization for removal of such debris or wreckage from public and private property and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the state government against any claim arising from such removal.

(b) Whenever the governor provides for clearance of debris or wreckage pursuant to subsection (1)(a) or (1)(b), employees of the designated state agencies or individuals appointed by the state are authorized to enter upon private land or waters and perform any tasks necessary to the removal or clearance operation.

Section 19. There is a new R.C.M. section numbered 77-2315 that reads as follows:

77-2315. Identification. Disaster and emergency services organizations and personnel may continue to identify themselves by the use of the civil defense symbol.

Section 20. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. **Repealer.** Sections 77-2305 and 77-2307, R.C.M. 1947, are repealed.

Section 22. **Effective date.** This act is effective on its passage and approval.

Approved April 8, 1977.

Note: Section 3 was erroneously enrolled as 79-2301.2. This section will appear in R.C.M. 1947 as 77-2301.2.

HeinOnline -- 1977 Vol. I 1036 1977

CHAPTER NO. 336

AN ACT TO DEFINE THE TERM "ENHANCED RECOVERY"; TO SUBSTITUTE THE TERM "ENHANCED RECOVERY" FOR THE TERMS "PRESSURE MAINTENANCE" AND "SECONDARY RECOVERY"; AND TO PROVIDE FOR RECOVERY OF COSTS OF AN ENHANCED RECOVERY PROGRAM INITIATED SUBSEQUENT TO A SECONDARY RECOVERY PROGRAM; AMENDING SECTIONS 60-126, 60-131.1, AND 60-131.3, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 60-126, R.C.M. 1947, is amended to read as follows:

"60-126. Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Waste" means: (1) physical waste, as that term is generally understood in the oil and gas industry; (2) the inefficient, excessive, or improper use of, or the unnecessary dissipation of reservoir energy; (3) the location, spacing, drilling, equipping, operating or producing of any oil or gas well or wells in a manner which causes, or tends to cause, reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or which causes or tends to cause unnecessary or excessive surface loss or destruction of oil or gas; and, (4) the inefficient storing of oil or gas. The production of oil or gas from any pool or by any well to the full extent that the well or pool can be produced in accordance with methods designed to result in maximum ultimate recovery, as determined by the board, is not waste within the meaning of this definition.

(2) "Board" means the board of oil and gas conservation provided for in section 82A-1508.

(3) "Person" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any agency or instrumentality of the state or any governmental subdivision thereof.

(4) "Oil" means crude petroleum oil and other hydrocarbons regardless of gravity which are produced at the wellhead in liquid form by ordinary production methods, and which are not the result of condensation of gas before or after it leaves the reservoir.

(5) "Gas" means all natural gases and all other fluid hydrocarbons as produced at the wellhead and not defined as oil in subsection (4) of this section.

(6) "Pool" means an underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure which is completely separated from any other zone in the same structure is a pool, as that term is used in this chapter.

(7) "Field" means the general area underlaid by 1 or more pools.

(8) "Owner" means the person who has the right to drill into and pro-

HeinOnline -- 1977 Vol. I 1037 1977

duce from a pool and to appropriate the oil or gas he produces therefrom either for himself or others or for himself and others, and the term includes all persons holding such authority by or through him.

Nothing herein contained shall be construed to conflict with subsection (4) of section 81-1702, granting the state board of land commissioners the authority to enter into pooling and unitization agreements for the production of oil or gas with others.

(9) "Producer" means the owner of a well or wells capable of producing oil or gas or both.

(10) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(11) "Enhanced recovery" means the increased recovery from a pool achieved by artificial means or by the application of energy extrinsic to the pool; such artificial means or application includes pressuring, cycling, pressure maintenance, or injection into the pool of any substance or form of energy as is contemplated in secondary recovery and tertiary programs but does not include the injection in a well of a substance or form of energy for the sole purpose of aiding in the lifting of fluids in the well or stimulating of the resevoir at or near the well by mechanical, chemical, thermal, or explosive means."

Section 2. Section 60-131.1, R.C.M. 1947, is amended to read as follows:

"60-131.1. Operation of pool as unit — board to hold hearing — notice. (1) The board, upon the application of persons owning leasehold interests underlying sixty per cent (60%) of the surface within the delineated area, shall hold a hearing to consider the need for the operation as a unit of one (1) or more pools or parts thereof in a field, for *enhanced recovery* purposes as to oil or oil and gas, to increase ultimate recovery, or to prevent waste of gas from pools or portions of pools where gas only is produced.

(2) At least sixty (60) days prior to application, the applicant shall, by registered or certified mail, notify all known persons owning an interest in the oil and gas within the proposed unit area as disclosed by the records of the county or counties in which the proposed unit area is situated, at that person's last known address, of the applicant's intention to make the application. At the same time producers shall be furnished with a plan of unit operations. Upon written request of an operator of a lease which is in whole or in part within the confines of the proposed delineated area, the applicant shall furnish the operator with copies of any exhibits to be submitted to the board at the time of hearing."

Section 3. Section 60-131.3, R.C.M. 1947, is amended to read as follows:

"60-131.3. Terms and conditions of order — requirements. The order shall be upon terms and conditions that are just and reasonable and shall prescribe a plan for unit operations that shall include:

(1) A description of the pool or pools or parts thereof to be so operated,

HeinOnline -- 1977 Vol. I 1038 1977

termed the unit area, but only so much of a pool as has reasonably been defined and determined by drilling operations to be productive of oil or gas may be included within the unit area. If the unit is formed solely for production of gas, a spacing unit on which is located a well producing or capable of producing gas on March 1, 1971, may not be included in the unit area without the written consent of the majority in interest of the working interest owners of the spacing unit and well.

(2) A statement of the nature and purpose of the plan and operations contemplated, together with a copy of the proposed unit agreement and unit operating agreement.

(3) A plan for allocating to each tract in the unit area its fair share of the oil and gas produced from the unit area and not required or consumed in the conduct of the operation of the unit area or unavoidably lost. A plan may not be approved by the board until it has considered the relative value that the share of production bears to the relative value of all of the separately owned tracts in the unit area, exclusive of physical equipment utilized in unit operations. In considering this relative value, the board shall weigh the economic value of the gas to all persons affected as compared to the economic value of the oil to all persons affected.

(4) A provision for the credits and charges to be made in the adjustment among the owners in the unit area for their respective investments in wells, tanks, pumps, machinery, materials, and equipment contributed to the unit operations.

(5) A provision providing how the costs of unit operations, including overhead and capital investments, shall be determined and charged to the separately owned tracts, including a provision for carrying or otherwise financing any owner who has not executed the proposed unit operating agreement and who elects to be carried or otherwise financed, allowing an interest charge of the then current prime rate plus two per cent (2%) for the service. Recovery of the money advanced, plus interest, shall be limited to, and only shall be recoverable from, the owners' share of production. The recovery shall be as follows:

(a) (1) In the case of a field producing oil, or oil and gas, during the period of depletion of the remaining estimated primary reserves from the unit, only from the production that is in excess of the owners' average actual rate of production during the eighteen (18) months immediately preceding the effective date of the unit. For purposes of this subsection, the term "primary reserves" means the oil or gas which would be produced from the unitized pool or pools *as* a result of the natural energy therein and without the introduction of *an enhanced* recovery program.

(2) During the period subsequent to the depletion of the remaining estimated primary reserves from the unit, from one hundred per cent (100%) of the owners' share of production.

(b) In the case of a field producing only gas, the recovery shall be from one hundred per cent (100%) of the owners' share of production.

(c) In the case of any enhanced recovery program that is initiated subsequent to a secondary recovery program, the recovery shall be from

75% of the owners' increased share of production from such subsequent program.

(6) A provision for the supervision and conduct of the unit operations, in respect to which each owner shall have a vote with a value corresponding to the percentage of the costs of unit operations chargeable against the interest of the owner.

(7) A provision whereby the unit operator, after having operated for a minimum period of two (2) years, can be challenged by any other owner in the unit, and the challenging owner may succeed to the unit operations upon a showing that: (a) he can operate more efficiently and economically than the present operator; (b) he is qualified and financially responsible; (c) a majority of the other owners, both in number and in percentage and exclusive of the challenged operator, approved the challenging owner becoming unit operator; and, (d) the challenged operator does not initiate the conditions of operations of the challenging owner within sixty (60) days of the challenged operator's receipt of the conditions of operations.

(8) The time when the unit operations shall commence, and the manner in which, and the circumstances under which, the unit operations shall terminate; and

(9) Such additional provisions that are found to be appropriate for carrying on unit operations and for the protection and adjustment of correlative rights."

Approved April 8, 1977.

CHAPTER NO. 337

AN ACT TO ENABLE PEACE OFFICERS TO RETAIN ALL PRIVILEGES AND IMMUNITIES FROM LIABILITY, AND ALL PENSION, INSURANCE, SALARY, AND OTHER BENEFITS TO WHICH THEY ARE NORMALLY ENTITLED WHEN RESPONDING TO OR PROVIDING ASSISTANCE TO ANY OTHER PEACE OFFICER WHO HAS CALLED FOR ASSISTANCE AND PROVIDING GUIDELINES FOR REIMBURSEMENT OF ENTITIES WHOSE EMPLOYEES ASSIST OTHER ENTITIES UNDER THIS ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-1851 that reads as follows:

11-1851. Law enforcement mutual assistance authorized — powers, duties, rights, and privileges of assisting officers. A peace officer or any law enforcement entity of any county or municipality or a state government law enforcement entity may request the assistance of a peace officer from another law enforcement entity within the state of Montana. A peace officer, while on such request for assistance, has the same powers, duties, rights, privileges, and immunities as a peace officer of the requesting entity.

HeinOnline -- 1977 Vol. I 1040 1977

Section 2. There is a new R.C.M. section numbered 11-1852 that reads as follows:

11-1852. Peace officer rendering assistance entitled to all rights of employment. A peace officer rendering assistance under 11-1851 is entitled to the same wage, salary, pension, workers' compensation, and all other service rights for such service as for service rendered within the law enforcement entity in which he is normally employed.

Section 3. There is a new R.C.M. section numbered 11-1853 that reads as follows:

11-1853. Employing entity to pay normal expenses for assisting officer — reimbursement in certain cases. The law enforcement entity employing a peace officer who renders assistance shall make all wage, pension, and disability payments and payments for damage to clothing and equipment due to the officer as a result of the rendering of assistance and shall pay any medical expense incurred by the officer in rendering assistance for which the officer is not otherwise entitled to reimbursement by operation of law or a contract. Upon making such payment such law enforcement entity shall, if it so requests, be reimbursed by the law enforcement entity that requested the services for all payments made for wages and damage to clothing and equipment and for any medical expense for which neither the employing entity nor the officer is otherwise entitled to reimbursement by operation of law or a contract. The employing entity shall also provide workers' compensation coverage for its employees while rendering assistance.

Section 4. There is a new R.C.M. section numbered 11-1854 that reads as follows:

11-1854. Assisted entity liable for obligation resulting from rendered assistance. A law enforcement entity requesting assistance under 11-1851 shall indemnify the assisting peace officer, his legal representative in case of death, or the furnishing law enforcement entity for any liability or obligation to indemnify created by 82-4322.1 and 82-4323 that may result from the assistance furnished.

Approved April 8, 1977.

CHAPTER NO. 338

AN ACT TO PROVIDE FOR THE IMPOSITION OF THE DEATH PENALTY IN CERTAIN CASES; TO PROVIDE PROCEDURES AND REQUIREMENTS FOR THE AUTHORIZATION OF SUCH PENALTY; TO PROVIDE FOR A SEPARATE SENTENCING HEARING TO DETERMINE THE EXISTENCE OR NONEXISTENCE OF AGGRAVATING OR MITIGATING CIRCUMSTANCES; TO PROVIDE THAT THE DEATH PENALTY MAY NOT BE IMPOSED UNLESS THE COURT FINDS ONE OR MORE OF THE AGGRAVATING CIRCUMSTANCES AND FINDS THAT THERE ARE NO MITIGATING CIRCUMSTANCES SUFFICIENTLY SUBSTANTIAL TO

HeinOnline -- 1977 Vol. I 1041 1977

CALL FOR LENIENCY; TO PROVIDE THAT THE DETERMINATION OF THE COURT SHALL BE SUPPORTED BY SPECIFIC WRITTEN FINDINGS OF FACT; TO PROVIDE FOR AUTOMATIC REVIEW OF A JUDGMENT OF CONVICTION AND SENTENCE OF DEATH; AMENDING SECTIONS 94-5-102, 94-5-303, 94-5-617, AND 94-5-622, R.C.M. 1947; REPEALING SECTIONS 94-5-105, 94-5-304, AND 95-2206.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 95-2206.6 that reads as follows:

95-2206.6. Sentence of death — hearing on imposition of death penalty. When a defendant is found guilty of or pleads guilty to an offense for which the sentence of death may be imposed, the judge who presided at the trial or before whom the guilty plea was entered shall conduct a separate sentencing hearing to determine the existence or nonexistence of the circumstances set forth in 95-2206.8 and 95-2206.9 for the purpose of determining the sentence to be imposed. The hearing shall be conducted before the court alone.

Section 2. There is a new R.C.M. section numbered 95-2206.7 that reads as follows:

95-2206.7. Sentencing hearing — evidence that may be received. In the sentencing hearing, evidence may be presented as to any matter the court considers relevant to the sentence, including but not limited to the nature and circumstances of the crime, the defendant's character, background, history, mental and physical condition, and any other facts in aggravation or mitigation of the penalty. Any evidence the court considers to have probative force may be received regardless of its admissibility under the rules governing admission of evidence at criminal trials. Evidence admitted at the trial relating to such aggravating or mitigating circumstances shall be considered without reintroducing it at the sentencing proceeding. The state and the defendant or his counsel shall be permitted to present argument for or against sentence of death.

Section 3. There is a new R.C.M. section numbered 95-2206.8 that reads as follows:

95-2206.8. Aggravating circumstances. Aggravating circumstances are any of the following:

(1) The offense was deliberate homicide and was committed by a person serving a sentence of imprisonment in the state prison.

(2) The offense was deliberate homicide and was committed by a defendant who had been previously convicted of another deliberate homicide.

(3) The offense was deliberate homicide and was committed by means of torture.

(4) The offense was deliberate homicide and was committed by a person lying in wait or ambush.

HeinOnline -- 1977 Vol. I 1042 1977

(5) The offense was deliberate homicide and was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(6) The offense was deliberate homicide as defined in subsection (1)(a) of 94-5-102 and the victim was a peace officer killed while performing his duty.

(7) The offense was aggravated kidnaping which resulted in the death of the victim.

Section 4. There is a new R.C.M. section numbered 95-2206.9 that reads as follows:

95-2206.9. Mitigating circumstances. Mitigating circumstances are any of the following:

(1) The defendant has no significant history of prior criminal activity.

(2) The offense was committed while the defendant was under the influence of extreme mental or emotional disturbance.

(3) The defendant acted under extreme duress or under the substantial domination of another person.

(4) The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was substantially impaired.

(5) The victim was a participant in the defendant's conduct or consented to the act.

(6) The defendant was an accomplice in an offense committed by another person, and his participation was relatively minor.

(7) The defendant, at the time of the commission of the crime, was less than 18 years of age.

(8) Any other fact exists in mitigation of the penalty.

Section 5. There is a new R.C.M. section numbered 95-2206.10 that reads as follows:

95-2206.10. Consideration of aggravating and mitigating factors in determining sentence. In determining whether to impose a sentence of death or imprisonment, the court shall take into account the aggravating and mitigating circumstances enumerated in 95-2206.8 and 95-2206.9 and shall impose a sentence of death if it finds one or more of the aggravating circumstances and finds that there are no mitigating circumstances sufficiently substantial to call for leniency. If the court does not impose a sentence of death and one of the aggravating circumstances listed in 95-2206.8 exists, the court may impose a sentence of imprisonment for life or for any term authorized by the statute defining the offense.

Section 6. There is a new R.C.M. section numbered 95-2206.11 that reads as follows:

HeinOnline -- 1977 Vol. I 1043 1977

95-2206.11. Specific written findings of fact. In each case in which the court imposes the death sentence, the determination of the court shall be supported by specific written findings of fact as to the existence or nonexistence of each of the circumstances set forth in 95-2206.8 and 95-2206.9. The written findings of fact shall be substantiated by the records of the trial and the sentencing proceeding.

Section 7. There is a new R.C.M. section numbered 95-2206.12 that reads as follows:

95-2206.12. Automatic review of sentence. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana as provided for in 95-2206.13 through 95-2206.15.

Section 8. There is a new R.C.M. section numbered 95-2206.13 that reads as follows:

95-2206.13. Review of death sentence — priority of review — time for review. The judgment of conviction and sentence of death are subject to automatic review by the supreme court of Montana within 60 days after certification by the sentencing court of the entire record unless the time is extended by the supreme court for good cause shown. The review by the supreme court has priority over all other cases and shall be heard in accordance with rules promulgated by the supreme court. The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration.

Section 9. There is a new R.C.M. section numbered 95-2206.14 that reads as follows:

95-2206.14. Transcript and records of trial transmitted. The clerk of the trial court, within 10 days after receiving the transcript, shall transmit the entire record and transcript to the supreme court.

Section 10. There is a new R.C.M. section numbered 95-2206.15 that reads as follows:

95-2206.15. Supreme court to make determination as to the sentence. The supreme court shall consider the punishment as well as any errors enumerated by way of appeal. With regard to the sentence, the court shall determine:

(1) whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor;

(2) whether the evidence supports the judge's finding of the existence or nonexistence of the aggravating or mitigating circumstances enumerated in 95-2206.8 and 95-2206.9; and

(3) whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. The court shall include in its decision a reference to those similar cases it took into consideration.

Section 11. Section 94-5-102, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1044 1977

"**94-5-102. Deliberate homicide.** (1) Except as provided in 94-5-103(1)(a), criminal homicide constitutes deliberate homicide if:

(a) it is committed purposely or knowingly; or

(b) it is committed while the offender is engaged in or is an accomplice in the commission of, an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnaping, felonious escape, or any other felony which involves the use or threat of physical force or violence against any individual.

(2) A person convicted of the offense of deliberate homicide shall be punished by death *or life imprisonment* as provided in *95-2206.6 through 95-2206.15* or by imprisonment in the state prison for any term not to exceed 100 years."

Section 12. Section 94-5-303, R.C.M. 1947, is amended to read as follows:

"**94-5-303. Aggravated kidnaping.** (1) A person commits the offense of aggravated kidnaping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward or as a shield or hostage; or

(b) to facilitate commission of any felony or flight thereafter; or

(c) to inflict bodily injury on or to terrorize the victim or another; or

(d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) A person convicted of the offense of aggravated kidnaping shall be punished by death *or life imprisonment* as provided in *95-2206.6 through 95-2206.15* or be imprisoned in the state prison for any term not to exceed 100 years unless he has voluntarily released the victim, alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for any term not to exceed 10 years."

Section 13. Section 94-5-617, R.C.M. 1947, is amended to read as follows:

"**94-5-617. Protection of life and health of infant.** (1) A person commits the offense of criminal homicide, as defined in sections 94-5-101 through *94-5-104*, if he purposely, knowingly, or negligently causes the death of a premature infant born alive, if such infant is viable.

(2) Whenever a premature infant which is the subject of abortion if is born alive and is viable, it becomes a dependent and neglected child subject to the provisions of state law, unless:

HeinOnline -- 1977 Vol. I 1045 1977

(a) the termination of the pregnancy is necessary to preserve the life of the mother; or

(b) the mother and her spouse, or either of them, have agreed in writing in advance of the abortion, or within seventy-two (72) hours thereafter, to accept the parental rights and responsibilities of the premature infant if it survives the abortion procedure.

(3) No person may use any premature infant born alive for any type of scientific research, or other kind of experimentation except as necessary to protect or preserve the life and health of such premature infant born alive.

(4) The department shall make regulations to provide for the humane disposition of dead infants or fetuses.

(5) Violation of subsection (3) of this section is a felony."

Section 14. Section 94-5-622, R.C.M. 1947, is amended to read as follows:

"**94-5-622. Penalties.** (1) A person convicted of criminal homicide under this act is subject to the penalties prescribed by sections 94-5-101 through *94-5-104.*

(2) A person convicted of a felony other than criminal homicide under this act is subject to a fine not to exceed one thousand dollars ($1,000), or imprisonment in the state prison for a term not to exceed five (5) years, or both.

(3) A person convicted of a misdemeanor under this act is subject to a fine not to exceed five hundred dollars ($500), or imprisonment in the county jail for a term not to exceed six (6) months, or both."

Section 15. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Repealer.** Sections 94-5-105, 94-5-304, and 95-2206.1, R.C.M. 1947, are repealed.

Approved April 8, 1977.

CHAPTER NO. 339

AN ACT TO PROVIDE AN EFFICIENT CENTRALIZED RECORDS RETENTION AND DESTRUCTION PROGRAM FOR ALL STATE AGENCIES; REPEALING SECTIONS 82-3311, 82-3312, AND 82-3313, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82-3332 that reads as follows:

HeinOnline -- 1977 Vol. I 1046 1977

82-3332. Short title. This act may be cited as the "Public Records Management Act".

Section 2. There is a new R.C.M. section numbered 82-3333 that reads as follows:

82-3333. Purpose. The purpose of this act is to create an effective records management program for executive branch agencies of the state of Montana by establishing guidelines and procedures for the efficient and economical control of the creation, utilization, maintenance, and preservation of state records.

Section 3. There is a new R.C.M. section numbered 82-3334 that reads as follows:

82-3334. Description and preservation of public records. (1) As used in this act, the term "public records" includes any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies thereof, regardless of physical form or characteristics, that has been made or received by a state agency in connection with the transaction of official business and preserved for informational value or as evidence of a transaction and all other records or documents required by law to be filed with or kept by any agency of the state of Montana.

(2) All public records are and shall remain the property of the state of Montana. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this act.

Section 4. There is a new R.C.M. section numbered 82-3335 that reads as follows:

82-3335. Department of administration — powers and duties — records management. In order to insure the proper management and safeguarding of public records, the department of administration shall undertake the following:

(1) establish guidelines for inventorying, cataloging, retaining, and transferring all public records of state agencies;

(2) review and analyze all state agency filing systems and procedures and approve filing system equipment requests;

(3) establish and operate the state records center, as authorized by appropriation, for the purpose of storing and servicing public records not retained in office space;

(4) gather and disseminate information on all phases of records management including current practices, methods, procedures, and devices for the efficient and economical management of records;

(5) operate a central microfilm unit which will microfilm, on a cost recovery basis, all records approved for filming by the office of origin and the department of administration; and

HeinOnline -- 1977 Vol. I 1047 1977

(6) approve microfilming projects and microfilm equipment purchases undertaken by all state agencies.

Section 5. There is a new R.C.M. section numbered 83-3336 that reads as follows:

82-3336. Agency responsibilities — transfer schedules. Each executive branch agency of state government shall administer its records management function and shall:

(1) coordinate all aspects of the agency records management function;

(2) manage the inventorying of all public records within the agency for disposition, scheduling and transfer action in accordance with procedures prescribed by the department of administration and the state records committee;

(3) analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the department of administration and the state records committee minimal retentions for all copies of public records within the agency;

(4) approve all records disposal requests which are submitted by the agency to the state records committee; and

(5) review established records retention schedules to insure that they are complete and current.

Section 6. There is a new R.C.M. section numbered 82-3337 that reads as follows:

82-3337. Legislative and judicial branches. Upon request, the department of administration shall assist and advise in the establishment of records management procedures in the legislative and judicial branches of state government and shall, as required by them, provide services similar to those available to the executive branch.

Section 7. There is a new R.C.M. section numbered 82-3338 that reads as follows:

82-3338. Records committee — composition — meetings — powers and duties. (1) There is a committee to be known as the state records committee, composed of representatives of:

(a) the department of administration;

(b) the legislative auditor;

(c) the attorney general; and

(d) the Montana historical society.

(2) The representatives are to be designated by the head of the respective agencies, and their appointments shall be submitted in writing to the director of the department of administration.

(3) The state records committee shall approve, modify, or disapprove the recommendations on retention schedules of all public records to

HeinOnline -- 1977 Vol. I 1048 1977

determine which documents not included in the provisions of this act are to be designated public records and approve agency requests to dispose of such public records.

(4) The committee shall meet at least quarterly. Committee members shall serve without additional salary but are entitled to reimbursement for travel expense incurred while engaged in committee activities as provided for in 59-538, 59-539, and 59-801. Such expenses shall be paid from the appropriations made for operation of their respective agencies.

Section 8. There is a new R.C.M. section numbered 82-3339 that reads as follows:

82-3339. Disposal of public records. Requests for the disposal of public records shall be submitted to the state records committee by the agency concerned. No public record may be disposed of or destroyed without the unanimous approval of the state records committee.

Section 9. There is a new R.C.M. section numbered 82-3340 that reads as follows:

82-3340. Transfer of public records. (1) All public records not required in the current operation of the office where they are made or kept and all records of each agency, commission, committee, or any other activity of the executive branch of state government which may be abolished or discontinued shall be, in accordance with approved records retention schedules, either transferred to the state records center or transferred to the custody of the state archives if such records are considered to have permanent administrative or historical value.

(2) When records are transferred to the state records center, the agency so doing loses none of its rights of control and access. The state records center is only a custodian of the agency records, and access will only be by agency approval. Agency records for which the state records center acts as custodian may not be subpoenaed from the state records center but must be subpoenaed from the agency to which the records belong. Fees may be charged to cover the cost of records storage and servicing.

(3) If an agency does not wish to transfer records as provided in an approved retention schedule, the agency shall, within 30 days, notify the department of administration and request a change in the schedule.

Section 10. There is a new R.C.M. section numbered 82-3341 that reads as follows:

82-3341. Protection of essential records. (1) In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the executive branch shall designate certain public records as essential records needed for an emergency or for the reestablishment of normal operations after any such emergency. A list of such records shall be forwarded to the department of administration. The list shall be reviewed from time to time by the elected or appointed officers to insure its accuracy. Any changes or revisions shall be forwarded to the department of administration.

HeinOnline -- 1977 Vol. I 1049 1977

(2) Each elected and appointed officer of state government shall insure that the security of essential records is accomplished by the most economical means possible. Protection of essential records may be by vaulting, planned or natural dispersal of copies, storage in the state archives, or any other method approved by the department of administration.

(3) Reproductions of essential records may be by photocopy, magnetic tape, microfilm, or other methods approved by the department of administration.

Section 11. **Repealer.** Sections 82-3311, 82-3312, and 82-3313, R.C.M. 1947, are repealed.

Approved April 8, 1977.

CHAPTER NO. 340

AN ACT TO REVISE THE LAW REGARDING ELIGIBILITY FOR PAROLE AND THE MERGER OF SENTENCES WHEN A SECOND CRIME IS COMMITTED WHILE IN PRISON OR ON PAROLE OR FURLOUGH; AMENDING SECTIONS 95-2213, 95-3214, AND 95-3215, R.C.M. 1947; REPEALING SECTION 95-2206.5, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 95-2206.16 that reads as follows:

95-2206.16. Judicial designation as nondangerous offender for purposes of parole eligibility. (1) The sentencing court shall designate an offender a nondangerous offender for purposes of eligibility for parole under 95-3214 if:

(a) during the 5 years preceding the commission of the offense for which the offender is being sentenced, the offender was neither convicted of nor incarcerated for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed; or

(b) the court has determined, based on any presentence report and the evidence presented at the trial and the sentencing hearing, that the offender does not represent a substantial danger to other persons or society.

(2) A conviction or incarceration may not be considered under subsection (1)(a) if:

(a) the offender was less than 18 years of age at the time of the commission of the present offense; or

(b) the offender has been pardoned for the previous offense on the grounds of innocence or the conviction for such offense has been set aside in a postconviction hearing.

HeinOnline -- 1977 Vol. I 1050 1977

Section 2. Section 95-2213, R.C.M. 1947, is amended to read as follows:

"**95-2213. Merger of sentences.** (a) Unless the judge otherwise orders, (1) when a person serving a term of commitment imposed by a court in this state is committed for another offense, the shorter term or shorter remaining term shall be merged in the other term, and (2) when a person under suspended sentence or on probation for an offense committed in this state is sentenced for another offense, the period still to be served on suspended sentence *or* probation shall be merged in any new sentence of commitment or probation.

(b) The court merging the sentences shall forthwith furnish each of the other courts and penal institutions in which the defendant is confined under sentence with authenticated copies of its sentence, which shall cite the sentences being merged.

(c) If an unexpired sentence is merged pursuant to subdivision (a), the court which imposed such sentence shall modify it in accordance with the effect of the merger.

(d) Separate sentences of two (2) or more crimes shall run concurrently unless the court otherwise orders.

(e) Except as provided in this subsection, when a prisoner is sentenced for an offense committed while he was imprisoned in the state prison or while he was released on parole or under the prisoner furlough program, the new sentence runs consecutively with the remainder of the original sentence. The prisoner starts serving the new sentence when the original sentence has expired or when he is released on parole under 95-3214 in regard to the original sentence, whichever is sooner. In the latter case, the sentences run concurrently from the time of his release on parole."

Section 3. Section 95-3214, R.C.M. 1947, is amended to read as follows:

"**95-3214. Parole authority and procedure.** (1) The board shall release on parole, by appropriate order, any person confined in the Montana state prison, except persons under sentence of death, when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community, provided:

(a) That no convict serving a time sentence shall be paroled until he has served at least *one-half* of his full term, less *the* good time *allowance* provided *for* in 80-1905; except that *a convict designated as a nondangerous offender under 95-2206.16 may be paroled after he has served one-quarter of his full term, less the good time allowance provided for in 80-1905. Any* offender *serving a time sentence* may be paroled after he has served, upon his term of sentence, seventeen and one-half (17 ½) years.

(b) No convict serving a life sentence shall be paroled until he has served thirty (30) years, less the good time allowances off, as provided in section 80-1905.

(2) Within two (2) months after his admission and at such intervals

HeinOnline -- 1977 Vol. I 1051 1977

thereafter as it determines, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of and physical and mental examinations which have been made.

(3) Before ordering the parole of any prisoner, the board shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released, but shall be subject to the orders of the board.

(4) The board may adopt other rules it considers proper or necessary, with respect to the eligibility of prisoners for parole, and the conduct of parole hearings or conditions to be imposed upon parolees. When an order for parole is issued it shall recite the conditions thereof."

Section 4. Section 95-3215, R.C.M. 1947, is amended to read as follows:

"**95-3215. Conditional release.** A prisoner on parole who has served *one-half* of his term or terms, less good time allowances, or a *nondangerous offender on parole who has served one-quarter of his term or terms, less good time allowances,* is considered released on parole until the expiration of the maximum term or terms for which he was sentenced, less good time allowances as provided in section 80-1905."

Section 5. **Application of act.** This act applies to any offender sentenced after July 1, 1977. (Section 2 of this act) applies to any prisoner who, after July 1, 1977, commits an offense while he is imprisoned in the state prison or while he is released on parole or under the prisoner furlough program.

Section 6. **Repealer.** Section 95-2206.5, R.C.M. 1947, is repealed.

Approved April 8, 1977.

CHAPTER NO. 341

AN ACT TO REPEAL THE SECTIONS ESTABLISHING THE EDUCATIONAL BROADCASTING COMMISSION AND ITS DUTIES; TO PROVIDE THAT THE DEPARTMENT OF ADMINISTRATION SHALL FOSTER THE DEVELOPMENT OF NEW COMMUNICATION SYSTEMS; AMENDING SECTION 82-3325, R.C.M. 1947; REPEALING SECTIONS 75-9001 THROUGH 75-9004 AND 82A-511, R.C.M. 1947; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-3325, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1052 1977

"**82-3325. Powers and duties of department of administration regarding communications.** The department of administration shall:

(1) Provide communication services to all agencies of state government. The state communications system shall be capable of passing voice, video, data, written information, and other forms of communication to and from distant points. The department shall adopt adequate rules for the use of any communications equipment and facilities now in use or hereafter made available;

(2) Exercise general supervision over all existing communications systems for all agencies of state government;

(3) Plan, review, and approve any additional installations of communications equipment and systems for all agencies of state government. In approving the installation of additional communications equipment or systems, the department shall first consult with and consider the recommendations and advice of the executive heads of the various state agencies;

(4) Approve standards and procedures for selection, acquisition, and operation of communication equipment;

(5) Insure that all communications equipment is properly maintained. The department is authorized to establish a centralized maintenance program for all state communications equipment and to contract the equipment maintenance if it is in the state's best interest. The department shall maintain cost records and bill agencies for services rendered;

(6) Provide assistance to the legislature, governor, and state agencies relative to state and interstate communication matters;

(7) Provide a means whereby political subdivisions of the state may utilize the state communications system, upon such terms and under such conditions the department may establish;

(8) Accept federal funds granted by Congress or by executive order for any purposes of this section, as well as gifts and donations from individuals and private organizations or foundations;

(9) *Foster the development of new and innovative communications systems and techniques for state government, including but not limited to satellite communications, and high-speed, high-density data transfer. To carry out the purposes of this section the department may contract with qualified private organizations, foundations, or individuals if it is in the state's best interest.*"

Section 2. **Repealer.** Sections 75-9001 through 75-9004 and 82A-511, R.C.M. 1947, are repealed.

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved April 8, 1977.

HeinOnline -- 1977 Vol. I 1053 1977

CHAPTER NO. 342

AN ACT TO GENERALLY REVISE THE LAWS IMPLEMENTING THE CONSTITUTIONAL RIGHT OF THE PEOPLE TO PETITION FOR INITIATIVE AND REFERENDUM ON STATEWIDE ISSUES; AMENDING SECTIONS 23-2704, 23-2802, 23-3326, AND 89-2330.3, R.C.M. 1947; AND REPEALING SECTIONS 37-101 THROUGH 37-104, 37-104.1, 37-104.2, 37-104.3, 37-104.4, 37-104.5, 37-104.6, 37-104.7, 37-104.8, 37-104.9, 37-104.10, 37-105 THROUGH 37-110, AND 37-201 THROUGH 37-203, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 37-115 that reads as follows:

37-115. Initiative and referendum procedures established. The right of the people to petition to enact laws by initiative, to petition to approve or reject by referendum any act of the legislature except an appropriation of money, to call for a vote on whether there shall be a constitutional convention, and to propose constitutional amendments by initiative as guaranteed by The Constitution of the State of Montana may be exercised through adherence to the procedures established in this chapter.

Section 2. There is a new R.C.M. section numbered 37-116 that reads as follows:

37-116. Who may petition — sufficiency of signature. A petition for the initiative, the referendum, or to call a constitutional convention may be signed only by a qualified elector of the state of Montana. A signature may not be counted unless the elector has signed in substantially the same manner as on the voter registry card.

Section 3. There is a new R.C.M. section numbered 37-117 that reads as follows:

37-117. Form of petition generally — approval of form required — petitions numbered. (1) A petition for the initiative, the referendum, or to call a constitutional convention must be substantially in the form provided by this chapter. Clerical or technical errors that do not interfere with the ability to judge the sufficiency of signatures on the petition do not render a petition void.

(2) Petition—Petition sheets may not exceed 8 ½ x 14 inches in size. Separate sheets of a petition may be fastened in sections of not more than 25 sheets. Near the top of each sheet containing signature lines must be printed the title of the statute or constitutional amendment proposed or the measure to be referred or a statement that the petition is for the purpose of calling a constitutional convention. If signature lines are printed on both the front and back of a petition sheet the information required above must appear on both the front and back of the sheet. The complete text of the measure proposed or referred must be attached to or contained within each signature sheet if sheets are circulated separately. If sheets are circulated in sections the complete text of the measure must be attached to each section.

HeinOnline -- 1977 Vol. I 1054 1977

(3) Before a petition may be circulated for signatures, a sample sheet must be submitted to the secretary of state in the form in which it will be circulated. The secretary of state shall refer a copy of the sheet to the attorney general for his approval. The secretary of state and attorney general must each review the sheet for sufficiency as to form and approve or reject the form of the petition stating his reasons therefor. The attorney general shall return the sheet together with his comments within 3 working days after receiving it. The secretary of state shall review the comments of the attorney general and make a final decision as to the approval or disapproval of the form of the sheet. The secretary of state must notify the person who submitted the sheet of the approval or rejection together with reasons for rejection, if applicable, within 1 week of receiving the sheet.

(4) The secretary of state shall serially number all submitted petitions that are approved as to form continuously from year to year. The numbering system shall distinguish the different types of petitions received and include provisions for numbering measures referred to the people by the legislature.

Section 4. There is a new R.C.M. section numbered 37-118 that reads as follows:

37-118. Petition for the initiative. (1) The following is substantially the form for a petition calling for a vote to enact a law by the initiative:

WARNING

A person who purposefully signs a name other than his own to this petition or who signs his name more than once upon a petition for the same issue at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana is punishable by a fine not exceeding $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years.

PETITION FOR INITIATIVE

To the Honorable ....., Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully propose that the measure printed within this petition, entitled (title of proposed law), be submitted to the qualified electors of the state of Montana for their approval or rejection at the general election to be held on the .... day of ....., 19... By his signature, each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana; I have not signed another petition for the same issue for the same election; and my post-office address and legislative representative district number are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

HeinOnline -- 1977 Vol. I 1055 1977

Section 5. There is a new R.C.M. section numbered 37-119 that reads as follows:

37-119. Petition for the referendum. (1) The following is substantially the form for a petition calling for approval or rejection of an act of the legislature by the referendum:

WARNING

A person who purposefully signs a name other than his own to this petition or who signs his name more than once upon a petition for the same issue at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana is punishable by a fine of not exceeding $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years.

PETITION FOR REFERENDUM

To the Honorable ....., Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully petition that Senate (House) Bill Number ...., entitled (title of act), passed by the ..... Legislature of the state of Montana at the regular (special) session of the legislature that commenced ....., 19.., be referred to the people of the state for their approval or rejection at the general election to be held on the .... day of ....., 19... By his signature, each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana; I have not signed another petition for the same issue for the same election; and my post-office address and legislative representative district number are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

Section 6. There is a new R.C.M. section numbered 37-120 that reads as follows:

37-120. Petition for initiative for constitutional convention. (1) The following is substantially the form for a petition to direct the secretary of state to submit to the qualified voters the question of whether there shall be a constitutional convention:

WARNING

A person who purposefully signs a name other than his own to this petition or who signs his name more than once upon a petition for the same issue at one election or who is not, at the time he signs this petition, a qualified elector of the state is punishable by a fine not exceeding $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years.

HeinOnline -- 1977 Vol. I 1056 1977

INITIATIVE PETITION ON THE QUESTION OF CALLING A CONSTITUTIONAL CONVENTION

To the Honorable ....., Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully petition that the question of whether there shall be an unlimited convention to revise, alter, or amend The Constitution of the State of Montana be submitted to the qualified electors of the state of Montana for their approval or rejection at the general election to be held on the .... day of ....., 19... By his signature, each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana; I have not signed another petition for the same issue for the same election; and my post-office address and legislative representative district number are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines shall follow the above heading. Each numbered line shall also contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

Section 7. There is a new R.C.M. section numbered 37-121 that reads as follows:

37-121. Petition for initiative for constitutional amendment. (1) The following is substantially the form for a petition for the initiative to amend the constitution:

WARNING

A person who purposefully signs a name other than his own to this petition or who signs his name more than once upon a petition for the same issue at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana is punishable by a fine not exceeding $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years.

PETITION PROPOSING A CONSTITUTIONAL AMENDMENT BY THE INITIATIVE

To the Honorable ....., Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully petition that the constitutional amendment printed within this petition be submitted to the qualified electors of the state of Montana for their approval or rejection at the statewide election to be held on the .... day of ....., 19... By his signature, each signer certifies: I have personally signed this petition; I am a qualified elector of the state of Montana; I have not signed another petition for the same issue for the same election; and my post-office address and legislative representative district number are correctly written after my name to the best of my knowledge and belief.

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, legislative representative district number, and printed last name of the signer.

Section 8. There is a new R.C.M. section numbered 37-122 that reads as follows:

HeinOnline -- 1977 Vol. I 1057 1977

37-122. Submission of petition sheets — certification of signatures. (1) Signed sheets or sections of petitions shall be submitted to the official responsible for registration of electors in the county in which the signatures were obtained no sooner than 1 year and no later than 2 weeks before the final date for filing the petition with the secretary of state. In no case, however, may a person submit a sheet or section of a petition to the county official so late as to allow less than 1 working day before the final date for filing the petition with the secretary of state for every 200 signatures on the sheets or sections of the petition submitted.

(2) An affidavit, in substantially the following form, shall be attached to each sheet or section submitted to the county official:

(Name of person circulating petition), affirms, or being first sworn, deposes and says: That I circulated or assisted in circulating the petition to which this affidavit is attached and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, and that the signers knew the contents of the petition before signing the same.

..... (Signature)

Subscribed and sworn to before me this .... day of ....., 19...

.....(Person authorized to take oaths)

Seal .....(Title or notarial information)

Section 9. There is a new R.C.M. section numbered 37-123 that reads as follows:

37-123. County official to forward verified sheets. (1) The county official verifying the number of registered electors signing the petition shall forward it to the secretary of state by certified mail with a certificate in substantially the following form attached:

To the Honorable ....., Secretary of State of the state of Montana:

I, ..., ... (title) of the County of ....., certify that I have examined the attached (section containing .... sheets) or (.... sheets) of the petition for (referendum, initiative, constitutional convention, or constitutional amendment) No. .... in the manner prescribed by law; and I believe that .... (number) signatures in Legislative Representative District No. .... (repeat for each district included in sheet or section) are valid; and I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and the post-office address and legislative representative district number is completed for each valid signature.

Signed: ..... (Date) ..... (Signature)

Seal ..... (Title)

(2) The county official certifying the sheets or sections of a petition shall keep a copy of the sheets or sections certified in the official files of his office. The copies may be destroyed 3 months after the date of the election specified in the petition unless a court action is pending on the sufficiency of the petition.

(3) The county official receiving the sheets or sections of a petition

HeinOnline -- 1977 Vol. I 1058 1977

shall check the names of all signers to verify they are registered electors of the county. In addition, the official shall randomly select signatures on each sheet or section and compare them with the signatures of the electors as they appear in the registration records of the office. If all the randomly selected signatures appear to be genuine, the number of signatures of registered electors on the sheet or section may be certified to the secretary of state without further comparison of signatures. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet or section must be compared with the signatures in the registration records of the office.

(4) The county official to whom the sheets or sections of the petition are submitted may not retain a sheet or section for longer than 1 working day for each 200 signatures on the sheet or section. The secretary of state may extend this time if he is convinced the workload involved requires extension.

(5) A registered elector of a county having reason to believe that signatures on a petition that were not among those actually compared with signatures in the registration records of the county are not genuine may file a sworn statement or affirmation of his belief and request for comparison of those signatures he believes are not genuine with the county official certifying the sheet or section of the petition. If any of the challenged signatures are not genuine, the county official must compare all signatures on that sheet or section and issue an amended certificate to the secretary of state giving the correct number of valid signatures.

Section 10. There is a new R.C.M. section numbered 37-124 that reads as follows:

37-124. Consideration and counting of signatures by secretary of state. (1) The secretary of state shall consider and count only such signatures on petitions as are certified by the proper county official, and each such certificate is prima facie evidence of the facts stated therein. However, the secretary of state may consider and count any signature not certified by the county official that is certified by a notary public of the county in which the signer resides to be the genuine signature of an elector legally qualified to sign the petition.

(2) The official certificate of the notary public for any signature not certified as valid by the county official shall be in substantially the following form:

State of Montana) ss
County of .....)

I, ... (name), a duly qualified and acting notary public in and for the above-named county and state, do hereby certify: that I am personally acquainted with each of the following-named electors whose signatures are affixed to the annexed (petition) (copy of a petition), and I know of my own knowledge that they are registered electors of the state of Montana and of the county and legislative district written after their names in the petition and that their post-office address is correctly stated therein.

HeinOnline -- 1977 Vol. I 1059 1977

.....(Names of such electors)

In Testimony Whereof, I have hereunto set my hand and official seal this .... day of ....., 19...

..... (Signature)

Seal ..... (Notarial information)

Section 11. There is a new R.C.M. section numbered 37-125 that reads as follows:

37-125. Time for filing. Unless a specific time for filing is provided in the constitution, all petitions filed with the secretary of state, certified as provided by law, must be received before 5 p.m. of the second Friday of the fourth month prior to the election at which they are to be voted upon by the people.

Section 12. There is a new R.C.M. section numbered 37-126 that reads as follows:

37-126. Certification of petition to governor — governor's proclamation. When sheets or sections of a petition for referendum, initiative, constitutional convention, or constitutional amendment containing a sufficient number of signatures have been filed with the secretary of state within the time required by the constitution or by law, he shall immediately certify to the governor that the completed petition has been officially filed. The governor shall include the titles of all ballot issues certified to him by the secretary of state or referred to the people or proposed by the legislature in the proclamation required by 23-2901 and shall also include a brief statement of each issue's tenor and effect.

Section 13. There is a new R.C.M. section numbered 37-127 that reads as follows:

37-127. Transmittal of issues to the attorney general — attorney general's statement. (1) The secretary of state shall transmit a copy of a ballot issue proposed by any type of initiative petition or referred to the people by referendum petition and a copy of the form in which the issue will appear on the ballot to the attorney general on the same day he certifies the official filing of the completed petition to the governor.

(2) The secretary of state shall transmit a copy of an act referred to the people or a constitutional amendment proposed by the legislature and a copy of the form in which the issue will appear on the ballot to the attorney general no later than 6 months before the election at which the issue will be voted on by the people.

(3) Within 10 days after receiving a copy of a ballot issue that will be voted on by the people, the attorney general shall return to the secretary of state a statement not exceeding 100 words in ordinary plain language explaining the general purpose of the issue submitted. The statement by the attorney general shall give a true and impartial statement of the purposes of the issue in plain, easily understood language and in a manner that is not an argument or likely to create prejudice either for or against the issue.

(4) At the same time he returns the statement explaining the purposes

HeinOnline -- 1977 Vol. I 1060 1977

of the issue, the attorney general shall notify the secretary of state of his approval or disapproval of the ballot form for the issue submitted by the secretary. If the ballot form is not approved, the secretary of state shall immediately submit a new ballot form and notice of approval or disapproval must be given by the attorney general within 5 days of receiving the new form.

(5) If statements of the implication of a vote for or against a ballot issue have been provided by the legislative act or petition placing the issue on the ballot, the secretary of state shall include a copy of the statements with the copy of the issue submitted to the attorney general. When the attorney general returns his statement of the general purpose of the issue to the secretary of state, he shall include a notice that he has reviewed the statements of the implication of a vote for or against the issue and may include comments as to whether the statements clearly explain the implications of a vote. If statements of the implication of a vote for or against a measure have not been provided, the attorney general shall provide the statements with his statement of the general purpose of the issue. Statements of the implication of a vote for or against a ballot issue shall be no more than 25 words and shall be in simple language clearly explaining the meaning of a vote for the issue or a vote against the issue. Such statements shall be placed beside the diagram provided for the marking of the ballot similar to the following example:

☐ FOR extending the right to vote to persons 18 years of age.

☐ AGAINST extending the right to vote to persons 18 years of age.

(6) In the case of an act referred to the people or a constitutional amendment proposed by the legislature, the secretary of state shall prepare a statement setting forth the vote by which the issue passed each house of the legislature. The secretary of state shall file an official copy of his statement with the attorney general's statement on the issue in the official records of his office.

Section 14. There is a new R.C.M. section numbered 37-128 that reads as follows:

37-128. Voter information pamphlet. (1) (a) The secretary of state shall prepare for printing a voter information pamphlet containing the following information for each ballot issue to be voted on at an election, as applicable:

(i) title and complete text of the issue;

(ii) statement of the secretary of state;

(iii) statement of the attorney general;

(iv) the form in which the issue will appear on the ballot;

(v) arguments advocating approval and rejection of the issue; and

(vi) rebuttal arguments.

(b) The secretary of state may arrange the information in the order which seems most appropriate, but the information for all issues in the pamphlet shall be presented in the same order.

HeinOnline -- 1977 Vol. I 1061 1977

(2) The arguments advocating approval or rejection of the ballot issue and rebuttal arguments shall be submitted to the secretary of state by committees appointed as provided in this subsection:

(a) The committee advocating approval of an act referred to the people or a constitutional amendment proposed by the legislature or an act referred to the people by referendum petition shall be composed of one senator known to favor the measure, appointed by the president of the senate; one representative known to favor the measure, appointed by the speaker of the house of representatives; and one member who need not be a member of the legislature, appointed by the first two members.

(b) The committee advocating rejection of a ballot issue referred to the people or proposed by the legislature shall be composed of one senator appointed by the president of the senate; one representative appointed by the speaker of the house of representatives; and one member who need not be a member of the legislature, appointed by the first two members. Whenever possible, the members shall be known to have opposed the issue.

(c) A three-member committee advocating approval of a ballot issue proposed by any type of initiative petition or advocating rejection of any ballot issue that is a legislative act referred to the people by referendum petition shall be appointed by the chairman of the organization that was first on record with the commissioner of campaign finances and practices as a proponent of the petition.

(d) A committee advocating rejection of a ballot issue proposed by any type of initiative petition shall be composed of five members. The governor, attorney general, president of the senate, and speaker of the house of representatives shall each appoint one member, and the fifth member shall be appointed by the first four members. All members shall be known to favor rejection of the issue.

Section 15. There is a new R.C.M. section numbered 37-129 that reads as follows:

37-129. Time for making appointments — chairman. (1) Appointments to committees advocating approval or rejection of an act referred to the people or a constitutional amendment proposed by the legislature shall be filed with the secretary of state no later than 4 months before the election at which the ballot issue will be voted on by the people.

(2) Appointments to committees advocating approval or rejection of a ballot measure referred to the people by referendum petition or proposed by any type of initiative petition shall be filed with the secretary of state no later than 10 days after the measure is certified to the governor. At the same time the certification of the sufficiency of a petition is made to the governor, the secretary of state shall notify all persons responsible for appointing members of committees advocating approval or rejection of the issue of the date by which such appointments must be filed in his office.

(3) The appointee of the president of the senate is the chairman of any committee to which that officer makes an appointment. The appoint-

HeinOnline -- 1977 Vol. I 1062 1977

ing authority for other committees shall name a chairman at the time the appointments are made.

Section 16. There is a new R.C.M. section numbered 37-130 that reads as follows:

37-130. Expenses allowed. Each committee is entitled to receive funds for the preparation of arguments and expenses of members not to exceed $150 for a three-member committee and $250 for a five-member committee. Itemized claims for actual expenses incurred, approved by a majority of the committee, shall be submitted to the secretary of state for payment from funds appropriated for that purpose.

Section 17. There is a new R.C.M. section numbered 37-131 that reads as follows:

37-131. Limitation on length of argument advocating approval or rejection — time of filing. An argument advocating approval or rejection of a ballot issue is limited to 500 words and shall be filed, in typewritten form, with the secretary of state no later than 30 days following the date by which the appointment of the committee was required to be filed with the secretary of state. In no case, however, may an argument be submitted for filing later than 70 days before the election at which the issue will be voted on by the people. A majority of the committee responsible for preparation must approve and sign each argument filed. Separate signed letters of approval of an argument may be filed with the secretary of state by members of a committee if necessary to meet the filing deadline.

Section 18. There is a new R.C.M. section numbered 37-132 that reads as follows:

37-132. Rebuttal arguments. The secretary of state shall provide copies of the arguments advocating approval or rejection of a ballot issue to the members of the adversary committee no later than 1 day following the filing of both the approval and rejection arguments for the issue in his office. The committees may prepare rebuttal arguments no longer than 250 words that shall be filed, in typewritten form, with the secretary of state no later than 10 days after the deadline for filing the original arguments. Discussion in the rebuttal argument must be confined to the subject matter raised in the argument being rebutted. The rebuttal argument shall be approved and signed by a majority of the committee responsible for its preparation. Separate signed letters of approval may be submitted in the same manner as for the original arguments.

Section 19. There is a new R.C.M. section numbered 37-133 that reads as follows:

37-133. Rejection of improper arguments — responsibility of author for content. (1) The secretary of state shall reject, with the approval of the attorney general, an argument or other matter held to contain obscene, vulgar, profane, scandalous, libelous, or defamatory matter; any language that in any way incites, counsels, promotes, or advocates hatred, abuse, violence, or hostility toward, or that tends to cast ridicule or shame upon, a group of persons by reason of race, color, religion, or sex; or any matter not allowed to be sent through the mail. Such arguments may not be filed or printed in the voter information pamphlet.

HeinOnline -- 1977 Vol. I 1063 1977

(2) Nothing in this act relieves an author of any argument from civil or criminal responsibility for statements contained in an argument printed in the voter information pamphlet.

Section 20. There is a new R.C.M. section numbered 37-134 that reads as follows:

37-134. Printing and distribution of voter information pamphlet. (1) The secretary of state shall arrange with the department of administration by requisition for the printing and delivery of a voter information pamphlet for all ballot issues to be submitted to the people at least 90 days before the election at which they will be submitted. The requisition shall include a delivery list providing for shipment of the required number of pamphlets to each county and to the secretary of state.

(2) The secretary of state shall estimate the number of copies necessary to furnish one copy to every voter in each county and provide for an extra supply of the pamphlets in his office in determining the number of voter pamphlets to be ordered in the requisition.

(3) The department of administration shall call for bids and contract with the lowest bidder for the printing and delivery of the voter information pamphlet. The contract shall require completion of printing and shipment, as specified on the delivery list, of the voter information pamphlets by not later than 30 days before the election at which the ballot issues will be voted on by the people.

(4) The county official responsible for voter registration in each county shall mail one copy of the voter information pamphlet to each registered voter of the county no later than 2 weeks after the pamphlets are received from the printer.

(5) Ten copies of the voter information pamphlet shall be available at each precinct for use by any voter wishing to read the explanatory information and complete text before voting on the ballot issues.

Section 21. There is a new R.C.M. section numbered 37-135 that reads as follows:

37-135. Secretary of state to certify ballot form. (1) The secretary of state shall furnish to the official of each county responsible for preparation and printing of the ballots, at the same time as he certifies the names of the persons who are candidates for offices to be filled at the election, a certified copy of the form in which each ballot issue to be voted on by the people at that election is to appear on the ballot. Unless otherwise provided in the legislative act or petition placing the issue on the ballot, the secretary of state shall list for each issue the number, the method of placement on the ballot, the title, and the statements of the implication of a vote for or against the issue that are to be placed beside the diagram for marking the ballot. The secretary of state shall use for each ballot issue the title of the legislative act, legislative constitutional proposal, or ballot issue proposed by any type of initiative petition unless that title exceeds 100 words. A title of 100 words or less for the ballot shall be provided by the legislature or the organization circulating the petition if the official title exceeds 100 words. Following the number of the ballot

HeinOnline -- 1977 Vol. I 1064 1977

issue, the secretary of state shall include one of the following statements to identify why the issue has been placed on the ballot:

(a) an act referred by the legislature;

(b) an amendment to the constitution proposed by the legislature;

(c) an act of the legislature referred by referendum petition; or

(d) a law or constitutional amendment proposed by initiative petition.

(2) Each of the county officials responsible for the preparation and printing of the ballots shall print the ballot issues on the official ballot in the form and order in which the issues have been certified by the secretary of state. All ballot issues shall be placed on the official ballot prescribed by 23-3506, 23-3804, or 23-3904 unless specific written approval by the secretary of state for placing the ballot issues on a separate ballot is received by the official responsible for printing the ballot. The secretary of state may issue such approval only when the number of issues to be voted on at an election makes it impossible to print the entire ballot, including the ballot issues, on the official ballot as prescribed by 23-3506, 23-3804, or 23-3904.

Section 22. There is a new R.C.M. section numbered 37-136 that reads as follows:

37-136. Determination of result of election. (1) The votes on ballot issues shall be counted, canvassed, and returned by the regular boards of judges, clerks, and officers as votes for candidates are counted, canvassed, and returned. The abstract of votes on ballot issues shall be prepared and returned to the secretary of state in the manner provided by 23-4015 for abstract of votes for state officers. The state board of canvassers shall proceed within 20 days after the election at which such ballot issues are voted upon and, at the same time as the votes for state officers are canvassed, canvass the votes given for each ballot issue. The secretary of state, as secretary of the board of state canvassers, shall prepare and file in his office a statement of the canvass giving the number and title of each issue, the whole number of votes cast in the state for and against each ballot issue, and the effective date of each ballot issue approved by a majority of those voting on the issue. The secretary of state shall transmit a certified copy of the statement of the canvass to the governor.

(2) The secretary of state shall send a certified copy of all ballot issues which have been approved by a majority of those voting on the issue and a copy of the statement of the canvass to the executive director of the legislative council at the same time he transmits a certified copy of the statement of the canvass to the governor.

Section 23. There is a new R.C.M. section numbered 37-137 that reads as follows:

37-137. Effective date of initiative and referendum issues. (1) Unless the petition placing an initiative issue on the ballot states otherwise, an initiative issue approved by the people is effective on July 1 following approval.

HeinOnline -- 1977 Vol. I 1065 1977

(2) Unless the legislature provides otherwise, a constitutional amendment proposed by the legislature and approved by the people is effective on July 1 following approval.

(3) Unless specifically provided by the legislature in an act referred by it to the people or until suspended by a petition signed by at least 15% of the qualified electors in a majority of the legislative representative districts, an act referred to the people is in effect as provided by law until it is approved or rejected at the election. An act that is rejected is repealed effective the date the result of the canvass is filed by the secretary of state under 37-136. An act referred to the people that was in effect at the time of the election and is approved by the people remains in effect. An act that was suspended by a petition and is approved by the people is effective the date the result of the canvass is filed by the secretary of state under 37-136. An act referred by the legislature that contains an effective date following the election becomes effective on that date if approved by the people. An act that provides no effective date and whose substantive provisions were delayed by the legislature pending approval at an election and that is approved is effective July 1 following the election.

Section 24. There is a new R.C.M. section numbered 37-138 that reads as follows:

37-138. Violations — penalties. A person who knowingly makes a false entry upon a petition or affidavit required by this chapter or who knowingly signs a petition to place the same issue on the ballot at the same election more than once is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 94-7-204 or 94-7-209, as applicable.

Section 25. Section 23-2704, R.C.M. 1947, is amended to read as follows:

"23-2704. Notice and closing of registration for elections on incurring of state indebtedness other than for refunding or levy of tax. (1) If the question of state indebtedness, issuance of bonds or debentures other than for refunding, or the levy of a tax for state purposes, is submitted at an election other than a general biennial election, the registrar of each county shall publish in the official county newspaper, a notice signed by him, stating that registration will close at noon on the fortieth (40th) day prior to the date of the election unless the act providing for the submission of the question fixes a different time for the giving of notice. The notice shall be published ten (10) days or more prior to the date when registration will be closed unless the act providing for submission of the question fixes a different time for closing registration.

(2) If the question is to be submitted at a general biennial election, notice and the closing of registration shall be governed by the laws applying to general biennial elections. The provisions of *37-134* apply to the printing and distribution of copies of the proposed law."

Section 26. Section 23-2802, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1066 1977

"**23-2802. Publication and printing of amendments to constitution.** If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall *have* the proposed amendment or amendments published in full twice each month for 2 months previous to the election at which they are to be voted upon by the people in not less than one newspaper *of general circulation* in each county."

Section 27. Section 89-2330.3, R.C.M. 1947, is amended to read as follows:

"**89-2330.3. Procedures for elections in drainage districts.** The election provided for by section 89-2330.1 shall be governed by the following rules.

(1) Notice of the election shall be as provided in section 89-2303 except that the form of the ballot shall be as hereinafter provided.

(2) The manner of conducting the election shall be as provided in section 89-2304.

(3) The qualifications of electors shall be as provided in section 89-2305 except that, in addition to persons holding title, or evidence of title to lands within the district, any person as therein defined who does not own land within the district but has been assessed or will have his improvements assessed under chapter 409, Laws of 1973, or who will be assessed for benefits received, shall be entitled to one (1) vote. Commissioners shall prepare a list of such persons and give them notice as provided in section 89-2303.

(4) The commissioners of any district in existence prior to the effective date of chapter 409, Laws of 1973, who wish to hold an election to determine if the district shall be governed by chapter 409, Laws of 1973, shall at any regular or special meeting adopt a resolution calling for an election to determine whether or not the voters of said district wish to be governed by chapter 409, Laws of 1973. The resolution shall contain a short summary of the changes made by chapter 409, Laws of 1973 and shall include the summary as part of the notice provided for by section 89-2303. In addition, the commission shall provide copies of chapter 409, Laws of 1973 to any person interested in obtaining a copy of the same and the notice to the persons in the district calling the election shall describe where and how copies may be obtained. The commissioners may authorize a reasonable charge for providing said copies, not to exceed twenty cents ($.20) per page.

(5) The ballot shall include the summary as provided for in the preceding paragraph and the form of the ballot shall conform, as closely as possible, to that set forth in *37-127.*

(6) A simple majority of those who cast valid ballots shall determine the outcome of the election."

Section 28. Section 23-3326, R.C.M. 1947, is amended to read as follows:

"**23-3326. Submission and verification of petition.** Petitions of nomination for the presidential preference primary election must be pre-

HeinOnline -- 1977 Vol. I 1067 1977

sented to the county clerk and recorder of the county in which the signatures are gathered. The county clerk and recorder must verify the signatures in the manner prescribed in *37-123* and must forward the petitions to the secretary of state. The petitions must be submitted to the clerk and recorder at least 30 days before the filing deadline established in 23-3305."

Section 29. **Repealer.** Sections 37-101 through 37-104, 37-104.1, 37-104.2, 37-104.3, 37-104.4, 37-104.5, 37-104.6, 37-104.7, 37-104.8, 37-104.9, 37-104.10, 37-105 through 37-110, and 37-201 through 37-203, R.C.M. 1947, are repealed.

Approved April 8, 1977.

CHAPTER NO. 343

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE BOARD OF EXAMINERS; AMENDING SECTIONS 3-2605, 5-1117, 31-104, 31-105, 41-908, 41-1603, 53-101, 75-8427, 75-8605, 75-8801, 79-901, 82-401, 82-1519, 82A-207, 83-606, 83-704, 87-130, AND 95-3124, R.C.M. 1947; AMENDING SECTION 82A-207, R.C.M. 1947, TO DELETE PROVISION ENABLING BOARD TO HIRE ITS OWN PERSONNEL; AND REPEALING SECTIONS 75-8802 AND 79-305, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-2605, R.C.M. 1947, is amended to read as follows:

"**3-2605. Warrants for claims.** The state auditor is hereby authorized to draw warrants on said fund on verified claims submitted by the state entomologist and approved by the *department of administration.*"

Section 2. Section 5-1117, R.C.M. 1947, is amended to read as follows:

"**5-1117. Disposition of unclaimed funds.** (1) The department shall certify to the state treasurer a complete list of funds remaining with it uncalled for, which have been left with it in its official capacity, in trust for depositors in and creditors of a liquidated bank after they have been held by it for six (6) months from the date of the final liquidation of the institution. Along with this certificate, it shall transmit to the state treasurer the funds with accumulated interest on them, which it has so held in trust for six (6) months. A copy of the certificate shall also be filed with the state auditor, who shall make a record of it.

(2) The state treasurer shall deposit the funds and interest in the general fund of this state.

(3) A depositor or creditor of a liquidated bank who has not been paid the amount standing to his credit as thus certified to the state treasurer, may apply to the *department* for the amount due him. The depositor or creditor shall make an affidavit and offer proof of his identity and of the amount due him by the liquidated bank. When satisfied as to the correct-

HeinOnline -- 1977 Vol. I 1068 1977

ness of the claim and of the identity of the person, the *department* shall forward it to the auditor, who shall audit the claim and if found correct so certify to the *department*, which, if it approves the claim, shall transmit the claim to the legislature with a statement of its approval."

Section 3. Section 31-104, R.C.M. 1947, is amended to read as follows:

"**31-104. Chief — appointment — tenure of office — salary — supervisory power — resident requirement.** The *attorney general* shall select a highway patrol chief who shall have the rank of colonel and shall hold his office until his appointment has terminated for cause, as hereinafter set forth, and shall receive a salary fixed by the *attorney general* within the limits of the legislative appropriation for such purpose, and travel expenses, as provided for in sections 59-538, 59-539, and 59-801. The chief shall have direct control and supervision of all patrolmen, subject to the approval of the *attorney general.* The person named as chief shall have been a continuous resident of Montana for at least five (5) years. The chief, with the approval of the *attorney general* and within the limits of any appropriation made available for such purposes, shall:

1. Designate the authority and responsibility in each such rank, grade and position;

2. Formulate standards, policies and qualifications in the selection of recruit patrolmen;

3. Prescribe the official uniform of the Montana highway patrol;

4. Station employees in such localities as he shall deem advisable for the enforcement of the traffic laws of this state;

5. Charge against each employee the value of property of the state, lost or destroyed through the carelessness or neglect of such employee;

6. Discharge, demote, or temporarily suspend after hearing as provided in section 31-105, any patrolman of the department;

7. Have purchased, or otherwise acquired, by the purchasing department of the state, motor equipment and all other equipment and commodities deemed by him essential to the efficient operation of the Montana highway patrol."

Section 4. Section 31-105, R.C.M. 1947, is amended to read as follows:

"**31-105. Appointment and promotion of officers — replacements and additions — reserve patrolmen — salaries — qualifications — probationary training — tenure — disciplinary action — hearing — appeal.** (1) Appointments and promotions. (a) The division of motor vehicles, department of justice shall designate supervisory personnel including, but not limited to, captains, lieutenants, sergeants, and patrolmen in such numbers as necessary, but within the limits of the legislative appropriation made available for such purposes.

(b) Replacements and additions to the highway patrol force shall be chosen in equal numbers from the twelve (12) highway districts, provided however, that if sufficient qualified applications are not received from any one district that the division may in its discretion substitute other qualified applicants from any other districts.

HeinOnline -- 1977 Vol. I 1069 1977

(c) Patrolmen filling vacancies caused by the incumbents' entrance into the armed forces of the United States, shall on the return of the incumbents be placed in the patrol reserve, without pay; otherwise they shall hold their probationary or permanent appointments while there are sufficient operating funds. Reserve patrolmen shall then be used for future replacements in the permanent patrol.

(d) Supervisory personnel shall be selected from the patrolmen by the chief, subject to the approval of the division. The duties and jurisdiction of the supervisory personnel shall be outlined, defined and under the control of the chief subject to the approval of the division.

(2) In the event that a probationary patrolman is appointed permanently, he shall, at the time of such appointment, receive the base salary of patrolmen.

(3) Qualifications. (a) Patrolmen shall possess the following qualifications:

(i) Sound and active physical and mental condition.

(ii) Good moral character.

(iii) Resident of Montana for at least one (1) year immediately prior to appointment.

(iv) Pass a satisfactory test in the operation of automobiles.

(v) Citizens of the United States and state of Montana.

(4) Probationary training. (a) All new patrolmen shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the division for permanent appointments; otherwise the probationary patrolmen will automatically be discharged.

(b) All newly appointed supervisory personnel shall be placed under probationary training and service for a period of six (6) months to one (1) year, during which time the highway patrol chief must recommend to the division for permanent appointments; otherwise the supervisory personnel will automatically revert to their previous ranks without prejudice.

(5) Tenure of office. Every person employed or appointed and designated as a chief, captain, lieutenant, sergeant, patrolman, or any other rank under and pursuant to the provisions of this act, except as provided in subsection (4) above, shall continue in service and hold his position without demotion until suspended, demoted, or discharged in the manner hereinafter provided, for one (1) or more of the causes specified in the following subsection.

(6) Suspension, demotion or discharge. Cause for suspension, demotion or discharge will be:

(a) Conviction of any crime involving moral turpitude in any court of competent jurisdiction subsequent to the commencement of such employment.

HeinOnline -- 1977 Vol. I 1070 1977

(b) Gross neglect of duty or willful violation or disobedience of orders or regulations.

(c) Loitering about or entering places of ill fame, ill repute, or where gambling is known to be conducted or to be in progress, except in the immediate discharge of duty.

(d) Conduct unbecoming an officer.

(e) Drinking intoxicating liquor while using state-owned cars or in uniform, or being intoxicated in a public place.

(f) Sleeping while on duty.

(g) Incapacity, or partial incapacity, materially affecting his ability to perform his official duties.

(h) Gross inefficiency in performing duties.

(i) Willful disobedience of rules and regulations adopted by the division, governing the conduct and discipline of members of the patrol.

(7) Method of preferring charges. (a) The charge or charges against any patrolman shall be made in writing and shall be signed and sworn to by the person making the charge or charges.

(b) The written charge or charges shall be filed with the chief of the Montana highway patrol.

(c) Any charge or charges which could result in the suspension or discharge of the chief or supervisory personnel with the rank of captain or above shall be filed directly with the division.

(d) When charges are filed and the chief believes that such charge or charges constitute grounds for suspension, demotion or discharge, he shall order a hearing to be had thereon before the division and fix a time for such hearing.

(e) When charges are filed and the chief believes such charge or charges do not constitute grounds for suspension, demotion or discharge he shall dismiss such charges.

(f) The division shall have the authority to order the chief to file charges with the division when the chief in his judgment does not believe the charge or charges warrant a hearing.

(8) Authority to suspend, demote or discharge. (a) When the highway patrol chief has cause to believe that any member of the highway patrol has violated any of the hereinabove grounds for suspension, demotion or discharge, or his conduct has warranted reprimanding, he may, with the approval of the division, suspend, demote or reprimand the member.

(b) If the chief orders a hearing he may suspend such patrolman pending the rendition of the decision made in such case.

(9) Length of suspension — demotion pay status. (a) Any member under suspension shall be on leave without pay and for a period not to exceed thirty (30) days in time.

HeinOnline -- 1977 Vol. I 1071 1977

(b) In cases of disciplinary action resulting in demotion, the member shall receive the pay of the rank to which he is demoted.

(10) Notification of hearing. (a) The chief shall, at least ten (10) days before the time appointed for a hearing, serve written notice specifying the charge or charges filed and stating the name of the person or persons making the charge or charges, on the accused patrolman personally, if his whereabouts is known, in the state of Montana.

(b) If at the time, the whereabouts of the accused patrolman is unknown, or if he be outside of the state of Montana, service may be made upon him by mailing the written notice to him at his last known place of residence in Montana.

(11) Hearing. (a) The division shall be the authority to hear such charge or charges and render a decision and appropriate order.

(b) The division shall have the power to compel the attendance of witnesses at any such hearing and to examine them under oath and to require the production of books, papers, and other evidence at such hearing and for that purpose issue subpoenas and cause the same to be served and executed in any part of the state.

(c) The accused patrolman shall be entitled to be confronted with the witnesses against him and have an opportunity to cross-examine the same and to introduce at such hearing testimony in his own behalf and shall be entitled to be represented by counsel at such hearing.

(d) The division shall within fifteen (15) days after such hearing render its decision in writing and file same in its office with the chief and with the patrolman accused also.

(12) Disciplinary action. (a) If, after a hearing, the division finds that any such charge or charges, made against the patrolman be true, it may punish the offending party by reprimand, suspension without pay, demotion, or discharge.

(b) If after the hearing, the division finds that the charge or charges made against the patrolman not be true, the division shall reinstate the accused patrolman to his position and rank and shall order the payment of any salary withheld pending the determination of the charge or charges.

(13) Right to appeal. (a) Any patrolman who is suspended, demoted, or discharged may have a right of appeal to the district court of Lewis and Clark county.

(b) Such appeal must be made within ten (10) days after such decision or determination of the division.

(c) The district court shall review such decision or determination in a summary manner and shall render its decision upon such appeal within ninety (90) days from the filing of such appeal in said court.

(d) If the decision or determination of the division shall be finally reversed or modified by the district court, the accused patrolman shall

HeinOnline -- 1977 Vol. I 1072 1977

be reinstated in his position and the division shall pay to the said patrolman any salary or wages withheld from him pending the determination of the charge or charges, or as may be directed by the court."

Section 5. Section 41-908, R.C.M. 1947, is amended to read as follows:

"**41-908. Parties may agree to special board of arbitration.** (1) The parties to any controversy or difference as described in section 41-904 of this code may submit the matters in dispute, in writing, to a local board of arbitration and conciliation; such board may be either mutually agreed upon, or the employer may designate one of the arbitrators, the employees, or their duly authorized agent, another, and the two arbitrators so designated may choose a third, who shall be chairman of the board. Such board shall, in respect to the matters referred to it, have and exercise all the powers which the state board might have and exercise, and its decision shall have whatever binding effect may be agreed upon by the parties to the controversy in written submission. The jurisdiction of such board shall be exclusive in respect to the matters submitted to it, but it may ask and receive the advice and assistance of the state board. The decision of such board shall be rendered within ten days of the close of any hearing held by it; such decision shall at once be filed with the clerk of the county in which the controversy or difference arose, and a copy thereof shall be forwarded to the state board and entered on its records. Each of such arbitrators shall be entitled to receive from the treasury of the county in which the controversy or difference that is the subject of the arbitration exists, if such payment shall be approved by the commissioners of said county, the sum of three dollars for each day of actual service, not exceeding ten days for any one arbitration.

(2) Whenever it is made to appear to the mayor of any city or two commissioners of any county, that a strike or lockout such as described hereafter in this section is seriously threatened or actually occurs, the mayor of such city, or said commissioners of such county, shall at once notify the state board of the fact. Whenever it shall come to the knowledge of the state board, either by notice from the mayor of a city, or two or more commissioners of a county, as provided in this section, or otherwise, that a strike or lockout is seriously threatened or has actually occurred in any city or county of this state, involving an employer and his present or past employees, if at the time he is employing or up to the occurrence of the strike or lockout was employing not less than twenty persons in the same general line of business in any city, town, or county in this state, it shall be the duty of the state board to put itself in communication as soon as may be with such employer and employees, and endeavor by mediation to effect an amicable settlement between them, or to endeavor to persuade them, providing that a strike or lockout has not actually occurred or is not then continuing, to submit the matters in dispute to a local board of arbitration and conciliation as above provided, or to the state board; and said state board may, if it deems it advisable, investigate the cause or causes of such controversy, and ascertain which party thereto is mainly responsible or blameworthy for the existence or continuance of the same, and may make and publish a report finding such cause or causes, and assigning such responsibility or blame. The board shall have the same powers for the foregoing purposes as are given it by section 41-904 of this code.

HeinOnline -- 1977 Vol. I 1073 1977

(3) Witnesses summoned by the state board shall be allowed the sum of fifty cents for each attendance, and the further sum of twenty-five cents for each hour of attendance in excess of two hours, and shall be allowed five cents a mile for travel each way from their respective places of employment or business to the place where the board is in session. Each witness shall certify in writing the amount of his travel and attendance, and the amount due him shall be certified to the *department of administration* for auditing, and the same shall be paid as other expenses of the state from any moneys in the state treasury."

Section 6. Section 41-1603, R.C.M. 1947, is amended to read as follows:

"**41-1603. Commissioner of labor and industry — term — salary — oath.** The term of office of the commissioner of labor and industry shall be four (4) years and until his successor is appointed and qualified. The commissioner shall receive an annual salary in such amount as may be specified by the *legislature* in the appropriation to the department of labor and industry. Before entering on the duties of his office, he must take and subscribe to the oath of office prescribed by the Montana Constitution."

Section 7. Section 53-101, R.C.M. 1947, is amended to read as follows:

"**53-101. Duties of registrar of motor vehicles — records.** 1. The warden of the state penitentiary shall be, and is hereby constituted the registrar of motor vehicles, trailers and semitrailers, and as such it shall be his duty to keep a record as hereinafter specified of all motor vehicles, trailers and semitrailers of every kind, and certificates of registration and ownership thereof, and of all dealers in motor vehicles.

2. In the case of motor vehicles, trailers and semitrailers, the record shall show the following: Name of owner, residence by town and county, business address, name and address of conditional sales vendor, mortgagee or other lien holder and amount due under contract or lien, manufacturer of car, manufacturer's designation of style of car or vehicle, identifying number, year of manufacture, character of motive power and shipping weight of car as shown by the manufacturer and the distinctive license number assigned such car or vehicle; and, if a truck or trailer, the number of tons capacity, and such other information as may from time to time be found desirable.

3. The registrar shall file applications for registration received by him from the county treasurers of the state and register the vehicles therein described and the owners thereof in suitable books or on index cards, as follows:

(a) Under distinctive license number assigned to vehicle by the county treasurers.

(b) Alphabetically under name of owners.

(c) Numerically under make and identifying number of vehicle.

(d) Such other index of registration as registrar shall deem expedient.

HeinOnline -- 1977 Vol. I 1074 1977

Vehicle registration records and indexes, and driver's license records and indexes, may be maintained by electronic recording and storage media.

4. In the case of dealers the records shall show the information contained in the application for dealer's license as required by section 53-118, as well as the distinctive license number assigned to the dealer.

5. The registrar of motor vehicles shall appoint such deputies, subordinate officers, clerks, investigators and other employees as may be necessary to carry out this act, providing there be selected as many of the clerical help from the inmates of the state prison as the registrar determines to be possible.

6. All office equipment, books, files and records belonging to the motor department shall be in the care and general custody and control of the registrar of motor vehicles at the state penitentiary. In order to prevent an accumulation of unneeded records and files the registrar of motor vehicles shall have the authority and it shall be his duty to destroy all records and files which have ceased to be of any value.

7. The registrar may establish and maintain a short-wave radio station in order to report motor vehicle registration information to the highway patrol, sheriffs, and to chiefs of police of each incorporated city of the state who are able to communicate with such short-wave radio station.

8. All such records shall be open to inspection during all reasonable business hours and the registrar of motor vehicles shall furnish any information from said records upon payment by the applicant of the cost of transcribing the information requested."

Section 8. Section 75-8427, R.C.M. 1947, is amended to read as follows:

"**75-8427. Acceptance of public lands.** (1) The regents shall receive in the names of western Montana college and eastern Montana college, all benefits derived from the distribution of lands contemplated in section 17 of an Act of Congress, approved February 22, 1889 entitled "An act to provide for the division of Dakota into two states and to enable the people of North Dakota, South Dakota, Montana, and Washington to form constitutions and state governments and to be admitted into the union on an equal footing with the original states, and to make donations of public lands to such states."

(2) The regents may in carrying out the provisions of Title 75, R.C.M., 1947, pledge one-half (½) of all interest and income derived from said land grant for the payment in whole or in part of notes, bonds or other obligations issued by the regents for residence halls or other facilities at western Montana college or at eastern Montana college, provided that any such pledge shall be subject to any prior pledge."

Section 9. Section 75-8605, R.C.M. 1947, is amended to read as follows:

"**75-8605. Receipt of funds.** (1) The treasurer of Montana state university may receive:

HeinOnline -- 1977 Vol. I 1075 1977

(a) the cash appropriation received from the United States by authority of the Act of Congress of August 30, 1890, known as the second Morrill Act, and the Act of Congress of March 4, 1907, known as the Nelson Amendment, to be expended by the executive board under the general supervision of the regents only for the purpose for which it was appropriated by Congress; and

(b) all moneys appropriated by the Act of Congress of March 16, 1906, entitled: "An act to provide for and increase the annual appropriation for agricultural experiment stations and regulating the expenditures thereof," to be expended under the supervision of the regents in the manner designated in the Act of Congress and as required by section 75-8604, R.C.M., 1947.

(2) On or before September 1 of each year the state university shall make detailed reports of the amounts received and disbursed under the provisions of the Acts of Congress of March [August] 30, 1890, of March 4, 1907, and of March 16, 1906, to the secretaries of agriculture and interior of the United States, as required by the Acts of Congress."

Section 10. Section 75-8801, R.C.M. 1947, is amended to read as follows:

"75-8801. Research programs — powers of units. (1) The units of the system are authorized, singly or in co-operation, to engage in research and development programs with the prior approval of the regents.

(2) Such programs may be conducted by any department of a unit or any organization established to assist the unit.

(a) A unit or organization may:

(i) contract with private organizations, companies, firms, or individuals relative to research programs;

(ii) conduct research programs with the penal, corrective, or custodial institutions of Montana and engage the voluntary participation of the inmates, with the prior approval of the governing board of the institution;

(iii) accept contributions, grants, or gifts from private organizations, companies, firms, individuals, governmental agencies or departments for research programs;

(iv) make agreements or co-operative undertakings with private organizations, companies, firms, individuals, governmental agencies or departments for research programs;

(v) match the funds of private organizations, companies, firms, individuals, governmental agencies or departments with available funds for research programs;

(vi) accumulate, invest, and expend the funds and proceeds from research programs;

(vii) acquire real and personal property reasonably required for research programs;

(viii) not divert funds, proceeds, or real and personal property from the research programs; and

HeinOnline -- 1977 Vol. I 1076 1977

(ix) not charge or obligate the state of Montana or the general funds or a unit or agency.

(3) The legislative assembly declares a public need for scientific research in the units of the system to promote the general welfare and to provide an adequate defense for the United States."

Section 11. Section 79-901, R.C.M. 1947, is amended to read as follows:

"**79-901. State officers and institutions — limit on expenditures.** It shall be unlawful for the board of trustees, executive board, managerial staff, president, deans and faculty, or any other authority of any state institution maintained in whole or in part by the state, or for any officer, department, board, commission or bureau, having charge of the disbursement or expenditure of the income provided by legislative appropriation, or otherwise, to expend, contract for the expenditure, or to incur or permit the incurring of any obligation whatsoever, in any one year, in excess of the income provided for such year, or for any supervisory board or authority either directly or indirectly to authorize, direct or order any such institution, officer, department, board, commission or bureau to increase any expenditures, except as specifically provided by law, and it shall be and is hereby made the duty of any and all of such institutions, officers, departments, boards, commissions and bureaus to keep such expenditures, obligations and liabilities within the amount of such income."

Section 12. Section 82-401, R.C.M. 1947, is amended to read as follows:

"**82-401. General duties.** It is the duty of the attorney general:

1. To attend the supreme court and prosecute or defend all causes to which the state, or any officer thereof, in his official capacity, is a party; and all causes to which any county may be a party, unless the interest of the county is adverse to the state, or some officer thereof acting in his official capacity.

2. After judgment in any of the causes referred to in the preceding subdivision, to direct the issuing of such process as may be necessary to carry the same into execution.

3. To account for and pay over to the proper officer all moneys which may come into his possession belonging to the state or to any county.

4. To keep a register of all cases in which he is required to appear, which must, during business hours, be open to the inspection of the public, and must show the county, district, and court in which the cases have been instituted and tried, and whether they are civil or criminal; if civil, the nature of the demand, the stage of proceedings, and, when prosecuted to judgment, a memorandum of the judgment, of any process issued thereon, and whether satisfied or not; if not satisfied, the return of the sheriff; and if criminal, the nature of the crime, the mode of prosecution, the stage of proceedings, and, when prosecuted to sentence, a memorandum of the sentence and of the execution thereof, if the same has been executed, and if not executed, of the reason of the delay or prevention; and must deliver the same to his successor in office.

HeinOnline -- 1977 Vol. I 1077 1977

5. To exercise supervisory powers over county attorneys in all matters pertaining to the duties of their offices, and from time to time require of them reports as to the condition of public business entrusted to their charge.

6. To give his opinion in writing, without fee, to the legislative assembly, or either house thereof and to any state officer, board, or commission, any county attorney, to the city attorney of any city or town, and to the board of county commissioners of any county of the state, when required upon any question of law relating to their respective offices. He shall give any such opinion within three (3) months following the date it is requested, unless he certifies in writing to the requesting party that the question is of sufficient complexity to require additional time.

7. When required by the public service, or directed by the governor, to assist the county attorney of any county in the discharge of his duties.

8. To bid upon and purchase in the name of the state, and under the direction of the board of *investments*, any property offered for sale under execution issued upon judgments in favor of or for the use of the state, and to enter satisfaction, in whole or in part, of such judgments as the consideration for such purchases.

9. Whenever the property of a judgment debtor in any judgment mentioned in the preceding subdivision has been sold under a prior judgment, or is subject to any judgment, lien, or encumbrance taking precedence of the judgment in favor of the state, under the direction of the board of *investments* to redeem such property from such prior judgment, lien, or encumbrance; and all sums of money necessary for such redemption must be paid out of any money appropriated for such purposes.

10. When in his opinion it is necessary for the collection or enforcement of any judgment hereinbefore mentioned, to institute and prosecute, in behalf of the state, such suits or other proceedings as are necessary to set aside and annul all conveyances fraudulently made by such judgment debtors, the cost necessary to the prosecution must be paid out of any appropriations for the prosecution of delinquents.

11. To discharge the duties of a member of the board of examiners, state board of land commissioners, board of state prison commissioners, and other duties prescribed by law.

12. To report to the governor, at the time prescribed by section 59-702 of this code, the condition of the affairs of his department, and to accompany the same with a copy of his docket and of the reports received by him from county attorneys, and to report to the governor as provided in section 59-705."

Section 13. Section 82-1519, R.C.M. 1947, is amended to read as follows:

"**82-1519. Report.** *(1)* It shall be the duty of all public officers to perform the duties relative to hail insurance under this act, without other compensation than that allowed by law. *All* appointed officers and employees under this act shall be allowed the per diem and mileage allowed state employees.

HeinOnline -- 1977 Vol. I 1078 1977

(2) The chairman of the state board of hail insurance shall report as provided in 82-4002 of this act."

Section 14. Section 82A-207, R.C.M. 1947, is amended to read as follows:

"82A-207. Board of examiners — allocated. (1) There is a board of examiners.

(2) The board is allocated to the department for administrative purposes only as prescribed in section 82A-108."

Section 15. Section 83-606, R.C.M. 1947, is amended to read as follows:

"83-606. Attorney general — service of process upon — power to arbitrate, compromise and settle. The attorney general of the state of Montana is hereby designated as the person upon whom all process shall be served, and he shall have full charge of such litigation on behalf of the state of Montana. *He* is authorized to arbitrate, compromise or settle any claim cognizable under this act, after the institution of any suit thereon, and further, with the approval of the court in which said suit is pending."

Section 16. Section 83-704, R.C.M. 1947, is amended to read as follows:

"83-704. Attorney general — service of process upon — power to arbitrate, compromise and settle. The attorney general of the state of Montana is hereby designated as the person upon whom all process shall be served, and he shall have full charge of such litigation on behalf of the state of Montana. *He* is authorized to arbitrate, compromise or settle any claim cognizable under this act, after the institution of any suit thereon, and further, with the approval of the court in which said suit is pending."

Section 17. Section 87-130, R.C.M. 1947, is amended to read as follows:

"87-130. Acquisition of property. Subject to the approval of the *department of administration,* the division may purchase such equipment, supplies, and real property as it may deem necessary and proper. The title to any real property purchased shall be taken in the name of the state of Montana. Subject to the approval of the *department of administration,* the division may sell any equipment, supplies or real property previously acquired by it, and the proceeds of such sale shall be deposited into the unemployment compensation administration fund. In the event the duties, or any part thereof, of the division shall be at any time in the future surrendered to or taken over by the federal government or any agency thereof, the division, with the approval of the *department of administration,* may lease such equipment and real property to the federal government, or such agency, but the title thereto shall remain in the state of Montana."

Section 18. Section 95-3124, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1079 1977

"**95-3124. Fugitives from this state — accounts.** When the governor of this state, in the exercise of the authority conferred by section 2, article IV, of the constitution of the United States, or by the laws of this state, demands from the executive authority of any state of the United States, or of any foreign government, the surrender to the authorities of this state of a fugitive from justice, who has been found and arrested in such state or foreign government, the accounts of the person employed by him to bring back such fugitive must be audited by the *department of administration*, and paid out of the state treasury."

Section 19. **Repealer.** Sections 75-8802 and 79-305, R.C.M. 1947, are repealed.

Approved April 8, 1977.

CHAPTER NO. 344

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE JUDICIARY AND THE COURTS OF THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1220, R.C.M. 1947, is amended to read as follows:

"**10-1220. Adjudicatory hearing.** (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, his parent, guardian, or attorney may demand a jury trial on such contested offenses; in the absence of such demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearings shall be set *immediately* and accorded a preferential priority.

(2) An adjudicatory hearing shall be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function shall be to determine whether the youth committed the contested offenses; if the hearing is before the youth court judge without a jury, the judge shall make and record his findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

(3) An adjudicatory hearing shall be recorded verbatim by whatever means the court *considers* appropriate.

(4) The youth charged in a petition must be present at the hearing and if brought from detention to the hearing, shall not appear clothed in institutional clothing.

HeinOnline -- 1977 Vol. I 1080 1977

(5) In a hearing on a petition under this section, the general public shall be excluded and only such persons admitted as have a direct interest in the case; except that when a hearing in the court is held on a written petition charging the commission of a felony, persons with a legitimate interest in the proceeding, including representatives of public information media, shall not be excluded from the hearing.

(6) If the court finds on the basis of a valid admission by a youth of the allegations of the petition or if a youth is found to be a delinquent youth or a youth in need of supervision the court shall schedule a dispositional hearing under this act.

(7) When a jury trial is required in a case, it may be held before *a jury selected as provided in Title 93, chapter 50.*"

Section 2. Section 11-1601, R.C.M. 1947, is amended to read as follows:

"**11-1601. City court established.** A city court is established in each city or town. *On judicial days, the court shall be open for all business, civil and criminal. On nonjudicial days as defined in 93-507, the court* may transact criminal business only."

Section 3. There is a new R.C.M. section numbered 11-1601.1 that reads as follows:

11-1601.1. Election and terms of office of city judges. The election of city judges and their terms of office are provided for in Title 11, chapter 7.

Section 4. Section 11-1602, R.C.M. 1947, is amended to read as follows:

"**11-1602. Concurrent jurisdiction.** *(1)* The city court has concurrent jurisdiction with the *justice's* court of all misdemeanors punishable by *a* fine not exceeding $500 or by imprisonment not exceeding 6 months or by both fine and imprisonment.

(2) Applications for search warrants and complaints charging the commission of a felony may be filed in the city court. *When* they are filed, the city judge *has* the same jurisdiction and responsibility as a justice of the peace, including the holding of a preliminary hearing. The city attorney may file an application for a search warrant or a complaint charging the commission of a felony when the offense was committed within the city limits. The county attorney, however, must handle any action after a defendant is bound over to district court."

Section 5. Section 11-1603, R.C.M. 1947, is amended to read as follows:

"**11-1603. Exclusive jurisdiction.** The *city* court has exclusive jurisdiction *of*:

(1) proceedings for the violation of *an* ordinance of the city or town, both civil and criminal;

(2) when the amount of the taxes or assessments sought does not exceed

HeinOnline -- 1977 Vol. I 1081 1977

$300, actions for the collection of taxes *or* assessments levied for *any of the following purposes, except that no lien on the property taxed or assessed for the nonpayment of the taxes or assessment may be foreclosed in any such action:*

(a) city or town purposes;

(b) the erection or improvement of public buildings;

(c) the laying out, opening, or improving *of a* public street, sidewalk, alley, or bridge;

(d) the *acquisition* or improvement of any public grounds; *and*

(e) public improvements made or ordered by the city or town within its limits;

(3) actions for the collection of money due to the city or town or from the city or town to any person, when the amount sought, exclusive of interest and costs, does not exceed *$300*;

(4) when the amount claimed, exclusive of costs, does not exceed $300, actions for:

(a) the breach of *an* official bond given by *a* city or town officer;

(b) the breach of any contract;

(c) damages, *when* the city or town is a party or is in any way interested;

(d) the enforcement of forfeited recognizances given to, for the benefit *of*, or *on* behalf of the city or town; and

(e) collection on bonds given upon *an* appeal taken from the judgment of the court in any action *mentioned in subsections (4)(a) through (4)(d);*

(5) actions for the recovery of personal property belonging to the city or town, when the value of the property, exclusive of the damages for the taking or detention, does not exceed *$300*; and

(6) actions for the collection of *a* license *fee* required by *an* ordinance of the city or town."

Section 6. There is a new R.C.M. section numbered 11-1603.1 that reads as follows:

11-1603.1. Who named as plaintiff. (1) An action brought for violation of a city or town ordinance shall be brought in the name of the city or town as the plaintiff and against the accused as the defendant.

(2) An action brought for violation of a state law within the city or town shall be brought in the name of the state of Montana as the plaintiff and against the accused as the defendant.

Section 7. Section 11-1604, R.C.M. 1947, is amended to read as follows:

"**11-1604. When substitute for judge called in.** *The city judge or mayor may call in a justice of the peace or some qualified resident of the city or town to act in the judge's place, whenever the judge is:*

HeinOnline -- 1977 Vol. I 1082 1977

(1) a party *in a case;*

(2) interested *in a case;*

(3) related to either party *in a case* by consanguinity or affinity within the sixth degree*; or*

(4) sick, absent, or *unable* to act."

Section 8. Section 11-1710, R.C.M. 1947, is amended to read as follows:

"**11-1710. Summons — time for answer.** *The summons* in municipal court shall be signed by the clerk and shall conform as near as *possible* to the provisions of *M. R. Civ. P., Rules 4 and 12(a),* except that the time for answering shall be *10* days, instead of *20.*"

Section 9. Section 11-1711, R.C.M. 1947, is amended to read as follows:

"**11-1711. Practice — reply.** The provisions of 93-6901 *through* 93-7405 and 93-7701 *through* 93-7714 are applicable to practice and procedure in municipal court, except *when they* are repugnant to the provisions of this act*, the* words "*municipal court*" being substituted for justice court and "judge" for justice of the peace. *Whenever* the answer contains a counterclaim or any new matter, the plaintiff shall within *5* days after the service and filing of the answer reply to *the* counterclaim or new matter in the manner and form provided for in *M. R. Civ. P., Rules 7(a), 8(e)(2), and 10(b).*"

Section 10. Section 16-3001, R.C.M. 1947, is amended to read as follows:

"**16-3001. Duties and records to be kept.** The clerk of the district court, in addition to the duties prescribed elsewhere, *shall:*

(1) take charge of and safely keep or dispose of according to law all books, papers, and records which *are* filed or deposited in his office;

(2) act as clerk of the district court and attend each term or session thereof and upon the judges at chambers when required;

(3) issue all process and notices required to be issued;

(4) enter all orders, judgments, and decrees proper to be entered;

(5) keep in each court a register of action, as provided in *93-8707,* which must state the names of the attorneys and all fees charged in each action;

(6) keep for the district court *two* separate *indexes, one* labeled *"general* index*—plaintiffs" and the other labeled "general index—defendants", which shall be in the form prescribed in 16-3003;*

(7) keep a minute book, which must contain the daily proceedings of court, may be signed by the clerk, *and* must be indexed in the names of both defendant and plaintiff;

HeinOnline -- 1977 Vol. I 1083 1977

(8) keep a book called "*record* of probate proceedings", which must contain all the orders and proceedings of the district court sitting in probate matters *and* must be indexed in the *names* of the deceased person *and* the executor or administrator *or the names of* the guardian *and the* ward;

(9) keep a book called the "*probate* record book", in which must be recorded all wills, bonds, letters of administration, letters testamentary, and other papers as prescribed *by law and* which must be indexed in *the same* manner as the "*record* of probate proceedings";

(10) keep two books*:*

(a) the first book must be labeled "declaration of intention to become citizens of the United States" and must have entered in it in alphabetical order the names of all persons who from the organization of the court have declared their intention to become citizens of the United States *with* the date of such declaration*;*

(b) the second book must be labeled "naturalization—final papers" and must have entered in it in alphabetical order the names of all persons who have been admitted *as* citizens of the United States by the court of which he is clerk and, in a separate column opposite each name, the country of which *the* person was *formerly* a citizen or subject, the date of his admission, and the page of the minute book or book of record containing the order admitting him *as* a citizen;

(11) keep a book called "*register* of criminal actions", *which must have a proper index and* in which must be entered the title and number of the action with a memorandum of every paper filed, *and* order or proceeding had therein, with the date thereof, and *a memorandum of* the name of every witness, *the* number of days *he attended,* and his *witness* fees*;*

(12) keep a book called "*register* of probate and guardianship proceedings", in which must be entered the name of the estate *and* the register number with a memorandum of every paper filed *and* order or proceeding had therein, with the date thereof, and *a memorandum of* the fees charged;

(13) keep a fee book in which must be shown, in an itemized form, all fees that he has received for any services rendered *in his capacity* as clerk;

(14) keep a book called "*book* of jurors' certificates", which must *contain* the blank certificates and stubs to be filled as provided in *25-405*;

(15) keep a "witness book", which must *contain* blank certificates and stubs to be filled as provided in *25-406*;

(16) keep a record of the attendance of all jurors and of witnesses in criminal actions and compute the mileage of each."

Section 11. Section 16-3603, R.C.M. 1947, is amended to read as follows:

"**16-3603. Governed by law prescribing sheriffs' duties.** All the provisions of 16-2701 *through* 16-2722, except *subsections (4), (5), and (6) of* 16-2702, apply to constables and govern their powers, duties, and liabilities."

HeinOnline -- 1977 Vol. I 1084 1977

Section 12. Section 16-3604, R.C.M. 1947, is amended to read as follows:

"**16-3604. Duties of justices.** Justices of the peace must perform such duties as are prescribed in 93-6601 *through* 93-7714 and *any* other duties prescribed by law."

Section 13. Section 16-3605, R.C.M. 1947, is amended to read as follows:

"**16-3605. Justices not to practice law.** *(1) Except as provided in subsection (2), a* justice of the peace *may not:*

(a) practice law*;*

(b) draw contracts, conveyances, or other legal instruments or documents*;*

(c) take any claim or bill for collection *or* act as a collection agent in any sense*; or*

(d) perform any legal duties other than those prescribed by law as *his* official duties in the conduct of cases and proceedings in *his court.*

(2) A justice of the peace who is an attorney and who is admitted to practice law before the supreme court of the state of Montana may engage in the general practice of law and practice law in all courts in the state of Montana, except that such a justice, his law partner *or* associate, *or a* member, associate, or employee of *a* firm of which he is a member *may* not represent a party involved in a case *which is* filed or tried in his court or in any justice court located in the same *county* as his court or which is appealed from *such a court.*

(3) A justice of the peace who violates any of the provisions of this section is guilty of malfeasance in office and shall be removed from his office of justice of the peace and thereafter be disqualified from holding such office."

Section 14. Section 16-3607, R.C.M. 1947, is amended to read as follows:

"**16-3607. Justice or constable not to purchase judgment.** *(1) A* justice of the peace *may not purchase* or *be* interested in the purchase of any judgment or part thereof on *his* docket or on any docket in *his* possession. *A constable may not purchase or be interested in the purchase of any judgment or part thereof on the docket of a justice of the peace of the county of which he is a constable or on a docket in the possession of such a justice.*

(2) Violation of subsection (1) is a misdemeanor."

Section 15. Section 25-307, R.C.M. 1947, is amended to read as follows:

"**25-307. Collection and disposition of fees — itemized statement.** *Each justice* of the peace shall collect the fees prescribed by law for *justices'* courts and shall pay *them* into the county treasury of the county

HeinOnline -- 1977 Vol. I 1085 1977

wherein *he holds* office, on or before the *10th* day of each month, to be credited to the general fund of the county. *He* shall also file an itemized statement showing all fees received during the preceding month in *his* court. *The* statement shall state that all fees required by law to be paid *during the preceding month* in connection with matters pending before the court have been paid into the county treasury and listed in *the* itemized statement and that he has not received or been promised, nor has any one else received or been promised for him, any other moneys, emolument, or thing by virtue of or in connection with his office. *The* statement shall be subscribed and sworn to by the justice."

Section 16. Section 25-401, R.C.M. 1947, is amended to read as follows:

"**25-401. Jurors' fees in courts of record.** *A grand or* trial *juror* shall receive $12 per day for attendance before any court of record and a mileage allowance, as provided in 59-801, for traveling *each way between his* residence and *the* county seat. *A* juror who is excused from attendance upon his own motion on the first day of his appearance in obedience to notice or who has been summoned as a special juror and not sworn in the trial of the case, in the discretion of the court, may receive per diem and mileage."

Section 17. Section 25-403, R.C.M. 1947, is amended to read as follows:

"**25-403. Jurors' fees in courts not of record and coroner's inquests.** Jurors in courts not of record, in both civil and criminal actions, shall receive *a fee of* $7.50 per day. *In* civil actions, the *jurors' fees* must be paid by the party demanding the jury and taxed as costs against the losing party. Jurors in coroner's *inquests* shall receive *a fee of* $7.50 per day."

Section 18. Section 82-503, R.C.M. 1947, is amended to read as follows:

"**82-503. Fees.** *(1) The clerk* must collect in advance the following fees:

(a) for filing the transcript on appeal in *any* civil case appealed to the supreme court, $20 payable by the appellant and $10 payable by *the* respondent at the time of his appearance, *as payment* in full for all services rendered in *the* case up to the remittitur to the court below;

(b) for filing *a* petition for any writ, $20, *as payment* in full for all services rendered in *the* cause;

(c) for *a* certificate of admission as *an* attorney, $5;

(d) for making transcripts *or* copies of papers or *records, 15* cents per folio;

(e) for comparing any document requiring a certificate, *5* cents per folio;

(f) for each certificate under seal, $1.

(2) Three-fourths of all fees collected by *the clerk* must be paid into

HeinOnline -- 1977 Vol. I 1086 1977

the state treasury *and* shall be credited to the general fund. *One-fourth* of all fees collected by him shall be paid to the public employees' retirement *division of the department of administration* to be credited to the *Montana* judges' retirement *system account.*"

Section 19. Section 82-505, R.C.M. 1947, is amended to read as follows:

"**82-505. Settlements and accounts to state auditor.** *The clerk* is responsible and must account for and, in his settlement with the state auditor, must be charged with the full amount of all fees collected or chargeable and accruing in causes brought into the court for services rendered therein up to the time of each settlement. *The* settlement must take place quarterly, and immediately thereafter *the clerk must* pay the amount found due into the treasury *or to the public employees' retirement division, as provided in 82-503(2).* He must also, at the end of each quarter, render to the state auditor, in such form as that officer prescribes, an account in detail *and* under oath of all fees chargeable and accruing in causes brought into court and not included in his previous accounts. His salary *may* not be allowed or paid until all fees so accruing for which he is chargeable have been accounted for and paid over."

Section 20. Section 82-2007, R.C.M. 1947, is amended to read as follows:

"**82-2007. Distribution of reports.** *(1)* On the publication of each volume of *the* reports, the secretary of state shall purchase *300 copies from the* publisher for the use of the state. *He* shall distribute *them* in the following *manner*:

(a) to the law libraries of each state and territory of the United States, one copy;

(b) to the *library* of *congress*, five copies;

(c) to each of the judges of the United States district courts of the states of Idaho, Nevada, California, Washington, Montana, Wyoming, and Oregon, one copy;

(d) to each justice of the supreme court, district judge, county attorney, and clerk of *a* district court in this state, one copy;

(e) to each state office, as many copies as the secretary of state determines are needed;

(f) to the law library of the state of Montana, three copies.

(2) He shall also distribute *the* reports to literary and scientific institutions, publishers, authors, and legislative reference libraries of other states with *which* the state law librarian has established a system of exchange.

(3) He shall also distribute to the *university* of Montana *up to 50* copies to be used by the law librarian of the university for the purpose of exchanges with universities and institutions of higher education in other states.

HeinOnline -- 1977 Vol. I 1087 1977

(4) All reports distributed to state, district, and other officers in the state *are* for the use of their office and shall be, by the person receiving *them*, turned over to his successor in office. *The* secretary of state shall take proper receipts for *the* reports."

Section 21. Section 93-219, R.C.M. 1947, is amended to read as follows:

"**93-219. Justice or judge not to run for office — resignation required.** *(1) (a) If a* person occupying the office of chief justice or associate justice *of* the supreme court *or judge of a district court* of the state of Montana *becomes* a candidate for election to any elective office under the laws of the state of Montana, *he* shall *immediately*, and in any event at or before the time *when he must* file as a candidate for such office *in* any primary or special or general election, resign *from his* office of chief justice, associate justice, *or district judge.*

(b) The resignation becomes effective immediately upon its delivery to the proper officer or superior.

(c) The resignation requirement applies except *when the* person is a bona fide candidate for *reelection* to the identical office then occupied by him or for another nonpartisan judicial office the term of which *does not* commence earlier than the end of the term of the office then occupied by *him.*

(2) In the event of *a* failure to resign, *the* office of chief justice, associate justice, or district judge *automatically becomes* vacant and the former occupant *has* no further right, power, or authority therein for any purpose and no right to any emoluments thereof, notwithstanding the fact that a successor is not appointed or elected. *The* vacancy *becomes* operative to deprive *the* person of the emoluments of *the* office in order to carry out the policy of this act."

Section 22. Section 93-302, R.C.M. 1947, is amended to read as follows:

"**93-302. Number of judges.** In each judicial district there must be the following number of judges of the district court, who must be elected by the qualified voters of the district and whose term of office *is* 6 years:

(1) in the *1st, 2nd, 11th,* and *16th districts,* two judges each*;*

(2) in the *4th, 8th, and 13th districts,* three judges *each;* and

(3) in all other districts, one judge each."

Section 23. Section 93-305, R.C.M. 1947, is amended to read as follows:

"**93-305. Expenses when out of district.** *A* judge who *sits* in the place of another judge in the trial or hearing of an action or proceeding in a district other than his own or in the supreme court or who *attends* a conference of judges in Helena called by the chief justice of the supreme court shall be paid his *actual and necessary* travel expenses while engaged in that service as follows:

HeinOnline -- 1977 Vol. I 1088 1977

(1) his travel expenses in going from the county seat which he makes his place of residence to the place of trial or conference and return; and

(2) his board and lodging while engaged in the trial, hearing, or conference."

Section 24. Section 93-313, R.C.M. 1947, is amended to read as follows:

"**93-313. Expenses when not in county of residence.** *A* district judge of a judicial district composed of more than one county *who,* for the purpose of holding court and disposing of judicial business, goes to a county of his judicial district other than the county in which he resides and therein holds court or transacts judicial business shall be paid all of his actual and necessary expenses of transportation and living incurred on account thereof from the time he leaves his place of residence until he returns thereto."

Section 25. Section 93-325, R.C.M. 1947, is amended to read as follows:

"**93-325. Appointment — salary — qualifications.** (1) The judges of the judicial district in which a small claims court has been created shall appoint a judge of the small claims court who shall:

(a) take the oath required of judges;

(b) serve at the pleasure of the district court judges;

(c) be paid a salary set by the district court *judges*; and

(d) be an attorney licensed to practice law in Montana.

(2) The *judges* of the district court may appoint more than one small claims court judge for any small claims court. *The* salary shall be prorated among the judges appointed."

Section 26. Section 93-408, R.C.M. 1947, is amended to read as follows:

"**93-408. Civil jurisdiction of justices' courts.** The *justices'* courts have jurisdiction:

(1) in actions arising on contract for the recovery of money only, if the sum claimed does not exceed $1,500, exclusive of court costs;

(2) in actions for damages not exceeding $1,500, exclusive of *court* costs, for taking, detaining, or injuring personal property or for injury to real property *when* no issue is raised by the verified answer of *the* defendant involving the title to or possession of the *real property*;

(3) in actions for damages not exceeding $1,500, exclusive of court costs, for injury to the person, *except* that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, *determination of paternity, and* abduction, the justice of the peace *does* not have jurisdiction;

(4) in actions to recover the possession of personal property, if the value of *the* property does not exceed $1,500;

HeinOnline -- 1977 Vol. I 1089 1977

(5) in actions for a fine, penalty, or forfeiture not exceeding $1,500, *imposed* by *a* statute or *an* ordinance of an incorporated city or town, *when* no issue is raised by the answer involving the legality of any tax, impost, assessment, toll, or municipal fine;

(6) in actions upon bonds or undertakings conditioned for the payment of money, *when* the sum claimed does not exceed $1,500, though the penalty may exceed that sum;

(7) to take and enter judgment for the recovery of money on the confession of a defendant, when the amount confessed does not exceed $1,500, exclusive of court costs."

Section 27. Section 93-505, R.C.M. 1947, is amended to read as follows:

"**93-505. Sittings of court — when private.** *(1)* In an action for divorce, criminal conversation, *or* seduction, the court may direct the trial of any issue of fact joined therein to be private and exclude all persons except the officers of the court, the parties, their witnesses, and counsel.

(2) During the examination of a witness in any cause, the court may, in *its* discretion, exclude *some* or all *of the other* witnesses in the cause."

Section 28. Section 93-507, R.C.M. 1947, is amended to read as follows:

"**93-507. Nonjudicial days.** *(1)* No court *may* be open nor *may* any judicial business be transacted on legal holidays as provided for in 19-107 *or* on a day appointed by the president of the United States or by the governor of this state for a public fast, thanksgiving, or holiday, except for the following purposes:

(a) to give, upon *its* request, instructions to a jury when deliberating on *its* verdict;

(b) to receive a verdict or discharge a jury;

(c) for the exercise of the powers of a magistrate in a criminal action or in a proceeding of a criminal nature.

(2) Injunctions, writs of prohibition, and habeas corpus may be issued and served on any day."

Section 29. Section 93-702, R.C.M. 1947, is amended to read as follows:

"**93-702. Qualifications and residence.** *(1)* No person is eligible for the office of justice of the supreme court or judge of *a* district court unless he is a citizen of the United States, has resided in the state 2 years immediately before taking office, and has been admitted to practice law in Montana for at least 5 years prior to the date of appointment or election.

(2) A judge of *a* district court need not be a resident of the district for which he is elected or appointed at the time of his election or appointment, but after his election or appointment, he *must* reside *in a county*

HeinOnline -- 1977 Vol. I 1090 1977

seat in the district for which he is elected or appointed during his term of office. Justices of the supreme court *must* reside within the state *during their terms of office.*"

Section 30. Section 93-705, R.C.M. 1947, is amended to read as follows:

"**93-705. Creation, composition, and function of commission.** *A* judicial nomination commission for the state of Montana *is created. Its* function *is* to provide the governor with a list of candidates for *nomination* to fill any vacancy on the supreme court or any district court of the state of Montana. The commission shall be composed of seven members as follows:

(1) four lay members who are neither judges *nor* attorneys, active or retired, who reside in different geographical areas of the state *and* each of *whom is* representative of a different industry, business, or profession, whether actively so engaged or retired, *who* shall be appointed by the governor;

(2) two attorneys actively engaged in the practice of law, one from each congressional district, who shall be appointed by the supreme court;

(3) one district judge elected by the district judges under an elective procedure initiated and conducted by the supreme court and certified to such election by the chief justice of the supreme court. *The election* shall be considered an appointment *for the purposes of this act.*"

Section 31. Section 93-725, R.C.M. 1947, is amended to read as follows:

"**93-725. Nonparticipation of interested judicial officer.** A judicial officer who is a member of the commission or of the supreme court *may* not participate in any proceeding involving his own censure, suspension, removal, or retirement or that of *his spouse,* a relative within the sixth degree of consanguinity, or the spouse of such a relative."

Section 32. Section 93-726, R.C.M. 1947, is amended to read as follows:

"**93-726. Interim disqualification of judicial officer.** A *judicial officer* is disqualified from acting as *such,* without loss of salary, while there is pending:

(1) an indictment or an information charging him with a crime punishable as a felony under Montana or federal law; or

(2) a formal proceeding before the commission for his removal or retirement."

Section 33. Section 93-903, R.C.M. 1947, is amended to read as follows:

"**93-903. No judicial officer to have partner practicing law.** No judicial *officer of a court of record may* have a partner acting as attorney or counsel in any court of this state."

Section 34. Section 93-1203, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1091 1977

"**93-1203. Grand jury defined.** A grand jury is a body of persons, *11* in number, returned *as provided by* law from the citizens of a county before a court of competent jurisdiction and sworn to inquire *into* public offenses committed or triable within the county."

Section 35. Section 93-1304, R.C.M. 1947, is amended to read as follows:

"**93-1304. Who exempt from jury duty.** *(1)* A person is exempt from liability to act as *a* juror if *he is*:

(a) a judicial, civil, or military officer of the United States or of this state;

(b) a person holding a public office in *this* state *or in* a county, *city*, or town *of this state*;

(c) an attorney in practice;

(d) a member of the clergy of any religion following his profession;

(e) an editor following his profession;

(f) a teacher in a university, college, academy, or school;

(g) an employee of the Montana state school for the deaf and blind;

(h) a practicing physician, dentist, or druggist actually engaged in the business of dispensing medicines;

(i) a regularly licensed embalmer or undertaker;

(j) an officer, keeper, or attendant of a hospital, *mental health facility*, or other charitable institution;

(k) an officer or attendant of the state prison or a county jail *on active duty*;

(l) an express agent, mail carrier, *or* superintendent, employee, or operator of a telegraph line doing general telegraph business in *this* state;

(m) an active member of the national guard of Montana;

(n) an active member of a fire department of any city or town of this state;

(o) a superintendent on a railroad;

(p) a nurse engaged in a case; or

(q) a person caring directly for one or more children.

(2) The number of firemen exempted under subsection (1)(n) may not exceed 28, including officers, for each company organized. The exempt members shall be selected from the roll of each company according to the seniority of membership. The secretary of each company shall make a list of the exempt members and file it with the clerk of the board of county commissioners on the first Mondays of March, June, September, and December. Failure to file the list is considered a waiver of the exemption.

HeinOnline -- 1977 Vol. I 1092 1977

(3) When a person claims exemption under subsection (1)(g), the certificate of the superintendent of the school, under the official seal of the school, is sufficient evidence of qualified employment.

(4) The court must discharge a person from serving as a trial juror in either of the following cases:

(a) when it satisfactorily appears that *the person* is not competent; *or*

(b) when it satisfactorily appears that *the person* is exempt and claims the benefit of exemption."

Section 36. Section 93-1503, R.C.M. 1947, is amended to read as follows:

"**93-1503. Drawing — how conducted.** *(1)* The clerk *shall* place *the* box on a rod so that *it* may readily revolve. *The* box must be revolved a sufficient number of times to ensure that the numbered slips in *it* become thoroughly mixed. *Thereafter* the judge *shall* draw from *the* box, one at a time, as many of the numbered slips as are ordered by the court.

(2) A *record* of the drawing shall be entered in the minutes of the court. *It* must show the names of the jurors corresponding to the numbers drawn from *the* jury box.

(3) If *the court is satisfied that* any person *whose name is* drawn is deceased or *mentally incompetent* or *has* permanently *moved* from the county, the name of *the* person shall be omitted from the list and another *name shall be* drawn in *its* place. *The reason for the omission* shall be entered upon the minutes of the court. The same *procedure* shall be *followed* as often as may be necessary, until the number *of names* of jurors required have been drawn.

(4) After the drawing *has* been completed, the clerk shall make a copy of the list of names drawn and certify the same. In his certificate he shall state the date of the order and of the drawing, the number of the *names* drawn, and the time when and the place where *the* jurors *are* required to appear.

(5) The certificate and list shall be delivered to the sheriff for service.

(6) No person *may* be asked to serve *for* more than one term during any year unless all the numbers in *the* jury box have been drawn and there are no other qualified jurors available."

Section 37. Section 93-1603, R.C.M. 1947, is amended to read as follows:

"**93-1603. Officer's return.** The officer summoning *the* jurors shall, at the time fixed in the order for their appearance, return *the order* to the court with a list of the persons summoned endorsed thereon."

Section 38. Section 93-1802, R.C.M. 1947, is amended to read as follows:

"**93-1802. How constituted.** *(1)* When *11* of the persons summoned as grand jurors *who are* competent and not excused are present, they constitute the grand jury.

HeinOnline -- 1977 Vol. I 1093 1977

(2) When more than 11 are present, the clerk *shall* write their names on separate ballots and place the ballots in black capsules. *The* capsules shall be deposited in a box large enough to hold all of the capsules without crowding. *The* box shall be so arranged that the clerk drawing the capsules from the box *is* unable to see the capsule he is about to draw. *The clerk shall* draw 11 *capsules. The* persons whose names are on the ballots so drawn shall constitute the grand jury.

(3) When less than 11 are present, the court *shall* order a sufficient number to be *immediately* drawn from *the jury* box and summoned to attend the court."

Section 39. Section 93-1803, R.C.M. 1947, is amended to read as follows:

"**93-1803. Manner of impaneling grand jury.** *After the jurors have been selected, the grand jury shall be impaneled* as prescribed in *95-1401 through 95-1403.*"

Section 40. Section 93-1805, R.C.M. 1947, is amended to read as follows:

"**93-1805. Clerk to call list of jurors summoned, prepare capsules.** At the opening of court on the day trial jurors have been summoned to appear, the clerk shall call the names of those summoned and the court may hear the excuses of jurors summoned.

(2) The clerk shall write the names of the jurors present and not excused *on* separate ballots, fold *the ballots* so that the names are concealed, and place *them* in black capsules. *In* the presence of the court, *the clerk shall* deposit the capsules containing *the* ballots in a box large enough to hold all of *the* capsules without crowding. *The* box shall be so arranged that the *judge* drawing *the* capsules from *the* box *is* unable to see the capsules he is about to draw. *The* box must be kept sealed or locked until ordered by the court to be opened."

Section 41. Section 93-1806, R.C.M. 1947, is amended to read as follows:

"**93-1806. Manner of impaneling.** *(1)* Whenever a civil action is called by the court for trial and a jury is required, the trial jury *shall be impaneled* as prescribed in 93-5001 *through* 93-5015.

(2) When the action *is* a criminal one, the jury shall be impaneled as prescribed in Title *95.*"

Section 42. Section 93-1809, R.C.M. 1947, is amended to read as follows:

"**93-1809. Manner of impaneling.** *The jury shall be impaneled as provided in:*

(a) Title 95, if the action is a criminal one;

(b) Sections 93-5001 through 93-5015, if *the action is* a civil one."

Section 43. Section 93-1903, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1094 1977

"**93-1903. Matters written out and filed.** All objections made *during the trial or hearing and* the rulings, decisions, and opinions of the court must be written out at length or printed in type by the reporter and filed with the clerk *immediately* after the close of the trial or hearing."

Section 44. Section 93-1904, R.C.M. 1947, is amended to read as follows:

"**93-1904. Copies of proceedings.** *(1)* Each reporter must *furnish,* upon request, with all reasonable diligence, to the defendant in a criminal *case* or a party or his attorney in a civil *case* in which he has attended the trial or hearing a copy, written out at length or in narrative form from his stenographic notes, of the testimony and proceedings *upon the trial or hearing,* or a part thereof, upon payment by the person requiring the same of *7 ½ cents* per folio.

(2) If the county attorney, attorney general, or judge requires *a* copy in a criminal *case,* the reporter is entitled to his fees therefor, but he must furnish it. *Upon* furnishing it, he shall receive a certificate of the sum to which he is so entitled, which is a county charge and must be paid by the county treasurer upon the certificate like other county charges.

(3) If the judge requires a copy in a civil case to assist him in rendering a decision, the reporter must furnish the same without charge therefor. *In civil cases, all transcripts required by the county shall be furnished without cost.*

(4) If it appears to the judge that a defendant in a criminal case is unable to pay for *a* copy, *it* shall be furnished *to* him and paid for by the county."

Section 45. Section 93-1906, R.C.M. 1947, is amended to read as follows:

"**93-1906. Salary and expenses — apportionment.** *(1) Each* reporter is entitled to receive an annual salary of not less than $12,500 *or* more than $16,000 *and no other compensation except as provided in 93-1904. The* salary *shall* be set by the judge in the district in which the reporter works. *It is* payable in monthly installments out of the general funds of the counties comprising the district for which *the reporter* is appointed, in proportion to the number of civil and criminal actions commenced in the district *court in and for each county* in the preceding year. *The* judge of *the* district *shall,* on January *1* of each year or as soon thereafter as *possible,* apportion the amount of *the* salary to be paid by each county in his district on the basis *prescribed in this subsection.*

(2) In judicial districts comprising more than one county, the reporter is allowed, in addition to the salary and fees *provided for in subsection (1),* his actual and necessary expenses of transportation and living when he goes on official business to a county of his judicial district other than the county in which he resides, from the time he leaves his place of residence until he returns thereto. *The* expenses *shall* be apportioned and payable in the same way as the salary."

HeinOnline -- 1977 Vol. I 1095 1977

Section 46. Section 93-5008, R.C.M. 1947, is amended to read as follows:

"**93-5008. Procedure when insufficient number attend.** *(1)* If a sufficient number of jurors duly drawn and notified do not attend to form a jury, the district judge shall, pursuant to an order to be entered in the minutes, in the presence of the clerk of the court draw a sufficient number of ballots from *the* box to complete the jury. The sheriff *shall* notify the persons thus drawn to attend *immediately* or at a time fixed by court. If for any reason a sufficient number of jurors to try the issue is not obtained from the persons notified under an order made as prescribed in this section, the court may make another order or successive orders until a sufficient number is obtained.

(2) Each person so notified must attend at *the* time required by the notice and, unless excused by the court or set aside, must serve as a juror upon the trial. For a neglect or refusal to do *so*, he may be fined in the same manner as *any other* trial juror regularly drawn and notified, and he is subject to the same exceptions and challenges as any other trial juror."

Section 47. Section 93-7501, R.C.M. 1947, is amended to read as follows:

"**93-7501. Contempts a justice may punish for.** A justice may punish for contempt persons guilty of the following acts and no other:

(1) disorderly, contemptuous, or insolent behavior toward the justice while holding the court tending to interrupt the due course of a trial or other judicial proceeding*;*

(2) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the justice or in the immediate vicinity of the court held by him tending to interrupt the due course of a trial or other judicial proceeding*;*

(3) disobedience or resistance to the execution of a lawful order or process made or issued by *the justice;*

(4) disobedience to a subpoena duly served or *refusal* to be sworn or to answer as a witness*;*

(5) rescuing any person or property in the custody of an officer by virtue of an order or process of the court."

Section 48. Section 93-7602, R.C.M. 1947, is amended to read as follows:

"**93-7602. How entries made — prima facie evidence.** The *items listed in 93-7601* must be entered *in the docket* under the title of the action to which they relate and, unless otherwise *provided* in 93-6601 *through 93-7714,* at the time when they occur. Such entries in a justice's docket or a transcript thereof certified by the justice or his successor in office are *prima facie* evidence of the facts so stated."

Section 49. Section 93-7605, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1096 1977

"**93-7605. Proceedings when office becomes vacant.** If the office of a justice *becomes* vacant *because of* his death or *his* removal from the county or *for any other cause* before his successor is *appointed*, the docket and papers *that were* in *his* possession *shall* be deposited in the office of some other justice in the county, *who shall deliver them* to the successor of *the former* justice. If there is no other justice in the county, the docket and papers *shall* be deposited in the office of the county clerk, *who shall deliver them* to the successor in office of the *former* justice."

Section 50. Section 93-7607, R.C.M. 1947, is amended to read as follows:

"**93-7607. Who is the successor.** The justice *appointed* to fill a vacancy is the successor of the justice whose office became vacant before the expiration of a full term. When a full term expires, the person elected to take *the numbered* office, *as provided in 93-401*, from that time is the successor."

Section 51. Section 93-7704, R.C.M. 1947, is amended to read as follows:

"**93-7704. Acting justices.** (1) *(a) Whenever* a justice of the peace is disqualified from acting *in* any action because of the application of subsection (1), (2), or (3) of 93-901, he shall either transfer the action to another justice court in the same county or call a justice from a neighboring county to preside in his behalf.

(b) Whenever a justice is sick, disabled, or *absent and* the county commissioners find that there is a delay in the proper administration of justice or the county attorney *makes a written request*, another justice, if there is one readily available, or a *city* judge or some other qualified person shall be called *in* to hold court for the absent justice until *his* return.

(c) During the time when a justice of the peace is on vacation or attending a training session, another justice of the peace of the same county shall be authorized to handle matters that otherwise would be handled by the absent justice. When there is no other justice of the peace in the county, the county commissioners shall handle the situation in the same manner as if the justice were sick or absent.

(2) Whenever a justice of the peace or *another* person is called *in* to preside over the court of a justice *under subsection (1), the* visiting justice or other person shall be paid all necessary and actual expenses including mileage. *If the* acting justice is not a justice of the peace receiving a salary, *he* shall *also* receive such compensation as is proper for the time involved. *The cost of implementing this subsection is* a proper charge against the county where the court is held.

(3) When another justice or any other qualified person is called to preside in a justice court, proper entries of all proceedings must be made in the docket of the justice for whom the visiting justice or person holds court. When the appointment is made by order of the county commissioners, the order shall be placed in the court docket.

HeinOnline -- 1977 Vol. I 1097 1977

(4) When called *in* to preside over a justice court, the visiting justice of the peace or other qualified person while acting as justice of the peace is vested with all the power of the justice for whom he holds court."

Section 52. Section 93-7707, R.C.M. 1947, is amended to read as follows:

"**93-7707. What provisions of code applicable to justices' courts.** *Because justices'* courts *are* courts of peculiar and limited jurisdiction, only those provisions of this code which are, in their nature, applicable to the organization, powers, and course of proceedings in justices' courts or which have been made applicable by special provisions in 93-6601 *through 93-7714* are applicable to justices' courts and the proceedings therein."

Section 53. Section 93-7709, R.C.M. 1947, is amended to read as follows:

"**93-7709. Deputy constables.** If in any county there *is* no appointed constable, the board of county commissioners may, at the request of a party, after being satisfied that it is expedient to do so, specially *deputize* any proper person of suitable age not interested in the action to serve a summons, with or without an order to arrest the defendant *and* with or without a writ of attachment, or to serve an execution. The *county commissioners are* liable upon *their* official *bonds* for all official acts of the person so *deputized. The appointment of the deputy* shall be *made* in writing on the process, and a note thereof *shall be* made on the justice's docket."

Section 54. Section 93-2801-3, R.C.M. 1947, is amended to read as follows:

"**93-2801-3. Distribution of proposed rules — suggestions of bench and bar.** Before any rule is adopted, the supreme court shall distribute copies of the proposed rule to the bench and bar of the state for their consideration and suggestions and *shall* give due consideration to such suggestions as they may submit to the court. The *state bar of Montana* or the *association* of Montana *judges* may file with the supreme court a petition specifying *its* suggestions concerning any existing or proposed rule and requesting a hearing thereon within 6 months after the filing of the petition."

Section 55. Section 95-2009, R.C.M. 1947, is amended to read as follows:

"**95-2009. Appeal.** *(1)* All cases on appeal from justices' or *city* courts must be tried anew in the district court and may be tried before a jury of six.

(2) The defendant may appeal to the district court by giving written notice of his intention to appeal within 10 days after judgment.

(3) Within 30 days the entire record of the *justice's* or *city* court proceedings shall be transferred to the district court or the appeal shall be dismissed. It *is* the duty of the defendant to perfect the appeal."

Section 56. Section 93-1404, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1098 1977

"**93-1404. Duty of clerk — jury box.** The clerk shall prepare and keep a jury box and contents as *prescribed in this section.* The number of each juror shall be written, typed, or stamped on *a slip of* paper or other suitable material, identical in all respects *to the slips used for the other numbers. The slips shall be* placed in a box of ample size to permit *them* to be thoroughly mixed. *The* box shall be plainly marked, "jury box". The *slips* may be used as often as necessary, *except that* none *may* be used which is in any manner defaced or disfigured or so marked that it may be recognized or distinguished from the others in *the* jury box except by the number thereon. *The box shall contain only one slip for each number* corresponding to the number before the name of each juror on the jury list."

Section 57. Section 93-1502, R.C.M. 1947, is amended to read as follows:

"**93-1502. District judge to draw jury.** Immediately *after* the order mentioned in *93-1501 has* been made, the district judge shall in the presence of the clerk of the court proceed to draw the jurors by number from *the* jury box."

Section 58. Section 93-1512, R.C.M. 1947, is amended to read as follows:

"**93-1512. Obtaining additional jurors when necessary.** Whenever it appears to a district judge that additional jurors will be needed for any term or trial, the judge shall draw as many numbers from *the* jury box as are necessary to secure the required number of additional jurors. Before drawing the numbers, the judge shall by appropriate order designate the number of jurors needed, and when the judge believes that securing the additional jurors from all of the county would cause unnecessary delay or expense, he may order the jurors selected from only a designated portion of the county, which portion shall never be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a number is drawn and the jury list shows the person represented by the number to be a resident of an area outside the area designated by the court order, that number shall be returned to the jury box and a new number drawn. When the required number of names have been selected, the judge may order the prospective jurors notified by telephone by the clerk of the court or he may order them summoned by the sheriff either by certified mail or by personal service."

Section 59. Section 93-1801, R.C.M. 1947, is amended to read as follows:

"**93-1801. Grand jury — when and how drawn and summoned.** Whenever in the opinion of the district judge a grand jury is necessary, he must make an order directing a grand jury to be drawn and summoned to attend before the court. The order must specify the number of jurors to be drawn, which must not be less than 15 *or* more than 20. The names of *the* jurors must be drawn from *the* jury box mentioned in 93-1404. *The* list of names *shall be* certified and *the jurors* summoned *in the same manner as for* trial jurors. *The* names of any persons drawn who *are* not impaneled *on* the grand jury must be again placed in *the* jury box."

HeinOnline -- 1977 Vol. I 1099 1977

Section 60. **Repealer.** Sections 11-1709, 16-3606, 93-221 through 93-233, 93-703, and 93-7608, R.C.M. 1947, are repealed.

Approved April 8, 1977.

CHAPTER NO. 345

AN ACT TO CHANGE THE AMOUNT ALLOWED FOR DELINQUENT TAXES WHEN COMPUTING LEVIES FOR STATE PURPOSES FROM 12% TO 6%; AMENDING SECTIONS 84-713 AND 84-3803, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-713, R.C.M. 1947, is amended to read as follows:

"**84-713. Determination of state rate of taxation — notice of.** Between the first and third Mondays of August of each year, the governor must determine the rate of state tax to be levied and collected upon the assessed valuation of the property in the state, which, after allowing *6%* for delinquencies in the collection of taxes, must be sufficient to raise the specific amount of the revenue required by the *legislature* for state purposes. The state department of revenue must immediately thereafter transmit to the county clerk of each county a statement of such rate, and upon its receipt the county clerk must, in writing, notify the state department of revenue thereof."

Section 2. Section 84-3803, R.C.M. 1947, is amended to read as follows:

"**84-3803. Rate of taxation fixed by state department.** The state department of revenue must, for state purposes, for each fiscal year fix an ad valorem rate of taxation upon each *$100* of taxable property of the state, after allowing *6%* for delinquencies in the taxes and for costs of collection thereof, as will raise a sufficient amount to meet the levy of the *legislature* for each fiscal year."

Approved April 8, 1977.

CHAPTER NO. 346

AN ACT TO AMEND SECTION 84-4931, R.C.M. 1947, PROVIDING SPECIFICALLY THAT THE DIVULGING OF FEDERAL RETURN INFORMATION CONTAINED ON A STATE TAX RETURN IS UNLAWFUL.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4931, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1100 1977

"84-4931. **Divulging information unlawful — exceptions — penalty.** (1) Except in accordance with proper judicial order or as otherwise provided by law, it is unlawful for the department or any deputy, assistant, agent, clerk or other officer or employee to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this act, or any other information secured in the administration of this act. *It is also unlawful to divulge or make known in any manner any federal return or federal return information disclosed on any return or report required by rule of the department of revenue or under this act.* The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except in any action or proceeding under the provisions of this act, or any other taxing act, to which the department is a party, or on behalf of any party to any action or proceedings under the provisions of this act or such other act when the reports or facts shown thereby are directly involved in such action or proceedings, in either of which events, the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceedings and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the attorney general, or other legal representatives of the state, of the report or return of any taxpayer who shall bring action to set aside or review the tax based thereon, or against whom an action or proceeding has been instituted in accordance with the provisions of section 84-4928 and section 84-4929. Reports and returns shall be preserved for three (3) years and thereafter until the department orders them to be destroyed.

(2) Any offense against subdivision one (1) of this section shall be punished by a fine not exceeding one thousand dollars ($1,000.00), or by imprisonment in the county jail not exceeding one (1) year, or both, at the discretion of the court, and if the offender be an officer or employee of the state, he shall be dismissed from office and be incapable of holding any public office in this state for a period of one (1) year, thereafter.

(3) Notwithstanding the provisions of this section, the department may permit the commissioner of internal revenue of the United States, or the proper officer of any state imposing a tax upon the incomes of individuals, or the authorized representatives of either such officer, to inspect the returns of income of any individuals, or may furnish to such officer or his authorized representatives an abstract of the return of income of any individual or supply him with information concerning any item of income contained in any return, or disclosed by the report of any investigation of the income or return of income of any individual, but such permission shall be granted or such information furnished to such officer or his representative, only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the proper officer of this state charged with the administration of this act.

HeinOnline -- 1977 Vol. I 1101 1977

(4) Further, notwithstanding any of the provisions of this section, the department shall furnish to the Montana highway patrol board all information necessary to identify those persons qualifying for the additional exemption for blindness pursuant to section 84-4910(d), for the purpose of enabling said highway patrol board to administer the provisions of section 31-127, R.C.M. 1947."

Approved April 8, 1977.

CHAPTER NO. 347

AN ACT TO PLACE TIME LIMITS ON THE HOLDING OF A COUNTY BOND ELECTION, AND TO REQUIRE THE COUNTY CLERK TO DELIVER THE PETITION TO THE COUNTY COMMISSIONERS; AMENDING SECTIONS 16-2021 AND 16-2022, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-2021, R.C.M. 1947, is amended to read as follows:

"**16-2021. Petition and election required for bonds issued for other purposes.** *(1)* County bonds for any other purpose than those enumerated in 16-2013 shall not be issued unless authorized at a duly called special or general election at which the question of issuing such bonds was submitted to the qualified electors of the county and approved, as provided in 16-2027. *No* such bond election *may* be called unless the board of county commissioners *receives* a petition, *delivered and certified by the county clerk,* asking that such election be held and such question be submitted. *The petition must be* signed by *at least* 20% of the qualified electors of the county.

(2) The bond election required by this section may not be held any sooner than 60 days after receipt of the petition by the county commissioners and must be held no later than the first general election following the 60-day period."

Section 2. Section 16-2022, R.C.M. 1947, is amended to read as follows:

"**16-2022. Form, contents, and proof of petition.** *(1)* Every petition for the calling of an election to vote upon the question of issuing county bonds shall plainly and clearly state the purpose or purposes for which the proposed bonds are to be issued and shall contain an estimate of the amount necessary to be issued for such purpose or purposes. There may be a separate petition for each purpose, or two or more purposes may be combined in one *petition* if each purpose, with an estimate of the amount of bonds necessary to be issued therefor, is separately stated in *the* petition. Such petition may consist of one sheet or of several sheets identical in form and fastened together after being circulated and signed so as to form a single complete petition before being delivered to the county clerk. The petition shall give the *post-office* address and voting precinct of each person signing the same.

HeinOnline -- 1977 Vol. I 1102 1977

(2) Only persons who are qualified to sign such petitions shall be qualified to circulate the same, and there shall be attached to the completed petition the affidavit of some person who circulated or assisted in circulating such petition that he believes the signatures thereon are genuine and that the signers knew the contents thereof before signing. The completed petition shall be filed with the county clerk who shall, within 15 days thereafter, carefully examine the *petition* and the county records showing the qualifications of the petitioners and attach thereto a certificate under his official signature and the seal of his office, which certificate shall set forth:

(a) the total number of persons who are registered electors;

(b) which and how many of the persons whose names are subscribed to *the* petition *possess* all of the qualifications required of signers *of* such *a* petition;

(c) whether such qualified signers constitute more or less than 20% of the registered electors of the county.

(3) After completing the certificate required by subsection (2), the county clerk shall deliver the certified petition to the board of county commissioners."

Approved April 8, 1977.

CHAPTER NO. 348

AN ACT TO REQUIRE THAT PROTEST OF ANY TAX OR LICENSE SHALL BE MADE ONLY ON THOSE PORTIONS OF THE TAX OR LICENSE THAT ARE DEEMED UNLAWFUL; ONLY THAT PORTION OF THE TAX OR LICENSE DEEMED UNLAWFUL SHALL BE DEPOSITED IN THE PROTEST FUND; AMENDING SECTION 84-4502, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4502, R.C.M. 1947, is amended to read as follows:

"**84-4502. Payment of taxes under protest — action to recover.** (1) In all cases of levy of taxes, licenses or other demands for public revenue which are deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may before such tax or license becomes delinquent pay under written protest such *portions of such* tax or license deemed unlawful, to the officers designated and authorized to collect the same, specifying the grounds of protest; and thereupon the party so paying, or his legal representatives, may bring an action in any court of competent jurisdiction against the officers to whom said license or tax was paid, or against the county or municipality in whose behalf the same was collected, and the state department of revenue, which shall be served with summons and

HeinOnline -- 1977 Vol. I 1103 1977

copy of the complaint, to recover such *portions of such* tax or license paid under protest; provided, that any action instituted to recover any *such portions of* license or tax paid under protest shall be commenced and summons served within sixty (60) days after the date of payment of the same; provided further, that when any such license or tax is payable in installments the first installment *portion of such tax or license* as may be deemed unlawful, may be paid under written protest and suit commenced and summons served to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment portion paid under protest, then such subsequent installment portion deemed unlawful, may also be paid under written protest, and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment portion paid under protest, shall determine the right of the party paying such subsequent installment to have the same, or any part thereof refunded to him. All such *portions of* licenses and taxes, when so paid under protest, shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund, and no part thereof shall be paid over to any officer, or placed in any other fund or used for any purpose whatever, but the whole thereof shall be retained in such protest fund until the final determination of any suit or action to recover the same.

(2) If no action is commenced within the time herein specified, or if such action be commenced and finally determined in favor of the county or municipality, or treasurer thereof, the amount of such *protested portions of the* license or tax shall be taken from such protest fund and deposited to the credit of the fund or funds to which the same property belongs, but if such action is finally determined adversely to such county or municipality, or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action, refund the amount of such *protested portions of the* license or tax, with costs of suit without interest, to the person in whose favor such judgment is rendered; provided, that if such action was commenced for the purpose of recovering the first installment *portions* of any such license or tax, and any subsequent installment thereof, has been paid under protest, as herein provided, then the county treasurer shall, at the time of refunding the amount of such first installment required by such judgment also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, without interest."

Approved April 8, 1977.

CHAPTER NO. 349

AN ACT TO LIMIT THE DEPARTMENT OF REVENUE'S OBLIGATION TO COMPUTE OR LEVY A TAX ON ANY NEW TAXING JURISDICTION CREATED AFTER JANUARY 1 OF EACH YEAR.

HeinOnline -- 1977 Vol. I 1104 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-3811 that reads as follows:

84-3811. Limitation on levy and computation of tax in new taxing jurisdictions. The department may not be required to levy or compute a tax for any new taxing jurisdiction created unless formally notified of its creation by January 1 of the year in which the taxes are to be levied.

Approved April 8, 1977.

CHAPTER NO. 350

AN ACT TO DECLARE THAT PERSONS MAY SERVE AS ASSISTANT ATHLETIC COACHES IN PRIVATE OR PAROCHIAL HIGH SCHOOLS WITHOUT BEING REGULAR FACULTY MEMBERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-8314 that reads as follows:

75-8314. Policy on part-time assistant coaches in high schools — enforcement. (1) A private or parochial high school is not bound by any rule or policy which prohibits the employment or association of part-time assistant athletic instructors with a high school who are not members of the regular faculty of the school, and no such school may be denied the privilege of participating in interscholastic competition with any school in this state because of the employment or association of such assistant athletic instructors with that school.

(2) Upon the complaint of an interested person, a district court may enjoin any association or combination of high schools from conspiring to violate this section or acting in concert in violation thereof.

Approved April 8, 1977.

CHAPTER NO. 351

AN ACT TO PROVIDE IN THE ALTERNATIVE FORMS OF LOCAL GOVERNMENT FOR THE ELECTION OF LOCAL GOVERNMENT COMMISSIONERS BY A PLAN INVOLVING ELECTION AT LARGE AND NOMINATION THAT MAY NOT PRECLUDE THE POSSIBILITY OF THE MAJORITY OF THE ELECTORS NOMINATING CANDIDATES FOR THE MAJORITY OF THE SEATS ON THE COMMISSION FROM PERSONS RESIDING IN THE DISTRICT OR DISTRICTS WHERE THE MAJORITY OF THE ELECTORS RESIDE; AMENDING SECTIONS 47A-3-203, 47A-3-204, 47A-3-205, 47A-3-206, AND 47A-3-208, R.C.M. 1947.

HeinOnline -- 1977 Vol. I 1105 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 47A-3-203, R.C.M. 1947, is amended to read as follows:

"**47A-3-203. Commission-executive form.** (1) The commission-executive form (which may be called the "council-executive", the "council-mayor", or the "commission-mayor" form) consists of an elected commission (which may be referred to as the "council") and one elected executive (who may be referred to as the "mayor") who is elected at large.

(2) The executive shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required of him by law, ordinance, or resolution;

(c) administer affairs of the local government;

(d) carry out policies established by the commission;

(e) recommend measures to the commission;

(f) report to the commission on the affairs and financial condition of the local government;

(g) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(h) report to the commission as the commission may require;

(i) attend commission meetings and may take part in discussions;

(j) execute the budget adopted by the commission;

(k) appoint, with the consent of the commission, all members of boards; except, the executive may appoint without the consent of the commission temporary advisory committees established by the executive.

(3) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The executive:

(i) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the executive; or

(ii) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the executive.

(b) The executive may:

(i) appoint and remove all employees of the local government; or

(ii) appoint and remove, with the consent of a majority of the commission, all employees of the local government; or

(iii) appoint, with the consent of a majority of the commission, all

department heads. The executive may remove department heads and may appoint and remove all other department employees; or

(iv) appoint and remove, with the consent of a majority of the commission, all department heads. The executive may appoint and remove all other employees of the local government.

(c) The executive may:

(i) veto ordinances and resolutions, subject to override by a majority plus one of the whole number of the commission; or

(ii) veto ordinances and resolutions, subject to override by a two-thirds vote of the commission; or

(iii) sign all ordinances and resolutions with no veto power.

(d) The executive may:

(i) prepare the budget and present it to the commission for adoption; or

(ii) prepare the budget in consultation with the commission and department heads.

(e) The executive may:

(i) exercise control and supervision of the administration of all departments and boards; or

(ii) exercise control and supervision of all departments and boards to the degree authorized by ordinance of the commission.

(f) A financial officer (who may be called the "treasurer"):

(i) shall be elected; or

(ii) shall be appointed by the executive with the consent of the council; or

(iii) shall be selected as provided by ordinance; or

(iv) may, at the discretion of the commission, be selected as provided by ordinance.

(g) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) *elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside*; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

HeinOnline -- 1977 Vol. I 1107 1977

(h) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(i) The commission shall have a chairman who shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

(ii) selected as provided by ordinance.

(j) The presiding officer of the commission shall be:

(i) the chairman of the commission who may vote as other members of the commission; or

(ii) the executive who may vote as the commissioners; or

(iii) the executive who shall decide all tie votes of the commission, but shall have no other vote. The chairman of the commission shall preside if the executive is absent; or

(iv) the executive, but he may not vote.

(k) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(l) The size of the commission, which shall be a number not less than three (3), shall be established when the form is adopted by the voters, and;

(i) community councils of at least three (3) members shall be elected within each district to advise the comissioner from that district. Local governments conducting elections at large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(m) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(4) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers."

Section 2. Section 47A-3-204, R.C.M. 1947, is amended to read as follows:

"**47A-3-204. Commission-manager form.** (1) The commission-manager form (which may be called the "council-manager" form) consists of an elected commission (which may be called the "council") and a manager

HeinOnline -- 1977 Vol. I 1108 1977

appointed by the commission who shall be the chief administrative officer of the local government. The manager shall be responsible to the commission for the administration of all local government affairs placed in his charge by law, ordinance, or resolution.

(2) The manager shall be appointed by the commission for an indefinite term on the basis of merit only, and removed only by a majority vote of the whole number of the commission.

(3) The manager shall:

(a) enforce laws, ordinances, and resolutions;

(b) perform the duties required of him by law, ordinance, or resolution;

(c) administer the affairs of the local government;

(d) direct, supervise, and administer all departments, agencies and offices of the local government unit except as otherwise provided by law or ordinance;

(e) carry out policies established by the commission;

(f) prepare the commission agenda;

(g) recommend measures to the commission;

(h) report to the commission on the affairs and financial condition of the local government;

(i) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(j) report to the commission as the commission may require;

(k) attend commission meetings and may take part in the discussion, but he may not vote;

(l) prepare and present the budget to the commission for its approval and execute the budget adopted by the commission;

(m) appoint, suspend, and remove all employees of the local government except as otherwise provided by law or ordinance. Employees appointed by the manager and his subordinates shall be administratively responsible to the manager;

(n) appoint members of temporary advisory committees established by the manager.

(4) Neither the commission nor any of its members may dictate the appointment or removal of any employee whom the manager or any of his subordinates are empowered to appoint.

(5) Except for the purpose of inquiry or investigation under this title, the commission or its members shall deal with the local government employees who are subject to the direction and supervision of the manager, solely through the manager, and neither the commission nor its members may give orders to any such employee, either publicly or privately.

HeinOnline -- 1977 Vol. I 1109 1977

(6) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) All members of boards, other than temporary advisory committees established by the manager, shall be appointed by:

(i) the chairman with the consent of the commission; or

(ii) the manager with the consent of the commission; or

(iii) the commission.

(b) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) *elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside*; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(c) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(d) The chairman of the commission shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

(ii) elected by the qualified electors for a term of office; or

(iii) selected as provided by ordinance.

(e) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(f) The size of the commission, which shall be a number of not less than three (3), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

HeinOnline -- 1977 Vol. I 1110 1977

(g) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(7) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers."

Section 3. Section 47A-3-205, R.C.M. 1947, is amended to read as follows:

"**47A-3-205. Commission form.** (1) The commission form consists of an elected commission (which may also be called the "council") and other elected officers as provided in this section. All legislative, executive, and administrative powers and duties of the local government not specifically reserved by law or ordinance to other elected officers shall reside in the commission. The commission shall appoint the heads of departments and other employees, except for those appointed by other elected officials. Cities and towns which adopt this form may distribute by ordinance the executive and administrative powers and duties into departments headed by individual commissioners.

(2) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) *elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside*; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(b) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(c) The chairman of the commission, who may be referred to as the "mayor", shall be the presiding officer of the commission. All members of boards and committees shall be appointed by the chairman with the consent of the commission. The chairman shall be recognized as the head of the local government unit and may vote as other members of the commission. The chairman shall be:

(i) elected by the members of the commission from their own number for a term established by ordinance; or

HeinOnline -- 1977 Vol. I 1111 1977

(ii) selected as provided by ordinance; or

(iii) elected directly by the voters for a term established by ordinance.

(d) The commission:

(i) shall appoint one or more administrative assistants to assist them in the supervision and operation of the local government; or

(ii) may appoint one or more administrative assistants to assist them in the supervision and operation of the local government.

(e) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(f) The size of the commission, which shall be a number of not less than three (3), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(g) The term of office of elected officials may not exceed four (4) years, except the term of office for commissioners in counties adopting the form authorized by Article XI, section 3 (2), of the Montana constitution, may not exceed six (6) years. Terms of office shall be established when the form is adopted by the voters.

(3) In county and consolidated local governments, the plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below. The officers shall have the powers and duties established by ordinance. After the establishment of any office, the commission may consolidate, as provided by law, two or more of the offices.

(a) A legal officer (who may be called the "county attorney"):

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

HeinOnline -- 1977 Vol. I 1112 1977

(b) A law enforcement officer (who may be called the "sheriff"):

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(c) A clerk and recorder:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(d) A clerk of district court:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(e) A treasurer:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

HeinOnline -- 1977 Vol. I 1113 1977

(f) A surveyor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(g) A superintendent of schools:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(h) An assessor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(i) A coroner:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

HeinOnline -- 1977 Vol. I 1114 1977

(vi) shall not be included in this form as a separate office.

(j) A public administrator:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(k) An auditor:

(i) shall be elected; or

(ii) shall be appointed by the local government commission; or

(iii) shall be appointed by the chairman of the local government commission; or

(iv) shall be selected as provided by ordinance; or

(v) may at the discretion of the commission be selected as provided by ordinance; or

(vi) shall not be included in this form as a separate office.

(4) Local governments that adopt this form shall have general government powers."

Section 4. Section 47A-3-206, R.C.M. 1947, is amended to read as follows:

"**47A-3-206. Commission-chairman form.** (1) The commission-chairman form consists of an elected commission (which may also be referred to as the "council"), and a commission chairman (who may also be referred to as "mayor" or as "president") elected by the members of the commission from their own number.

(2) The commission chairman (who may also be referred to as "mayor") shall be elected by the members of the commission from their own number to serve at the pleasure of the commission. He shall: be the presiding officer of the commission, be recognized as the head of the local government unit, have the power to vote as other members of the commission, be the chief executive officer of the local government, and:

(a) enforce laws, ordinances, and resolutions;

(b) perform duties required of him by law, ordinance, or resolution;

(c) administer the affairs of the local government;

(d) direct, supervise, and administer all departments, agencies, and offices of the local government, except as otherwise provided by law or ordinance;

HeinOnline -- 1977 Vol. I 1115 1977

(e) carry out policies established by the commission;

(f) prepare the commission agenda;

(g) recommend measures to the commission;

(h) report to the commission on the affairs and financial condition of the local government;

(i) execute bonds, notes, contracts, and written obligations of the commission, subject to the approval of the commission;

(j) report to the commission as the commission may require;

(k) attend commission meetings and may take part in discussions;

(l) execute the budget adopted by the commission;

(m) appoint with the consent of the commission all members of boards and committees; except the chairman may appoint without the consent of the commission temporary advisory committees established by the chairman;

(n) appoint with the consent of a majority of the commission all department heads. The chairman may remove department heads and may appoint and remove all other employees;

(o) prepare the budget and present it to the commission for adoption;

(p) exercise control and supervision over the administration of departments and boards.

(3) The plan of government submitted to the qualified electors shall further define the structural characteristics of the form by including one item from each of the choices listed below:

(a) The commission shall be:

(i) elected at large; or

(ii) elected by districts in which candidates must reside and which are apportioned by population; or

(iii) *elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside*; or

(iv) elected by any combination of districts in which candidates must reside and which are apportioned by population, and at large.

(b) Local government elections shall be conducted on a:

(i) partisan basis as provided in this title; or

(ii) nonpartisan basis as provided in this title.

(c) The commission chairman:

HeinOnline -- 1977 Vol. I 1116 1977

(i) shall appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the chairman; or

(ii) may appoint one or more administrative assistants to assist him in the supervision and operation of the local government. Such administrative assistants shall be answerable solely to the chairman.

(d) Commission members shall be elected for:

(i) concurrent terms of office; or

(ii) overlapping terms of office.

(e) The size of the commission, which shall be a number of not less than five (5), shall be established when the form is adopted by the voters, and:

(i) community councils of at least three (3) members shall be elected within each district to advise the commissioner from that district. Local governments conducting elections at-large shall district according to population for the purpose of electing community councils; or

(ii) community councils to advise commissioners may be authorized by ordinance.

(f) The term of office of elected officials may not exceed four (4) years, and shall be established when the form is adopted by the voters.

(4) The plan of government submitted to the qualified electors shall determine the powers of the local government unit by authorizing:

(a) general government powers; or

(b) self-government powers."

Section 5. Section 47A-3-208, R.C.M. 1947, is amended to read as follows:

"**47A-3-208. Charter form.** (1) The purpose of this section is to comply with Article XI, section 5(1), of the Montana constitution, which provides: "(1) The legislature shall provide procedures permitting a local government unit or combination of units to frame, adopt, amend, revise, or abandon a self-government charter with the approval of a majority of those voting on the question. The procedures shall not require approval of a charter by a legislative body."

(2) Charter provisions establishing executive, legislative, and administrative structure and organization are superior to statutory provisions.

(3) A charter form of government shall possess self-government powers.

(4) Charter form of government shall be established by a charter which is a written document defining the powers, structures, privileges, rights, and duties of the unit of local government and limitations thereon.

(5) The charter shall provide for an elected legislative body, called a commission or council, or shall provide for a legislative body comprised

HeinOnline -- 1977 Vol. I 1117 1977

of all qualified electors. For elected legislative bodies the charter shall specify the number of members thereof, their term of office, election on a partisan or nonpartisan basis, the grounds for their removal, and the method for filling vacancies.

(6) The charter shall provide for the nomination and election of commissions at-large, or by districts in which candidates must reside and which are apportioned by population, or by a combination of districts in which candidates must reside and which are apportioned by population and at large *or elected at large and nominated by a plan of nomination that may not preclude the possibility of the majority of the electors nominating candidates for the majority of the seats on the commission from persons residing in the district or districts where the majority of the electors reside.*

(7) The charter shall specify which official of the local government will be the chief administrative and executive officer, the method of his selection, his term of office, except that it may be at the pleasure of the selecting authority if such officer is not elected by popular vote, the grounds for his removal, and his powers and duties. Notwithstanding the foregoing, the charter may allocate the chief executive and the chief administrative functions among two or more officials specified as above, or the charter may provide that chief executive and administrative functions of the local government will be performed by one or more members of the legislative body.

(8) The charter may establish other legislative, administrative, and organizational structures.

(9) A charter form of government shall have such officers, departments, boards, commissions, and agencies as are established in the charter, by local ordinance, or required by state law.

(10) Charter provisions may not conflict with the provisions of Title 47-A, Part 7 which establish statutory limitations on the powers of self-government units.

(11) Charter forms are subject to state laws establishing election, initiative and referendum procedures and charters shall not contain provisions establishing election, initiative and referendum procedures.

(12) The charter shall not contain provisions establishing or modifying local court systems.

(13) The enumeration of powers in a charter shall not be construed as a limitation or prohibition on the residual or self-governing powers granted by the constitution.

(14) The charter may contain prohibitions on the exercise of power by a unit of local government.

(15) The charter may include such provisions as may be necessary to permit an orderly transition to the new form of government.

(16) The charter shall specify the date on which the charter will take effect, except that provisions may be made for temporary partial effectiveness consistent with an orderly transition of government.

HeinOnline -- 1977 Vol. I 1118 1977

(17) The listing of charter provisions in this section shall not be construed to prevent the inclusion of additional provisions in charters.

(18) A charter may be amended only as provided by state law."

Approved April 8, 1977.

CHAPTER NO. 352

AN ACT TO CONVERT THE 1-YEAR OPERATING PERMITS UNDER THE MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT AND COAL CONSERVATION ACT INTO 5-YEAR PERMITS WITH ANNUAL REPORTING REQUIREMENTS; AMENDING SECTIONS 50-1039, 50-1040, 50-1044, AND 50-1404, R.C.M. 1947; AND REPEALING SECTION 50-1049, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1039, R.C.M. 1947, is amended to read as follows:

"**50-1039. Permit required to engage in strip mining or underground mining — application for permit — contents — fee — bond — agencies exempt — annual report.** (1) An operator may not engage in strip or underground mining without having first obtained from the department a permit designating the area of land affected by the operation, *which designation shall include all lands reasonably anticipated to be mined or otherwise affected during the applicable 5-year period.* The permit shall authorize the operator to engage in strip or underground mining upon the area of land described in his application and designated in the permit for a period of *5 years* from the date of its issuance. Such permit shall be renewable *upon each 5-year anniversary* thereafter upon application to the department at least thirty (30) but not more than sixty (60) days prior to the renewal date so long as the operator is in compliance with the requirements of this act, the rules hereunder, and the reclamation plan provided for in section 50-1043 and agrees to comply with all applicable laws and rules in effect at the time of renewal. Such renewal shall further be subject to the denial provisions of sections 50-1042, 50-1046 and 50-1050.

(2) An operator shall file an annual report with the department within 30 days of the anniversary date of each permit. Included within this report shall be:

(a) the name and address of the operator and permit number;

(b) a report in such detail as the department shall require, supplemented with maps, cross sections, or other material indicating the extent to which mining operations have been carried out, the progress of all reclamation work, the extent to which expectations and predictions made in the original application have been fulfilled, and any deviation therefrom, and the number of acres affected; and

HeinOnline -- 1977 Vol. I 1119 1977

(c) a revised schedule or timetable of operations and reclamation and an estimate of the number of acres to be affected during the next 1-year period.

(3) Upon receipt of the annual report the department may make further inquiry and request further information, and if it does so shall allow a reasonable opportunity for the operator to respond.

(4) When problem situations are revealed by review of new information or as a result of field inspections, the department may order such changes in the mining and reclamation plans as are necesssary to insure compliance with this chapter.

(5) An operator desiring a permit shall file an application which shall contain a complete and detailed plan for the mining, reclamation, revegetation, and rehabilitation of the land and water to be affected by the operation. Such plan shall reflect thorough advance investigation and study by the operator and shall include all known or readily discoverable past and present uses of the land and water to be affected and the approximate periods of such use and shall state:

(a) the location and area of land to be affected by the operation, with a description of access to the area from the nearest public highways;

(b) the names and addresses of the owners of record of the surface of the area of land to be affected by the permit and the owners of record of all surface area within one-half (.5) mile of any part of the affected area;

(c) the names and addresses of the present owners of record of all subsurface minerals in the land to be affected;

(d) the source of the applicant's legal right to mine the mineral on the land affected by the permit;

(e) the permanent and temporary post-office addresses of the applicant;

(f) whether the applicant or any person associated with the applicant holds or has held any other permits under this act, and an identification of those permits;

(g) whether the applicant is in compliance with section 50-1050 and whether every officer, partner, director, or any individual owning of record or beneficially (alone or with associates) if known, ten percent (10%) or more of any class of stock of the applicant, is subject to any of the provisions of section 50-1050 and he shall so certify, and whether any of the foregoing parties or persons have ever had a strip mining or underground mining license or permit issued by any other state or federal agency revoked, or have ever forfeited a strip mining or underground mining bond or a security deposited in lieu of a bond and if so, a detailed explanation of the facts involved in each case must be attached;

(h) the names and addresses of any persons who are engaged in strip or undergrcund mining activities on behalf of the applicant;

HeinOnline -- 1977 Vol. I 1120 1977

(i) the annual rainfall and the direction and average velocity of the prevailing winds in the area where the applicant has requested a permit;

(j) the results of any test borings or core samplings which the applicant or his agent has conducted on the land to be affected, including the nature and the depth of the various strata or overburden and topsoil, the quantities and location of subsurface water and its quality, the thickness of any mineral seam, an analysis of the chemical properties of such minerals, including the acidity, sulphur content, and trace mineral elements of any coal seam, as well as the British thermal unit (B.T.U.) content of such seam, and an analysis of the overburden, including topsoil. If test borings or core samplings are submitted, each permit application shall contain two (2) copies each of two (2) sets of geologic cross-sections accurately depicting the known geologic makeup beneath the surface of the affected land. Each set shall depict subsurface conditions at five hundred (500) foot intervals across the surface and shall run at a ninety (90) degree angle to the other set unless the department determines that closer intervals are required. Each cross-section shall depict the thickness and geological character of all known strata beginning with the top soil; in addition, each application for an underground mining permit shall be accompanied by cross-sections and maps showing the proposed underground locations of all shafts, entries, and haulageways or other excavations to be excavated during the permit year. These cross-sections shall also include all existing shafts, entries and haulageways;

(k) the name and date of a daily newspaper of general circulation within the county in which the applicant has prominently published an announcement of his application for a strip mining or underground mining permit, and a detailed description of the area of land to be affected should a permit be granted;

(l) such other or further information as the department may require.

(6) The application for a permit shall be accompanied by two (2) copies of all maps meeting the requirements of the subsections below. The maps shall:

(a) identify the area to correspond with the application;

(b) show any adjacent deep mining or surface mining and the boundaries of surface properties and names of owners of record of the affected area and within one thousand (1,000) feet of any part of the affected area;

(c) show the names and locations of all streams, creeks, or other bodies of water, roads, buildings, cemeteries, oil and gas wells, and utility lines on the area of land affected and within one thousand (1,000) feet of such area;

(d) show by appropriate markings the boundaries of the area of land affected, any cropline of the seam or deposit of mineral to be mined, and the total number of acres involved in the area of land affected;

(e) show the date on which the map was prepared and the north point;

(f) show the final surface and underground water drainage plan on and away from the area of land affected. This plan shall indicate the

HeinOnline -- 1977 Vol. I 1121 1977

directional and volume flow of water, constructed drainways, natural waterways used for drainage, and the streams or tributaries receiving the discharge;

(g) show the proposed location of waste or refuse area;

(h) show the proposed location of temporary subsoil and topsoil storage area;

(i) show the location of test boring holes;

(j) show the surface location lines of any geologic cross-sections which have been submitted;

(k) show a listing of plant varieties encountered in the area to be affected and their relative dominance in the area, together with an enumeration of tree varieties and the approximate number of each variety occurring per acre on the area to be affected, and the locations generally of the various kinds and varieties of plants, including but not limited to grasses, shrubs, legumes, forbs and trees;

(l) be certified as follows: "I, the undersigned, hereby certify that this map is correct, and shows to the best of my knowledge and belief all the information required by the mining laws of this state." The certification shall be signed and notarized. The department may reject a map as incomplete if its accuracy is not so attested;

(m) contain such other or further information as the department may require.

(7) In addition to the information and maps required above, each application for a permit shall be accompanied by detailed plans or proposals showing the method of operation, the manner, time or distance, and estimated cost for backfilling, subsidence stabilization, water control, grading work, highwall reduction, topsoiling, planting, revegetating, and a reclamation plan for the area affected by the operation, which proposals shall meet the requirements of this act and rules adopted under this act.

(8) (a) An application fee of fifty dollars ($50) shall be paid before the permit required in this section shall be issued. The operator shall file with the department a bond payable to the state of Montana with surety satisfactory to the department in the penal sum to be determined by the board (on the recommendation of the commissioner) of not less than two hundred dollars ($200) nor more than twenty-five hundred dollars ($2,500) for each acre or fraction thereof of the area of land affected, with a minimum bond of two thousand dollars ($2,000), conditioned upon the faithful performance of the requirements set forth in this act and of the rules of the board. *The level of bonding shall be relative to the degree of disturbance projected by the original permit and the annual report.* A political subdivision or agency of the state need not file a bond unless required to do so by the board. The board may require the filing of the bond prior to permit issuance or at any time thereafter.

(b) In determining the amount of the bond within the above limits, the board shall take into consideration the character and nature of the overburden, the future suitable use of the land involved and the cost of

HeinOnline -- 1977 Vol. I 1122 1977

backfilling, grading, highwall reduction, subsidence stabilization, water control, topsoiling, and reclamation to be required; but in no event shall the bond be less than the total estimated cost to the state of completing the work described in the reclamation plan."

Section 2. Section 50-1040, R.C.M. 1947, is amended to read as follows:

"**50-1040. Increase or reduction in area — application — fee — bond.** The department may increase or reduce the area of land affected by an operation under a permit on application by an operator, but an increase may not extend the period for which an original permit was issued. An operator may, at any time, apply to the department for an amendment of the permit so as to increase or reduce the acreage affected by it. The operator shall file an application and map in the same form and with the same content as required for an original application under this act and shall pay an application fee of $50 and shall file with the department a supplemental bond in the amount to be determined under section 6 [50-1039] for each acre or fraction of an acre of the increase approved. If the department approves a reduction in the acreage covered by the original or supplemental permit, it shall release the bond for each acre reduced, but in no case shall the bond be reduced below $2,000, except as provided in subsection (5) of section 6 [50-1039]."

Section 3. Section 50-1044, R.C.M. 1947, is amended to read as follows:

"**50-1044. Area mining required — grading and revegetation — release of bond — alternative plan.** (1) Area strip mining, a method of operation which does not produce a bench or fill bench, is required where strip mining is proposed. All highwalls must be reduced and the steepest slope of the reduced highwall shall be no greater than twenty (20) degrees from the horizontal. Highwall reduction shall be commenced at or beyond the top of the highwall and sloped to the graded spoil bank. Reduction, backfilling, and grading shall eliminate all highwalls and spoil peaks. The area of land affected shall be restored to the approximate original contour of the land. When directed by the department, the operator shall construct in the final grading, such diversion ditches, depressions, or terraces as will accumulate or control the water runoff. Additional restoration work may be required by the department according to rules adopted by the board.

(2) In addition to the backfilling and grading requirements, the operator's method of operation on steep slopes may be regulated and controlled according to rules adopted by the board. These rules may require any measure whatsoever to accomplish the purpose of this act.

(3) All available topsoil shall be removed in a separate layer, guarded from erosion and pollution, kept in such a condition that it can sustain vegetation of at least the quality and variety it sustained prior to removal, and returned as the top layer after the operation has been backfilled and graded; provided that the operator shall accord substantially the same treatment to any subsurface deposit of material that is capable, as determined by the department, of supporting surface vegetation virtually as well as the present topsoil.

HeinOnline -- 1977 Vol. I 1123 1977

(4) As determined by rules of the board, time limits shall be established requiring backfilling, grading, subsidence stabilization, water control, highwall reduction, topsoiling, planting, and revegetation to be kept current. All backfilling, subsidence stabilization, sealing, grading, and topsoiling shall be completed before necessary equipment is moved from the operation.

(5) When the backfilling, grading, subsidence stabilization, water controls, and topsoiling have been completed and approved by the department, the commissioner may release so much of the bond which was filed for that portion of the operation as the commissioner may determine, provided that no less than two hundred dollars ($200) per acre shall be retained by the department until such time as the planting and revegetation is done according to law and approved by the department, at which time the commissioner shall release the bond in the remaining amount.

(6) An operator may propose alternative plans other than backfilling, grading, highwall reduction, or topsoiling if the restoration will be consistent with the purpose of this act. These plans shall be submitted to the department, and, after consultation with the landowner, if the plans are approved by the board and complied with within the time limits as may be determined by the board as being reasonable for carrying out the plans, the backfilling, grading, highwall reduction, or topsoiling requirements of this act may be modified by the board. An operator who proposes alternative plans that will affect an existing permit shall comply with the notice requirement of section 50-1039*(5)*(k)."

Section 4. Section 50-1404, R.C.M. 1947, is amended to read as follows:

"**50-1404. Approved plan required for strip mining — period for which effective.** (1) No operator may engage in strip mining without having first obtained approval of a strip mining plan from the department as provided for in section 5 [50-1405].

(2) Approved strip mining plans shall be effective for *5 years* from the date the plan is approved, *with annual reports to the department, as prescribed in 50-1039(2), in which the operator indicates whether any waste has occurred in the past year or is expected to occur in the forthcoming year.*"

Section 5. **Repealer.** Section 50-1049, R.C.M. 1947, is repealed.

Approved April 8, 1977.

CHAPTER NO. 353

AN ACT TO AUTHORIZE THE DIRECTOR OF REVENUE TO ENTER INTO CLOSING AGREEMENTS RELATING TO TAXES IMPOSED BY CHAPTERS 15, 49, AND 69, OF TITLE 84, R.C.M. 1947.

HeinOnline -- 1977 Vol. I 1124 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section in chapter 15, Title 84, numbered 84-1526 that reads as follows:

84-1526. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any person relating to the liability of such person in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded.

Section 2. There is a new R.C.M. section in chapter 49, Title 84, numbered 84-4959 that reads as follows:

84-4959. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any person relating to the liability of such person in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded.

Section 3. There is a new R.C.M. section in chapter 69, Title 84, numbered 84-6909 that reads as follows:

84-6909. Closing agreements. (1) The director of revenue or any person authorized in writing by him is authorized to enter into an agreement with any person relating to the liability of such person in respect to the tax imposed by this chapter for any taxable period.

(2) Any such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of a material fact:

(a) the case may not be reopened as to matters agreed upon or the agreement modified by any officer, employee, or agent of this state; and

(b) in any suit, action, or proceeding under such agreement or any determination, assessment, collection, payment, abatement, refund, or

HeinOnline -- 1977 Vol. I 1125 1977

credit made in accordance therewith, the agreement may not be annulled, modified, set aside, or disregarded.

Approved April 8, 1977.

CHAPTER NO. 354

AN ACT TO COORDINATE THE REQUIREMENTS FOR PUBLIC HEARINGS CONTAINED IN THE TAXPAYERS INFORMATION ACT AND THE SCHOOL BUDGET SYSTEM; AMENDING SECTIONS 75-6709 AND 84-7204, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6709, R.C.M. 1947, is amended to read as follows:

"**75-6709. Notice of preliminary budget filing and final budget meeting.** *(1)* Between the tenth and twentieth days of July of each year, the county superintendent shall publish notice one (1) time in the official newspaper of the county stating that the preliminary budgets for all districts in the county for the school fiscal year just beginning, as prepared and adopted by the respective trustees, are on file in his office and that such budgets are open to inspection of all taxpayers. The notice shall also state that the board of school budget supervisors of the county will meet at 10 a.m. on the fourth Monday in July for the purpose of considering and adopting the final budget of each district, that the meeting of such budget board may be continued from day to day until the final adoption of all the districts' budgets, and that any taxpayer in a district may appear at such budget board meeting and be heard for or against any part of the budget of his district.

(2) Notice given under this section meets the requirement for notice contained in 84-7203, R.C.M. 1947."

Section 2. Section 84-7204, R.C.M. 1947, is amended to read as follows:

"**84-7204. Resolution or ordinance for increase over certified millage.** No millage in excess of the department's certified millage shall be levied until a resolution or ordinance has been approved by the governing board of the taxing authority, which resolution or ordinances must be approved by said taxing authority according to the following procedure:

(1) The taxing authority shall advertise its intent to exceed the department's certified millage in a newspaper of general circulation in the county, as provided in section 3 [84-7203] of this act. The advertisement shall state that the taxing authority will meet on a day, at a time and place fixed in the advertisement, which shall be approximately seven (7) days after the day that the advertisement is published, for the purpose of hearing comments regarding the proposed increase and to explain the reasons for the proposed increase. The meeting may coincide with the meeting on the tentative budget as required by law.

(2) The taxing authority, after the public hearing has been held in

HeinOnline -- 1977 Vol. I 1126 1977

accordance with the above procedures, may adopt a resolution or ordinance levying a millage rate in excess of the certified millage. If the resolution or ordinance adopting said millage rate is not approved on the day of the public hearing, the day, time and place at which the resolution or ordinance will be scheduled for consideration and approval by the taxing authority must be announced at the public hearing. If the resolution or ordinance is to be considered at a day and time that is more than two (2) weeks from the public hearing, the taxing authority must again advertise in the same manner as provided in sections 3 [84-7203] and 4(1) [84-7204 (1)] of this act.

(3) Public notice given and public hearings held in compliance with the requirements of Title 75, chapter 67, in setting school budgets satisfy the requirements contained in this section."

Approved April 8, 1977.

CHAPTER NO. 355

AN ACT TO CHANGE THE FIRST AND LAST MEETING DATE FOR COUNTY TAX APPEAL BOARDS, CHANGING THE TERMS OF APPOINTMENT OF COUNTY TAX APPEAL BOARD MEMBERS, ADDING A SPECIAL PROVISION FOR AN EXTENDED HEARING SESSION, AND CHANGING THE DATE FOR TRANSMITTING RECORDS FROM COUNTY TAX APPEAL BOARDS TO THE STATE TAX APPEAL BOARD; AMENDING SECTIONS 84-601, 84-603, AND 84-604, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-601, R.C.M. 1947, is amended to read as follows:

"**84-601. County tax appeal board — when to hear protests.** The board of county commissioners of each county shall appoint a three member county tax appeal board *with the members to serve staggered terms of 3 years each.* The members of each *county* tax appeal board shall be residents of the county in which they serve. *They shall* receive compensation of $25 per day and travel expenses only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or attending meetings called by the state tax appeal board. Travel expenses and compensation shall be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards shall be furnished by the county. All other incidental expenses will be paid from the appropriation of the state tax appeal board. The county tax appeal board must meet on the third Monday of *April* in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but not later than the *last* Monday in *June unless granted additional time by order of the state tax appeal board.* In connection with any such appeal, the county tax appeal board shall have the authority to change any assess-

ment or fix the assessment at some other level. It is the duty of the county clerk to publish a notice to taxpayers of the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for such hearings, by publication in a newspaper, if any is printed in the county; if none, then in such manner as the board may direct. The notice shall be published at least 7 days prior to the first meeting of the county tax appeal board."

Section 2. There is a new section which reads as follows:

Implementation. As of December 31, 1980, one member of the county tax appeal board shall be appointed for a 1-year term, one member shall be appointed for a 2-year term, and the third and all succeeding members shall be appointed for 3-year terms.

Section 3. Section 84-603, R.C.M. 1947, is amended to read as follows:

"**84-603. Application for reduction in valuations.** No reduction must be made in the valuation of property unless the party affected thereby, or his agent, makes and files with the county tax appeal board on or before the *first* Monday *in June*, a written application therefor. Said application shall state the post-office address of the applicant, shall specifically describe the property involved and shall state the facts upon which it is claimed such reduction should be made. The department of revenue shall, however, have the right to raise or lower the valuation of all of one class of property in a county, as provided in the preceding section."

Section 4. Section 84-604, R.C.M. 1947, is amended to read as follows:

"**84-604. Examination of applicant.** Before the county tax appeal board grants any application or makes any reduction applied for, it must examine on oath, the person or agent making the application, touching the value of the property of each person. No reduction must be made unless such person or agent makes an application, as provided in the preceding section, and attends and answers all questions pertinent to the inquiry. The testimony of all witnesses upon such hearing must be taken in shorthand or by stenotype or electronically recorded and preserved for 1 year. If the decision of the county tax appeal board is appealed, all testimony must be transcribed or otherwise reduced to writing and forwarded together with all exhibits to the state tax appeal board. The date of hearing, the proceedings before the board, and the decision, must be entered upon the minutes of the board, and the board shall notify the applicant of its decision, by registered or certified mail within 3 days thereafter. A copy of the minutes of the county tax appeal board must be transmitted to the state tax appeal board no later than 3 days after the *second* Monday in *July*."

Section 5. **Effective date.** This act is effective upon its passage and approval.

Approved April 11, 1977.

HeinOnline -- 1977 Vol. I 1128 1977

CHAPTER NO. 356

AN ACT TO INCREASE THE PERCENTAGE OF MONEYS RECEIVED UNDER THE FEDERAL MINERAL LANDS LEASING ACT WHICH IS PAID INTO THE EARMARKED REVENUE FUND FOR STATE EQUALIZATION AID TO PUBLIC SCHOOLS OF THE STATE AND TO CHANGE CERTAIN TERMINOLOGY; AMENDING SECTION 75-6916, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6916, R.C.M. 1947, is amended to read as follows:

"**75-6916. Definition of and revenue for state equalization aid.** The following shall be paid into the earmarked revenue fund, for state equalization aid to public schools of the state:

(1) 25% of all moneys received from the collection of income taxes under chapter 49 of Title 84, R.C.M. 1947,

(2) 25% of all moneys received from the collection of corporation license taxes under chapter 15 of Title 84, R.C.M. 1947, as provided by section 84-1901, R.C.M. 1947,

(3) 10% of the moneys received from the collection of the severance tax on coal under chapter 13 of Title 84, R.C.M. 1947,

(4) *62 ½%* of the moneys received from the treasurer of the United States as the state's shares of oil, gas, *and other mineral* royalties under the *federal Mineral Lands Leasing Act, as amended,*

(5) interest and income moneys described in sections 75-6907 and 75-6908, R.C.M. 1947,

(6) income from the local impact and education trust fund account, and

(7) in addition to these revenues, the surplus revenues collected by the counties for foundation program support according to sections 75-6912 and 75-6913 shall be paid into the same earmarked revenue fund.

As used in this title, the term "state equalization aid" means those moneys deposited in the earmarked revenue fund as required in this section plus any legislative appropriation of moneys from other sources for distribution to the public schools for the purpose of equalization of the foundation program."

Approved April 11, 1977.

CHAPTER NO. 357

AN ACT TO REDUCE THE PERCENTAGE OF MONEYS RECEIVED UNDER THE FEDERAL MINERAL LANDS LEASING ACT WHICH IS PAID INTO THE STATE HIGHWAY ACCOUNT IN THE EARMARKED REVENUE FUND, AND TO CHANGE CERTAIN TERMINOLOGY; AMENDING SECTION 79-211, R.C.M. 1947.

HeinOnline -- 1977 Vol. I 1129 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 79-211, R.C.M. 1947, is amended to read as follows:

"**79-211. Deposit of gas and oil royalties from federal government in highway account.** It shall be the duty of the state treasurer to pay *37 ½%* of the moneys received from the treasurer of the United States as the state's share of gas, oil, *and other mineral* royalties under the *federal Mineral Lands Leasing Act, as amended,* to the state highway account in the earmarked revenue fund."

Approved April 11, 1977.

CHAPTER NO. 358

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE V, SECTION 9, OF THE MONTANA CONSTITUTION TO PROVIDE THAT A MEMBER OF THE LEGISLATURE MAY RUN FOR PUBLIC OFFICE DURING HIS TERM.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article V, section 9, of the Montana Constitution is amended to read as follows:

"**Section 9. Disqualification.** No member of the legislature shall, during the term for which he shall have been elected, be appointed to any civil office under the state. *A legislator may be a candidate for public office before the end of his term. He shall resign before assuming another office. No* member of congress, or other person holding an office (except notary public, or the militia) under the United States or this state, shall be a member of the legislature during his continuance in office."

Section 2. **Submission to electors.** This amendment shall be submitted to the electors of the state of Montana at the general election to be held November 7, 1978, by printing on the ballot the full title and the following:

☐ FOR allowing a legislator to be a candidate for public office during his term.

☐ AGAINST allowing a legislator to be a candidate for public office during his term.

Approved (Constitutional Amendment).

CHAPTER NO. 359

AN ACT FOR THE GENERAL REVISION OF THE LAWS CONCERNING CRIMES.

HeinOnline -- 1977 Vol. I 1130 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 54-132, R.C.M. 1947, is amended to read as follows:

"**54-132. Criminal sale of dangerous drugs.** *(1)* A person commits the offense of criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away *or* manufactures, prepares, cultivates, compounds, or processes any dangerous drug, as defined in *54-301.*

(2) A person convicted of criminal sale of dangerous drugs shall be imprisoned in the state prison for a term *of* not less than 1 year *or* more than life.

(3) Practitioners and agents under their supervision acting in the course of a professional practice, *as defined by 54-301,* are exempt from this section."

Section 2. Section 54-133, R.C.M. 1947, is amended to read as follows:

"**54-133. Criminal possession of dangerous drugs.** *(1)* A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug, as defined in *54-301.*

(2) Any person convicted of criminal possession of *marijuana* or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of *marijuana* or 1 gram of hashish *is,* for the first offense, guilty of a misdemeanor and punishable by a fine not to exceed $1,000 or imprisonment in the county jail *for a term* not to exceed 1 year or both such fine and imprisonment. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or imprisonment in the county jail *for a term* not to exceed 1 year or in the state prison *for a term* not to exceed 3 years or both such fine and imprisonment.

(3) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection *(2)* shall be imprisoned in the state prison *for a term* not to exceed 5 years.

(4) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence.

(5) Ultimate users and practitioners and agents under their supervision acting in the course of a professional practice, as defined by 54-301, are exempt from this section."

Section 3. Section 54-134, R.C.M. 1947, is amended to read as follows:

"**54-134. Fraudulently obtaining dangerous drugs.** A person commits the offense of fraudulently obtaining dangerous drugs if he obtains or attempts to obtain a dangerous drug, *as defined in 54-301,* by:

(1) fraud, deceit, misrepresentation, or subterfuge;

(2) falsely assuming the title of or representing himself to be a manu-

facturer, wholesaler, practitioner, pharmacist, owner of a pharmacy, or other *person* authorized to possess dangerous drugs;

(3) the use of a forged, altered, or fictitious prescription;

(4) the use of a false name or a false address on a prescription; or

(5) the concealment of a material fact."

Section 4. Section 54-135, R.C.M. 1947, is amended to read as follows:

"54-135. Altering labels on dangerous drugs. A person commits the offense of altering labels on dangerous drugs if he affixes a false, forged, or altered label to *or otherwise misrepresents* a package or receptacle containing a dangerous drug, *as defined in 54-301.*"

Section 5. Section 54-137, R.C.M. 1947, is amended to read as follows:

"54-137. Alternative sentencing authority. A person convicted of criminal possession of dangerous drugs, fraudulently obtaining dangerous drugs, or altering labels on dangerous drugs, if he is shown to be an excessive or habitual user of dangerous drugs, *as defined in 54-301,* either from the face of the record or by a presentence investigation, may, in lieu of imprisonment, be committed to the custody of any institution for rehabilitative treatment for not less than 6 months *or* more than 2 years."

Section 6. Section 54-138, R.C.M. 1947, is amended to read as follows:

"54-138. Jurisdiction. The district court *has* exclusive trial jurisdiction over all prosecutions commenced under *this chapter.*"

Section 7. Section 94-1-103, R.C.M. 1947, is amended to read as follows:

"94-1-103. Application to offenses committed before and after enactment. (1) The provisions of this code apply to any offense defined in this code and committed after *January 1, 1974.*

(2) Unless otherwise expressly provided or unless the context otherwise requires, the provisions of this *title and Title 95* govern the construction of and punishment for any offense defined outside of this code and committed after *January 1, 1974,* as well as the construction and application of any defense to a prosecution for such an offense.

(3) The provisions of this code do not apply to any offense defined outside of this code and committed before *January 1, 1974.* Such an offense must be construed and punished according to the provisions of law existing at the time of the commission thereof in the same manner as if this code had not been enacted."

Section 8. Section 94-1-105, R.C.M. 1947, is amended to read as follows:

"94-1-105. Classification of offenses. (1) For the determination of the court's jurisdiction at the commencement of the action and for the determination of the commencement of the period of limitations, the offense shall be designated a felony or misdemeanor based upon the maximum potential sentence which could be imposed by statute.

HeinOnline -- 1977 Vol. I 1132 1977

(2) An offense defined by any statute of this state other than this code shall be classified as provided in this section and the sentence that may be imposed upon conviction thereof shall be governed by this *title and Title 95.*"

Section 9. Section 94-1-106, R.C.M. 1947, is amended to read as follows:

"**94-1-106. General time limitations.** (1) A prosecution for criminal homicide may be commenced at any time.

(2) Except as otherwise provided *by law,* prosecutions for other offenses are subject to the following periods of limitation:

(a) a prosecution for *a* felony must be commenced within 5 years after it is committed;

(b) a prosecution for a misdemeanor must be commenced within 1 year after it is committed.

(3) The period prescribed in subsection (2) is extended in a prosecution for theft involving a breach of fiduciary obligation to an aggrieved person as follows:

(a) *if* the aggrieved person is a minor or incompetent, during the minority or incompetency or within 1 year after the termination thereof;

(b) *in* any other instance, within 1 year after the discovery of the offense by the aggrieved person or by a person who has legal capacity to represent an aggrieved person or has a legal duty to report the offense and is not himself a party to the offense or, in the absence of such discovery, within 1 year after the prosecuting officer becomes aware of the offense.

(4) An offense is committed either when every element occurs or, when the offense is based upon a continuing course of conduct, at the time when the course of conduct is terminated. Time starts to run on the day after the offense is committed.

(5) A prosecution is commenced either when an indictment is found or an information or complaint is filed."

Section 10. Section 94-2-101, R.C.M. 1947, is amended to read as follows:

"**94-2-101. General definitions.** Unless otherwise specified in the statute, all words will be taken in the objective standard rather than in the subjective, *and unless a different meaning plainly is required, the following definitions apply in this title:*

(1) "Acts" has its usual and ordinary grammatical meaning and includes any bodily movement, any form of communication, and, where relevant, a failure or omission to take action.

(2) "Another" means a person or persons as defined in this code other than the offender.

HeinOnline -- 1977 Vol. I 1133 1977

(3) "Administrative proceeding" means any proceeding the outcome of which is required to be based on a record or documentation prescribed by law or in which a law or a regulation is particularized in its application to an individual.

(4) "Benefit" means gain or advantage or anything regarded by the beneficiary as gain or advantage, including benefit to any other person or entity in whose welfare he is interested but not an advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(6) "Cohabit" means to live together under the representation of being married.

(7) "Common scheme" means a series of acts or omissions motivated by a purpose to accomplish a single criminal objective or by a common purpose or plan which *results* in the repeated commission of the same offense or affects the same person or the same persons or the property thereof.

(8) "Conduct" means an act or series of acts and the accompanying mental state.

(9) "Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

(10) "Correctional institution" means the state prison, county or city jail, or other institution for the incarceration or custody of persons under sentence for offenses or awaiting trial or sentence for offenses.

(11) "Deception" means knowingly to:

(a) create or confirm in another an impression which is false and which the offender does not believe to be true;

(b) fail to correct a false impression which the offender previously has created or confirmed;

(c) prevent another from acquiring information pertinent to the disposition of the property involved;

(d) sell or otherwise transfer or encumber property, failing to disclose a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether such impediment is or is not of value or is *or is* not a matter of official record; or

(e) promise performance which the offender does not intend to perform or knows will not be performed. Failure to perform standing alone is not evidence that the offender did not intend to perform.

(12) "Defamatory matter" means anything which exposes a person or a group, class, or association to hatred, contempt, ridicule, degradation, or disgrace in society or injury to his or its business or occupation.

HeinOnline -- 1977 Vol. I 1134 1977

(13) "Deprive" means to withhold property of another:

(a) permanently;

(b) for such a period as to appropriate a portion of its value;

(c) with the purpose to restore it only upon payment of reward or other compensation; or

(d) to dispose of the property and use or deal with the property so as to make it unlikely that the owner will recover it.

(14) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.

(15) "Felony" means an offense in which the sentence imposed upon conviction is death or imprisonment in the state prison for any term exceeding 1 year.

(16) "A frisk" is a search by an external patting of a person's clothing.

(17) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

(18) "Government" includes any branch, subdivision, or agency of the government of the state or any locality within it.

(19) "Harm" means loss, disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

(20) "A house of prostitution" means any place where prostitution or promotion of prostitution is regularly carried on by one *or more persons* under the control, management, or supervision of another.

(21) "Human being" means a person who has been born and is alive.

(22) "An illegal article" is an article or thing which is prohibited by statute, rule, or order from being in the possession of a person subject to official detention.

(23) "Inmate" means a person who engages in prostitution in or through the agency of a house of prostitution.

(24) "Intoxicating substance" means any controlled substance as defined in chapter 3 of Title 54 and *any* alcoholic beverage including but not limited to any beverage containing ½ of 1% or more of alcohol by volume. *The* foregoing definition shall not extend to dealcoholized wine *or* to any beverage or liquid produced by the process by which beer, ale, port, or wine is produced if it contains less than ½ of 1% of alcohol by volume.

(25) "An involuntary act" means any act which is:

(a) a reflex or convulsion;

(b) a bodily movement during unconsciousness or sleep;

HeinOnline -- 1977 Vol. I 1135 1977

(c) conduct during hypnosis or resulting from hypnotic suggestion; or

(d) a bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.

(26) "Juror" means any person who is a member of any jury, including a grand jury, impaneled by any court in this state in any action or proceeding or by any officer authorized by law to impanel a jury in any action or proceeding. The term "juror" also includes a person who has been drawn or summoned to attend as a prospective juror.

(27) "Knowingly"—*a* person acts knowingly with respect to conduct or to a circumstance described by a statute defining an offense when he is aware of his conduct or that the circumstance exists. A person acts knowingly with respect to the result of conduct described by a statute defining an offense when he is aware that it is highly probable that such result will be caused by his conduct. When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence. Equivalent terms such as "knowing" or "with knowledge" have the same meaning.

(28) "Mentally defective" means that a person suffers from a mental disease or defect which renders him incapable of appreciating the nature of his conduct.

(29) "Mentally incapacitated" means that a person is rendered temporarily incapable of appreciating or controlling his conduct as result of the influence of an intoxicating substance.

(30) "Misdemeanor" means an offense in which the sentence imposed upon conviction is imprisonment in the county jail for any term or fine, or both, or the sentence imposed is imprisonment in the state prison for any term of *1* year or less.

(31) "Negligently"—*a* person acts negligently with respect to a result or to a circumstance described by a statute defining an offense when he consciously disregards a risk that the result will occur or that the circumstance exists or if he disregards a risk of which he should be aware that the result will occur or that the circumstance exists. The risk must be of such a nature and degree that to disregard it involves a gross deviation from the standard of conduct that a reasonable person would observe in the actor's situation. Gross deviation means a deviation that is considerably greater than lack of ordinary care. Relevant terms such as "negligent" and "with negligence" have the same meaning.

(32) "Obtain" means:

(a) in relation to property, to bring about a transfer of interest or possession whether to the offender or to another; and

(b) in relation to labor or services, to secure the performance thereof.

(33) "Obtains or exerts control" includes but is not limited to the taking, carrying away, or sale, conveyance, transfer of title to, interest in, or possession of property.

(34) "Occupied structure" means any building, vehicle, or other place

HeinOnline -- 1977 Vol. I 1136 1977

suited for human occupancy or night lodging of persons or for carrying on business whether or not a person is actually present. Each unit of a building consisting of two or more units separately secured or occupied is a separate occupied structure.

(35) "Offender" means a person who has been or is liable to be arrested, charged, convicted, or punished for a public offense.

(36) "Offense" means a crime for which a sentence of death or of imprisonment or fine is authorized. Offenses are classified as felonies or misdemeanors.

(37) "Official detention" means imprisonment *resulting* from a conviction for an offense, confinement for an offense, confinement of a person charged with an offense, detention by a peace officer pursuant to arrest, detention for extradition or deportation, or any lawful detention for the purpose of the protection of the welfare of the person detained or for the protection of society. "*Official* detention" does not include supervision of probation or parole, constraint incidental to release on bail, or an unlawful arrest unless the person arrested employed physical force, a threat of physical force, or a weapon to escape.

(38) "Official proceeding" means a proceeding heard or which may be heard before any legislative, judicial, administrative, or other governmental agency or official authorized to take evidence under oath, including any referee, hearing examiner, commissioner, notary, or other person taking testimony or deposition in connection with such proceeding.

(39) "Other state" means any state or territory of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(40) "Owner" means a person, other than the offender, who has possession of or any other interest in the property involved, even though such interest or possession is unlawful, and without whose consent the offender has no authority to exert control over the property.

(41) "Party official" means a person who holds an elective or appointive post in a political party in the United States by virtue of which he directs or conducts or participates in directing or conducting party affairs at any level of responsibility.

(42) "Peace officer" means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for offenses while acting within the scope of his authority.

(43) "Pecuniary benefit" is benefit in the form of money, property, commercial interests, or anything else the primary significance of which is economic gain.

(44) "Person" includes an individual, business association, partnership, corporation, government, or other legal entity and an individual acting or purporting to act for or on behalf of any government or subdivision thereof.

(45) "Physically helpless" means that a person is unconscious or is otherwise physically unable to communicate unwillingness to act.

HeinOnline -- 1977 Vol. I 1137 1977

(46) "Possession" is the knowing control of anything for a sufficient time to be able to terminate control.

(47) "Premises" includes any type of structure or building and any real property.

(48) "Property" means anything of value. Property includes, but is not limited to:

(a) real estate;

(b) money;

(c) commercial instruments;

(d) admission or transportation tickets;

(e) written instruments *which represent* or *embody* rights concerning anything of value, *including* labor or services, or *which are* otherwise of value to the owner;

(f) things growing on, affixed to, or found on land *and things which are* part of or affixed to any building;

(g) electricity, gas, and water;

(h) birds, animals, and fish which ordinarily are kept in a state of confinement;

(i) food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof; *and*

(j) any other articles, materials, devices, substances, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information *or a secret* designed process, procedure, formula, invention, or improvement.

(49) "Property of another" means real or personal property in which a person other than the offender has an interest which the offender has not authority to defeat or impair, even though the offender himself may have an interest in the property.

(50) "Public place" means any place to which the public or any substantial group thereof has access.

(51) "Public servant" means any officer or employee of government, including but not limited to legislators, judges, and firemen and any person participating as a juror, advisor, consultant, administrator, executor, guardian, or court-appointed fiduciary. *The* term does not include witnesses. The term public servant includes one who has been elected or designated to become a public servant.

(52) "Purposely"—*a* person acts purposely with respect to a result or to conduct described by a statute defining an offense if it is his conscious object to engage in that conduct or to cause that result. When a particular

HeinOnline -- 1977 Vol. I 1138 1977

purpose is an element of an offense, the element is established although such purpose is conditional, unless the condition negatives the harm or evil sought to be prevented by the law defining the offense. Equivalent terms such as "purpose" and "with the purpose" have the same meaning.

(53) "Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. *It* includes serious mental illness or impairment.

(54) "Sexual contact" means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.

(55) "Sexual intercourse" means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.

(56) "Solicit" or "solicitation" means to command, authorize, urge, incite, request, or advise another to commit an offense.

(57) "State" or "this state" means the state of Montana, all the land and water in respect to which the state of Montana has either exclusive or concurrent jurisdiction, and the air space above such land and water.

(58) "Statute" means any act of the legislature of this state.

(59) "Stolen property" means property over which control has been obtained by theft.

(60) "A stop" is the temporary detention of a person that results when a peace officer orders the person to remain in his presence.

(61) "Tamper" means to interfere with something improperly, meddle with it, make unwarranted alterations in its existing condition, or deposit refuse upon it.

(62) "Threat" means a menace, however communicated, to:

(a) inflict physical harm on the person threatened or any other person or on property;

(b) subject any person to physical confinement or restraint;

(c) commit any criminal offense;

(d) accuse any person of criminal offense;

(e) expose any person to hatred, contempt, or ridicule;

(f) harm the credit or business repute of any person;

(g) reveal any information sought to be concealed by the person threatened;

HeinOnline -- 1977 Vol. I 1139 1977

(h) take action as an official against anyone or anything, withhold official action, or cause such action or withholding;

(i) bring about or continue a strike, boycott, or other similar collective action if the property is not demanded or received for the benefit of the groups which he purports to represent; or

(j) testify or provide information or withhold testimony or information with respect to another's legal claim or defense.

(63) (a) "Value" means the market value of the property at the time and place of the crime or, if such cannot be satisfactorily ascertained, the cost of the replacement of the property within a reasonable time after the crime. If the offender appropriates a portion of the value of the property, the value shall be determined as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, such figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

(ii) The value of any other instrument which creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(b) When it cannot be determined if the value of the property is more or less than $150 by the standards set forth in subsection *(63)(a)* above, its value shall be deemed to be an amount less than $150.

(c) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property.

(64) "Vehicle" means any device for transportation by land, water, or air or mobile equipment with provision for transport of an operator.

(65) "Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

(66) "Witness" means a person whose testimony is desired in any *official* proceeding, in any investigation by a grand jury, or in a criminal action, prosecution, or proceeding."

Section 11. Section 94-2-103, R.C.M. 1947, is amended to read as follows:

"94-2-103. General requirements of criminal act and mental state. (1) A person is not guilty of an offense, other than an offense which involves absolute liability, unless, with respect to each element described by the statute defining the offense, he acts while having one of the mental states described in *subsections (27), (31), and (52) of 94-2-101.*

(2) If the statute defining an offense *prescribes* a particular mental

HeinOnline -- 1977 Vol. I 1140 1977

state with respect to the offense as a whole, without distinguishing among the elements thereof, the prescribed mental state applies to each such element.

(3) Knowledge that certain conduct constitutes an offense or knowledge of the existence, meaning, or application of the statute defining an offense is not an element of the offense unless the statute clearly defines it as such.

(4) A person's reasonable belief that his conduct does not constitute an offense is a defense if:

(a) the offense is defined by an administrative regulation or order which is not known to him and has not been published or otherwise made reasonably available to him and he could not have acquired such knowledge by the exercise of due diligence pursuant to facts known to him;

(b) he acts in reliance upon a statute which later is determined to be invalid;

(c) he acts in reliance upon an order or opinion of the Montana supreme court or a United States appellate court later overruled or reversed; or

(d) he acts in reliance upon an official interpretation of the statute, regulation, or order defining the offense made by a public officer or agency legally authorized to interpret such statute.

(5) If a person's reasonable belief is a defense under subsection (4), nevertheless he may be convicted of an included offense of which he would be guilty if the law were as he believed it to be.

(6) Any defense based upon this section is an affirmative defense."

Section 12. Section 94-2-104, R.C.M. 1947, is amended to read as follows:

"**94-2-104. Absolute liability.** A person may be guilty of an offense without having, as to each element thereof, one of the mental states described in *subsections (27), (31), and (52) of 94-2-101* only if the offense is punishable by a fine not exceeding $500 and the statute defining the offense clearly indicates a legislative purpose to impose absolute liability for the conduct described."

Section 13. Section 94-2-111, R.C.M. 1947, is amended to read as follows:

"**94-2-111. Consent as a defense.** (1) The consent of the victim to conduct charged to constitute an offense or to the result thereof is a defense.

(2) Consent is ineffective if:

(a) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense;

(b) *it is given by a person who* by reason of youth, mental disease or defect, or intoxication is unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense;

(c) it is induced by force, duress, or deception; or

(d) it is against public policy to permit the conduct or the resulting harm, even though consented to."

Section 14. Section 94-5-105, R.C.M. 1947, is amended to read as follows:

"**94-5-105. Sentence of death for deliberate homicide.** (1) *Unless there are mitigating circumstances, when* a defendant is convicted of the offense of deliberate homicide, the court shall impose a sentence of death in *any of* the following circumstances:

(a) The deliberate homicide was committed by a person serving a sentence of imprisonment in the state prison.

(b) The defendant was previously convicted of another deliberate homicide.

(c) The deliberate homicide was committed by means of torture.

(d) The deliberate homicide was committed by a person lying in wait or ambush.

(e) The deliberate homicide was committed as a part of a scheme or operation which, if completed, would result in the death of more than one person.

(2) *Notwithstanding* the provisions of subsection (1) and regardless of circumstances, when a defendant is convicted of the offense of deliberate homicide under subsection (1)(a) of 94-5-102 *and* the victim was a peace officer killed while performing his duty, the court shall impose a sentence of death."

Section 15. Section 94-5-501, R.C.M. 1947, is amended to read as follows:

"**94-5-501. Definitions.** As used in 94-5-503 and 94-5-505, the term "without consent" means:

(1) the victim is compelled to submit by force or by threat of imminent death, bodily injury, or *kidnapping* to be inflicted on anyone; or

(2) the victim is incapable of consent because he is:

(a) mentally defective or incapacitated;

(b) physically helpless; or

(c) less than 16 years old."

Section 16. Section 94-5-503, R.C.M. 1947, is amended to read as follows:

"**94-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with a person *of the opposite sex* not his spouse commits the offense of sexual intercourse without consent.

HeinOnline -- 1977 Vol. I 1142 1977

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for any term not to exceed 20 years.

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term not to exceed 40 years.

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(a) *evidence* of the victim's past sexual conduct with the offender;

(b) *evidence* of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

(6) If the defendant proposes for any purpose to offer evidence described in *subsection (5)*(a) or (b), the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under subsection *(5)*.

(7) If the issue of failure to make a timely complaint or immediate outcry is raised, the jury shall be informed that such fact, standing alone, may not bar conviction."

Section 17. Section 94-5-506, R.C.M. 1947, is amended to read as follows:

"**94-5-506. Provisions generally applicable to sexual crimes.** (1) When criminality depends on the victim being less than 16 years old, it is a defense for the offender to prove that he reasonably believed the child to be above that age. Such belief shall not be deemed reasonable if the child is less than 14 years old.

(2) Whenever the definition of an offense excludes conduct with a spouse, the *exclusion* shall be deemed to extend to persons living as *husband* and wife regardless of the legal status of their relationship. The exclusion shall be inoperative as respects spouses living apart under a decree of judicial separation. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse in a sexual act which he or she causes another person, not within the exclusion, to perform.

(3) In a prosecution under the preceding sections on sexual crimes (94-5-502 *through* 94-5-504) in which the victim's lack of consent is based solely upon his incapacity to consent because he was mentally incapacitated, it is a defense to such prosecution that the victim was a voluntary social companion of the defendant and the intoxicating substance was voluntarily and knowingly taken."

Section 18. Section 94-5-607, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1143 1977

"**94-5-607. Endangering the welfare of children.** (1) A parent, guardian, or other person supervising the welfare of a child less than 16 years old commits the offense of endangering the welfare of children if he knowingly endangers the child's welfare by violating a duty of care, protection, or support.

(2) A parent, guardian, or other person commits the offense of endangering the welfare of children if he knowingly contributes to the delinquency of a *child less than 16 years old* by:

(a) supplying or encouraging the use of intoxicating substances by *the* child; *or*

(b) assisting, promoting, or encouraging *the* child to leave or abandon his place of residence without the consent of his parents or guardian, to enter a place of prostitution, to engage in sexual conduct, or to enter places exclusively for adults.

(3) A person convicted of endangering *the* welfare of children shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of a second offense of endangering *the* welfare of children shall be fined not to exceed $1,000 or imprisoned in the county jail for any term not to exceed 6 months, or both.

(4) On the issue of whether there has been a violation of the duty of care, protection, and support, the following, in addition to all other admissible evidence, *is* admissible: cruel treatment; abuse; infliction of unnecessary and cruel punishment; abandonment; neglect; lack of proper medical care, clothing, shelter, and food; *and* evidence of past bodily injury.

(5) The court may order, in its discretion, any fine levied or any bond forfeited upon a charge of endangering *the* welfare of children paid to or for the benefit of the person or persons whose welfare the defendant has endangered."

Section 19. Section 94-5-608, R.C.M. 1947, is amended to read as follows:

"**94-5-608. Nonsupport.** (1) A person commits the offense of nonsupport if he fails to provide support which he can provide and which he knows he is legally obliged to provide to a spouse, child, or other dependent.

(2) A person commits the offense of aggravated nonsupport if:

(a) the offender has left the state to avoid the duty of support; *or*

(b) the offender has been previously convicted of the offense of nonsupport.

(3) A person convicted of nonsupport shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of aggravated nonsupport shall be imprisoned in the state prison for any term not to exceed 10 years.

(4) The court may order, in its discretion, any fine levied or any bond

HeinOnline -- 1977 Vol. I 1144 1977

forfeited upon a charge of nonsupport paid to or for the benefit of *any* person that the defendant has failed to support."

Section 20. Section 94-5-618, R.C.M. 1947, is amended to read as follows:

"**94-5-618. Control of practice of abortion.** (1) No abortion may be performed within the state of Montana:

(a) *except* by a licensed physician;

(b) *after* the first *3* months of pregnancy, except in a hospital licensed by the department;

(c) *after* viability of the fetus, unless in appropriate medical judgment the abortion is necessary to preserve the life or health of the mother. An abortion under this subsection (1)(c) may only be performed if:

(i) the foregoing judgment of the physician who is to perform the abortion is first certified in writing by him, setting forth in detail the facts upon which he relies in making such judgment; and

(ii) two other licensed physicians have first examined the patient and concurred in writing with such judgment. The foregoing certification and concurrence is not required if a licensed physician certifies the abortion is necessary to preserve the life of the mother.

(2) The timing and procedure used in performing an abortion under subsection (1)(c) of this section must be such that the viability of the fetus is not intentionally or negligently endangered, as the term "negligently" is defined in 94-2-101*(31)*. The fetus may be intentionally endangered or destroyed only if necessary to preserve the life or health of the mother.

(3) No physician, facility, or other person or agency shall engage in solicitation, advertising, or other form of communication having the purpose of inviting, inducing, or attracting any person to come to such physician, facility, or other person or agency to have an abortion or to purchase abortifacients.

(4) Violation of subsections (1) and (2) of this section is a felony. Violation of subsection (3) of this section is a misdemeanor."

Section 21. Section 94-6-201, R.C.M. 1947, is amended to read as follows:

"**94-6-201. Definition.** *(1)* "Enter or remain unlawfully." A person enters or remains unlawfully in or upon any vehicle, occupied structure, or premises when he is not licensed, invited, or otherwise privileged to do so. A person who enters or remains upon land does so with privilege unless notice is personally communicated to him by an authorized person or unless such notice is given by posting in a conspicuous manner.

(2) In no event shall civil liability be imposed upon the owner or occupier of premises by reason of any privilege created by this *section*."

Section 22. Section 94-6-302, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1145 1977

"**94-6-302. Theft.** (1) A person commits the offense of theft when he purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when he purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when he purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in such manner as to deprive the owner of the property; or

(c) uses, conceals, or abandons the property knowing such use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person convicted of the offense of theft of property not exceeding $150 in value shall be fined not to exceed $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A person convicted of the offense of theft of property exceeding $150 in value or theft of any commonly domesticated hoofed animal shall be imprisoned in the state prison for any term not to exceed 10 years.

(5) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

Section 23. Section 94-6-307, R.C.M. 1947, is amended to read as follows:

"**94-6-307. Deceptive practices.** (1) A person commits the offense of deceptive practices when he purposely or knowingly:

(a) causes another, by deception or threat, to execute a document disposing of property or a document by which a pecuniary obligation is incurred;

HeinOnline -- 1977 Vol. I 1146 1977

(b) makes or directs another to make a false or deceptive statement addressed to the public or any person for the purpose of promoting or procuring the sale of property or services;

(c) makes or directs another to make a false or deceptive statement to any person respecting his financial condition for the purpose of procuring a loan or credit *or accepts a false or deceptive statement from any person who is attempting to procure a loan or credit regarding that person's financial condition*; or

(d) obtains or attempts to obtain property, labor, or services by any of the following means:

(i) *using* a credit card which was issued to another, without the other's consent;

(ii) *using* a credit card that has been revoked or canceled;

(iii) *using* a credit card that has been falsely made, counterfeited, or altered in any material respect;

(iv) *using* the pretended number or description of a fictitious credit card;

(v) *using* a credit card which has expired provided *the* credit card clearly indicates the expiration date.

(2) A person convicted of the offense of deceptive practices shall be fined not to exceed $500 or imprisoned in the county jail for *a* term not to exceed 6 months, or both. If the deceptive practices are part of a common scheme or the value of any property, labor, or services obtained or attempted to be obtained exceeds $150, the offender shall be imprisoned in the state prison for *a* term not to exceed 10 years."

Section 24. Section 94-6-308.1, is amended to read as follows:

"94-6-308.1. Chain distributor schemes. (1) As used in this section:

(a) "*person*" means a natural person, corporation, partnership, trust, or other entity; and in the case of an entity it shall include any other entity which has a majority interest in such entity or effectively controls such other entity as well as the individual officers, directors, and other persons in act of control of the activities of each entity;

(b) "*chain* distributor scheme" means a sales device whereby a person, under a condition that he make an investment, is granted a license or right to recruit for consideration one or more additional persons who are also granted such license or right upon condition of making an investment and may further perpetuate the chain of persons who are granted such license or right upon such condition.

(2) It is unlawful for any person to promote, sell, or encourage participation in any chain distributor scheme.

(3) Any person violating the provisions of this section shall, upon conviction, be imprisoned in the state prison for a period not to exceed 1 year, or *fined* not to exceed $1,000, or both.

HeinOnline -- 1977 Vol. I 1147 1977

(4) Any person convicted of a second offense under this section shall be imprisoned in the state prison for a period not to exceed 5 years or *fined* not to exceed $5,000, or both."

Section 25. Section 94-7-103, R.C.M. 1947, is amended to read as follows:

"94-7-103. Threats and other improper influence in official and political matters. (1) A person commits an offense under this section if he purposely or knowingly:

(a) threatens unlawful harm to any person with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(b) threatens harm to any public servant with the purpose to influence his decision, opinion, recommendation, vote, or other exercise of discretion in a judicial or administrative proceeding;

(c) threatens harm to any public servant or party official with the purpose to influence him to violate his duty;

(d) privately addresses to any public servant who has or will have official discretion in a judicial or administrative proceeding any representation, entreaty, argument, or other communication designed to influence the outcome on the basis of considerations other than those authorized by law; or

(e) as a juror or officer in charge of a jury receives or permits to be received any communication relating to any matter pending before such jury, except according to the regular course of proceedings.

(2) It is no defense to prosecution under subsections (1)(a) through (1)(d) that a person whom the offender sought to influence was not qualified to act in the desired way, whether because he had not yet assumed office or lacked jurisdiction or for any other reason.

(3) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both, unless the offender threatened to commit an offense or made a threat with the purpose to influence a judicial or administrative proceeding, in which case the offender shall be imprisoned in the state prison for any term not to exceed 10 years."

Section 26. Section 94-7-104, R.C.M. 1947, is amended to read as follows:

"94-7-104. Compensation for past official behavior. (1) A person commits an offense under this section if he knowingly solicits, accepts, or agrees to accept any pecuniary benefit as compensation for having as a public servant given a decision, opinion, recommendation, or vote favorable to another, for having otherwise exercised a discretion in *another's* favor, or for having violated his duty. A person commits an offense under this section if he knowingly offers, confers, or agrees to confer compensation which is prohibited by this section.

HeinOnline -- 1977 Vol. I 1148 1977

(2) A person convicted under this section shall be fined not to exceed $500 or imprisoned in the county jail for any term not to exceed 6 months, or both."

Section 27. Section 94-7-207, R.C.M. 1947, is amended to read as follows:

"**94-7-207. Tampering with witnesses and informants.** (1) A person commits the offense of tampering with witnesses and informants if, believing that an official proceeding or investigation is pending or about to be instituted, he purposely or knowingly attempts to induce or otherwise cause a witness or informant to:

(a) testify or inform falsely;

(b) withhold any testimony, information, document, or thing;

(c) elude legal process summoning him to testify or supply *evidence*; or

(d) absent himself from any proceeding or investigation to which he has been summoned.

(2) A person convicted of tampering with witnesses or informants shall be imprisoned in the state prison for any term not to exceed 10 years."

Section 28. Section 94-7-307, R.C.M. 1947, is amended to read as follows:

"**94-7-307. Transferring illegal articles or unauthorized communication.** (1) (a) A person commits the offense of transferring illegal articles if he knowingly or purposely transfers any *illegal* article or thing to a person subject to official detention or is transferred any *illegal* article or thing by a person subject to official detention.

(b) A person convicted of transferring illegal articles shall be:

(i) imprisoned in the state prison for a term not to exceed 20 years, if he conveys a weapon to a person subject to official detention; or

(ii) fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both, *if he conveys any other illegal article or thing to a person subject to official detention.*

(c) Subsection (1)(b)(ii) does not apply unless the offender knew or was given sufficient notice so that he reasonably should have known that the article or thing he conveyed was an illegal article.

(2) (a) A person commits the offense of unauthorized communication if he knowingly or purposely communicates with a person subject to official detention without the consent of the person in charge of such official detention.

(b) A person convicted of the offense of unauthorized communication shall be fined not to exceed $100 or imprisoned in the county jail for any term not to exceed 10 days, or both."

Section 29. Section 94-7-503, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 Vol. I 1149 1977

"**94-7-503. Criminal syndicalism.** (1) "Criminal syndicalism" means the advocacy of crime, malicious damage or injury to property, violence, or other unlawful methods of terrorism as a means of accomplishing industrial or political ends.

(2) A person commits the offense of criminal syndicalism if he purposely or knowingly:

(a) orally or by means of writing, advocates or promotes the doctrine of criminal syndicalism;

(b) organizes or becomes a member of any assembly, group, or organization which he knows is advocating or promoting the doctrine of criminal syndicalism; or

(c) for or on behalf of another *whose purpose is* to advocate or promote the doctrine of criminal syndicalism, distributes, sells, publishes, or publicly displays any writing advocating or advertising such doctrine.

(3) A person convicted of the offense of criminal syndicalism shall be imprisoned in the state prison for a term not to exceed 10 years.

(4) Whoever, being the owner or in possession or control of any premises, knowingly permits any assemblage of persons to use such *premises* for the purpose of advocating or promoting the doctrine of criminal syndicalism shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 30. Section 94-8-107, R.C.M. 1947, is amended to read as follows:

"**94-8-107. Public nuisance.** (1) "Public nuisance" means:

(a) a condition which endangers safety or health, is offensive to the senses, or obstructs the free use of property, so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition which renders dangerous for passage any public highway or *right-of-way* or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if he knowingly creates, conducts, or maintains a public nuisance.

(3) Any act which affects an entire community or neighborhood or any considerable number of persons (as specified in subsection (1)(a)) is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) A person convicted of maintaining a public nuisance shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both. Each day of such conduct constitutes a separate offense.

(5) Action to abate a public nuisance.

HeinOnline -- 1977 Vol. I 1150 1977

(a) Every public nuisance may be abated and the persons maintaining such nuisance and the possessor *of the premises* who permits the same to be maintained may be enjoined from such conduct by an action in equity in the name of the state of Montana by the county attorney or any resident of the state.

(b) Upon the filing of the complaint in such action the judge may issue a temporary injunction.

(c) In such action evidence of the general reputation of the premises *is* admissible for the purpose of proving the existence of *the* nuisance.

(d) If the existence of the nuisance *is* established, an order of abatement shall be entered as part of the judgment in the case. The judge issuing *the* order may, in his discretion:

(i) confiscate all fixtures used on the premises to maintain the nuisance and either sell them and transmit the proceeds to the county general fund, destroy them, or return them to their rightful ownership;

(ii) close the premises for any period not to exceed 1 year, during *which* period the premises shall remain in the custody of the court;

(iii) allow the premises to be opened upon posting bond sufficient in amount to assure compliance with the order of abatement. The bond shall be forfeited if the nuisance is continued or resumed. The procedure for forfeiture or discharge of the bond shall be as provided in 95-1116; *or*

(iv) any combination of the above."

Section 31. Section 94-8-108, R.C.M. 1947, is amended to read as follows:

"**94-8-108. Creating a hazard.** (1) A person commits the offense of creating a hazard if he knowingly:

(a) discards in any place where it might attract children a container having a compartment of more than 1 ½ cubic feet capacity and a door or lid that locks or fastens automatically when closed and cannot easily be opened from the inside and fails to remove the door, lid, or locking or fastening device;

(b) being the owner or otherwise having possession of property upon which there is a well, cistern, cesspool, mine shaft, or other hole of a depth of 4 feet or more and a top width of 12 inches or more, fails to cover or fence it with a suitable protective construction;

(c) tampers with an aircraft without the consent of the owner;

(d) being the owner or otherwise having possession of property upon which there is a steam engine or steam boiler, continues to use a steam engine or steam boiler which is in an unsafe condition;

(e) being a person in the act of game hunting, acts in a negligent manner or knowingly fails to give all reasonable assistance to any person whom he has injured; or

HeinOnline -- 1977 Vol. I 1151 1977

(f) deposits any hard substance upon or between any railroad tracks which will tend to derail railroad cars or other vehicles.

(2) A person convicted of the offense of creating a hazard shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 32. Section 94-8-110.2, R.C.M. 1947, is amended to read as follows:

"94-8-110.2. Sale and advertisement of contraceptive drugs and devices. (1) It *is* unlawful for any person, firm, corporation, *partnership,* or association to sell, offer for sale, *or* give away, *by means* of vending machines, personal or collective distribution, solicitation, *or* peddling or in any other manner whatsoever, contraceptive drugs or devices, prophylactic rubber goods, or other articles for the prevention of venereal diseases. *This subsection does* not apply to regularly licensed practitioners of medicine *or* osteopathy, other licensed persons practicing other healing arts, registered pharmacists, *or* wholesale drug jobbers or manufacturers who sell to retail stores only.

(2) It *is* unlawful to:

(a) exhibit or display prophylactics or contraceptives in any show window, upon the streets, or in any public place, other than in the place of business of a licensed pharmacist;

(b) advertise such in any magazine, newspaper, or other form of publication originating in or published within the state of Montana;

(c) publish or distribute from house to house or upon the streets any circular, booklet, or other form of advertising *of prophylactics or contraceptives;* or

(d) advertise such by other visual means, auditory method, or radio broadcast or by the use of outside signs on stores, billboards, window displays, or other advertising visible to persons upon the streets or public highways.

(3) Nothing in this *section prevents* the advertising of prophylactics or contraceptives in the trade press, those magazines whose principal circulation is to the medical and pharmaceutical professions, or those magazines and other publications having interstate circulation *or* originating outside of the state of Montana where the advertising does not violate any United States law or federal postal regulation.

(4) Nothing in this section prevents the furnishing within the store or place of business of a licensed pharmacist to persons qualified to purchase, and then only upon their inquiry, such printed or other information as *is* requisite to proper use in relation to any merchandise coming within the provisions of this section.

(5) Nothing in this section prevents the dissemination of medically acceptable contraceptive information by printed or other methods concerning the availability and use of any merchandise coming within the provisions of this *section.*

HeinOnline -- 1977 Vol. I 1152 1977

(6) Any officer of the law *may* cause the arrest of *a* person violating any provision of this *section*, seize stocks illegally held, and *seize* any mechanical device or vending machine containing any merchandise coming within the provisions of this *section*, holding the owner of *the* machine *and* the occupier and owner of the premises where seizure is made to be in violation of this section.

(7) Any person, any member of a firm or *partnership*, or the officers of a corporation or association who knowingly *violate* any of the provisions of this *section are* guilty of a misdemeanor and shall, upon conviction, be punished by a fine not to exceed $500 or by imprisonment not to exceed 6 months in the county jail, or both.

(8) Justice of the peace courts and the district courts of the state have concurrent jurisdiction in all prosecutions and causes arising under this *section.*"

Section 33. Section 94-8-114, R.C.M. 1947, is amended to read as follows:

"**94-8-114. Privacy in communications.** (1) A person commits the offense of violating privacy in communications if he knowingly or purposely:

(a) with the *purpose* to terrify, intimidate, threaten, harass, annoy, or offend, *communicates with any person by telephone and uses* any obscene, lewd, or profane language, *suggests* any lewd or lascivious act, or *threatens* to inflict injury or physical harm to the person or property of any person *(the use of obscene, lewd, or profane language or the making of a threat or lewd or lascivious suggestions is prima facie evidence of an intent to terrify, intimidate, threaten, harass, annoy, or offend);*

(b) *uses* a telephone to attempt to extort money or any other thing of value from any person or to disturb by repeated telephone calls the peace, quiet, or right of privacy of any person at the place where the telephone call or calls *are* received;

(c) *records* or causes to be recorded *any conversation* by use of *a* hidden electronic or mechanical device which reproduces a human conversation without the knowledge of all parties to the conversation. Subsection (c) *does* not apply to duly elected or appointed public officials or employees when *the* transcription or recording is done in the performance of official duty, to persons speaking at public meetings, or *to* persons given warning of *the* recording;

(d) by means of any machine, instrument, *or* contrivance or in any other manner:

(i) reads or attempts to read any message or learn the contents thereof while *it* is being sent over *a* telegraph line;

(ii) learns or attempts to learn the contents of any message *while it* is in *a* telegraph office or is being received thereat or sent therefrom; or

(iii) uses, attempts to use, or *communicates* to others any information so obtained;

HeinOnline -- 1977 vol. II 1153 1977

(e) *discloses* the contents of a telegraphic message or any part thereof addressed to another person without the permission of such person, unless directed to do so by the lawful order of a court; *or*

(f) *opens* or reads or causes to be read any sealed letter not addressed to himself without being authorized to do so by either the writer of *the* letter or the person to whom it is addressed *or*, without the like authority, publishes any of the contents of *the letter* knowing the same to have been unlawfully opened.

(2) A person convicted of the offense of violating privacy in communications shall be fined not to exceed $500 or imprisoned in the county jail for a term not to exceed 6 months, or both."

Section 34. Section 94-8-201, R.C.M. 1947, is amended to read as follows:

"**94-8-201. Definitions.** *In 94-8-202 through 94-8-208 the following definitions apply:*

(1) "Machine gun" *means* a weapon of any description by whatever name known, loaded or unloaded, from which more than six shots or bullets may be rapidly, automatically, or semiautomatically discharged from a magazine by a single function of the firing device.

(2) "Crime of violence" *means* any of the following crimes or an attempt to commit any of the same*: any forcible felony,* robbery, burglary, *and criminal trespass.*

(3) "Person" includes *a* firm, partnership, association, or corporation."

Section 35. Section 94-8-204, R.C.M. 1947, is amended to read as follows:

"**94-8-204. Presumption of offensive or aggressive purpose.** Possession or use of a machine gun shall be presumed to be for offensive or aggressive purpose:

(1) when the machine gun is on premises not owned or rented for bona fide permanent residence or business occupancy by the person in whose possession the machine gun may be found;

(2) when the machine gun is in the possession of or used by a person who has been convicted of a crime of violence in any court of record, state or federal, *in* the United States of America *or* its territories or insular possessions;

(3) when the machine gun is of the kind described in 94-8-208 and has not been registered as *required* in *that* section; or

(4) when empty or loaded pistol shells of 30 (.30 in. or 7.63 mm.) or larger caliber which have been or are susceptible of *being used* in the machine gun are found in the immediate vicinity thereof."

Section 36. Section 94-8-210, R.C.M. 1947, is amended to read as follows:

"**94-8-210. Carrying concealed weapons in cities or towns prohib-**

HeinOnline -- 1977 vol. II 1154 1977

ited. Every person who, within the limits of any city or town, carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slingshot, *sword cane,* billy, knuckles made of any metal or hard substance, knife having a blade *4* inches long or longer, razor, not including a safety razor, or other deadly weapon shall be punished by a fine not exceeding *$500* or imprisonment in the county jail for a period not exceeding *6* months, or both, or by imprisonment in the state *prison* for a period not exceeding *5* years."

Section 37. Section 94-8-212, R.C.M. 1947, is amended to read as follows:

"**94-8-212. Exceptions.** *Sections 94-8-210 and 94-8-211 do* not apply to:

(1) any peace officer of the state of Montana;

(2) any officer of the United States government authorized to carry a concealed weapon;

(3) a person in actual service as a national guardsman;

(4) a person summoned to the aid of *any* of the persons *named in subsections (1) through (3);*

(5) a civil officer or his deputy engaged in the discharge of official business;

(6) a person authorized by a judge of a district court of this state to carry a weapon; *or*

(7) the carrying of arms on one's own premises or at *one's* home or place of business."

Section 38. Section 94-8-214, R.C.M. 1947, is amended to read as follows:

"**94-8-214. Permits to carry concealed weapons — records — revocation.** *(1)* Any judge of a district court of this state may grant permission to carry or bear, concealed or otherwise, a pistol or revolver for a term not exceeding *1* year.

(2) All applications for such permission must be made by petition filed with the clerk of the district court. *No charge may be made* for the filing of *the* petition.

(3) The applicant shall, if personally unknown to the judge, furnish proof by a credible witness of his good moral character and peaceable disposition.

(4) No such permission shall be granted any person who is not a citizen of the United States and who has not been an actual bona fide resident of the state of Montana for *6* months immediately next preceding the date of such application.

(5) A record of permission granted shall be kept by the clerk of the court. *The* record shall state the date of the application, the date of the permission, the name of the person to whom permission is granted, the

HeinOnline -- 1977 vol. II 1155 1977

name of the judge granting the permission, *and* the name of the person, if any, by whom good moral character and peaceable disposition are proved. *The* record must be signed by *the* person who is granted such permission.

(6) The clerk shall thereupon issue under his hand and the seal of the court a certificate, in a convenient card form so that the same may be carried in the pocket, stating:

"Permission to .... authorizing him to carry or bear, concealed or otherwise, a pistol or revolver for the period of .... from the date hereof, has been granted by ...., a judge of the district court of the .... judicial district of the state of Montana, in and for the county of ....

"Witness the hand of the clerk and the seal of said court this .... day of ...., 19...

.....
Clerk."

(7) The date of the certificate shall be the date of the granting of such permission. The certificate shall bear upon its face the signature of the person receiving the same.

(8) Upon good cause shown the judge granting such permission may, in his discretion without notice to the person receiving such permission, revoke the same. *The* date of the revocation *shall be* noted by the clerk upon the record kept by him.

(9) All permissions to carry or bear concealed weapons granted *before March 3, 1919,* are hereby revoked."

Section 39. Section 94-8-218, R.C.M. 1947, is amended to read as follows:

"**94-8-218. Firing firearms.** Every person who willfully shoots or fires off a gun, pistol, or any *other* firearm within the limits of any town or city or of any private inclosure which contains a dwelling house is punishable by a fine not exceeding *$25.*"

Section 40. Section 94-8-221, R.C.M. 1947, is amended to read as follows:

"**94-8-221. Use of firearms by children under age fourteen prohibited.** It *is* unlawful for *a* parent, guardian, or other person having charge or custody of *a* minor child under the age of *14* years to permit *the* minor child to carry or use *in public* any firearms of any description loaded with powder and lead, except when *the* child is *accompanied by a person having charge or custody of the child* or under the supervision of a qualified firearms safety instructor who has been authorized by *the* parent or guardian."

Section 41. Section 3-228.3, R.C.M. 1947, is amended to read as follows:

"**3-228.3. Suspension or revocation of license.** (1) The department may, after notice and an opportunity for a hearing in accordance with the Montana Administrative Procedure Act *have* been afforded to the

HeinOnline -- 1977 vol. II 1156 1977

licensee, suspend or revoke a license if the licensee has failed to comply with this act or rules of the department, or if the licensee has:

(a) violated this act or 3-229;

(b) been found guilty of dishonesty, burglary, *theft, or any other offense defined in Title 94, chapter 6, part 3*;

(c) failed or refused to furnish information, records, or reports required by statute or rule.

(2) The department may, in accordance with the Montana Administrative Procedure Act, summarily suspend a license where the public health, safety, or welfare imperatively requires emergency action."

Section 42. Section 5-1040, R.C.M. 1947, is amended to read as follows:

"**5-1040. Penalty for unlawful hypothecation of property received.** Any officer or employee of any bank doing business in this state who, except in the manner authorized by law or the contract of the parties, hypothecates, pledges, or in any way alienates any notes, stocks, bonds, mortgages, securities, or any other property coming into his hands or into the possession of *the* bank as collateral, for safekeeping or in any other manner, and to which the bank has not acquired full title, *is* guilty of *theft* and upon conviction thereof shall be punished as for other felonies."

Section 43. Section 5-1044, R.C.M. 1947, is amended to read as follows:

"**5-1044. Theft of bank funds by officers or employees.** Any banker, officer, director, or employee of any bank who *fraudulently appropriates* or abstracts or misapplies any of the moneys, funds, credits, or property of the bank when owned by it or held in trust, or issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment, or decree with intent in any case to injure or defraud the bank or any person or corporation or to deceive any officer of the bank or any other person or *anyone* appointed to examine the affairs of *the* bank or any person who with like intent, aids or abets any officer, clerk, or employee in the violation of this section *is* guilty of *theft* and upon conviction thereof shall be imprisoned in the state *prison* for a period of not exceeding 20 years."

Section 44. Section 11-1916, R.C.M. 1947, is amended to read as follows:

"**11-1916. Theft from funds.** Any person who *fraudulently appropriates* any money or other valuable thing belonging to the disability and pension fund of any fire department relief association or who *takes* part in or in any manner *aids* in any scheme or plan whereby *the* fund or association *is* defrauded out of any of the money in *the* fund *is* guilty of *theft* and upon conviction thereof shall be punished by imprisonment in the state prison for not less than *1* year or more than *10* years."

Section 45. Section 14-631, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1157 1977

"**14-631. Duties of directors.** *The* directors *shall*:

(1) act upon applications for membership or appoint one or more membership officers to approve applications for membership under such conditions as the board prescribes. A record of a membership officer's approval or denial of membership shall be available to the board of directors for inspection. A person denied membership by a membership officer may appeal the denial to the board.

(2) purchase a blanket fidelity bond, in accordance with any rules of the director, to protect the credit union against losses caused by occurrences covered therein such as fraud, dishonesty, forgery, *theft*, misappropriation, misapplication, or unfaithful performance of duty by a director, officer, employee, member of an official committee, *attorney-at-law*, or other agent;

(3) determine from time to time the interest rate or rates consistent with this act *to* be charged on loans and authorize interest refunds, if any, to members from income earned and received in proportion to the interest paid by them on such classes of loans and under such conditions as the board prescribes;

(4) fix from time to time the maximum amount which may be loaned to any one member;

(5) declare dividends on shares in the manner and form provided in the bylaws;

(6) limit the number of shares which may be owned by a member, such limitations to apply alike to all members;

(7) have charge of the investment of surplus funds, except that the board of directors may designate an investment committee or any qualified individual to have charge of making investments under controls established by the board of directors;

(8) authorize the employment of such persons necessary to carry on the business of the credit union, including the credit manager, loan officers, and auditing assistants requested by the supervisory committee and fix the compensation, if any, of the treasurer and the general manager and provide for compensation for other employees within guidelines predetermined by the board of directors;

(9) authorize the conveyance of property;

(10) borrow or lend money to carry on the functions of the credit union;

(11) designate a depository or depositories for the funds of the credit union;

(12) suspend any or all members of the credit or supervisory committee for failure to perform their duties;

(13) appoint any special committees *considered* necessary; and

(14) perform such other duties as the members from time to time direct and perform or authorize any action not inconsistent with this act and not specifically reserved by the bylaws for the members."

HeinOnline -- 1977 vol. II 1158 1977

Section 46. Section 31-110, R.C.M. 1947, is amended to read as follows:

"**31-110. Offenses for which arrest may be made by patrolmen — when patrolmen police officers — forbidden to act in labor disputes — temporary control of traffic in cities and towns — investigations of accidents — inspection of livestock.** *(1)* In addition to the above duties, the highway patrol supervisor and all patrolmen *may* make arrests for the following offenses if committed in the presence of *the* supervisor or any of *the* patrolmen; if committed in a rural district, upon the request of a peace officer; or if committed in a city or town of less than 2,500 inhabitants, upon the request of any peace officer or the mayor of *the* city or town: *deliberate homicide*, assault with a deadly weapon, arson, *criminal mischief*, burglary, *theft*, *kidnapping*, illegal transportation of narcotics, or violation of the Dyer *Act* regarding the transportation of stolen automobiles. *Such* highway patrolmen have no authority and are expressly forbidden to make arrests in labor disputes or *to prevent* violence in connection with strikes and *may not* perform any duties whatsoever in connection with labor disputes, strikes, or boycotts.

(2) Patrolmen *are considered* police officers *for the purpose of* making arrests *for* all offenses occurring on the highways *or involving* the use of motor vehicles or the registration thereof and for the purpose of serving warrants of arrest in connection with such violations.

(3) Patrolmen may stop any truck or motor vehicle in which livestock or livestock products are being transported and ascertain whether the driver of such truck or vehicle is rightfully in possession of such livestock or livestock products. *If* the patrolmen have good reason to believe that livestock or livestock products have been stolen, they *may* take possession of the same until *the* livestock or livestock products can be delivered into the custody of the sheriff or until such time as the facts as to the actual ownership can be ascertained."

Section 47. Section 31-146, R.C.M. 1947, is amended to read as follows:

"**31-146. Mandatory revocation of license by board or chief upon proper authority.** The board or chief upon proper authority shall revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

(1) negligent homicide resulting from the operation of a motor vehicle;

(2) driving a motor vehicle while under the influence of intoxicating liquor or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle, or a combination thereof;

(3) any felony in the commission of which a motor vehicle is used;

(4) failure to stop and render aid as required under the laws of this state in the event of a motor vehicle accident resulting in the death or personal injury of another;

HeinOnline -- 1977 vol. II 1159 1977

(5) perjury or the making of a false affidavit or statement under oath to the board under this act or under any other law relating to the ownership or operation of motor vehicles;

(6) conviction or forfeiture of bail not vacated, upon three charges of reckless driving committed within a period of 12 months."

Section 48. Section 31-177, R.C.M. 1947, is amended to read as follows:

"**31-177. Definitions.** As used in this act, *the following definitions apply*:

(1) "Habitual traffic offender" means any person who, within a *5-year* period from and after passage of this act, accumulates 30 or more conviction points according to the schedule specified in this subsection:

(a) *deliberate homicide* resulting from the operation of a motor vehicle, 15 points;

(b) *mitigated deliberate homicide or negligent homicide* resulting from operation of a motor vehicle, 12 points;

(c) any offenses punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used, 12 points;

(d) driving while under the influence of intoxicating liquor or narcotics or drugs of any kind, 10 points;

(e) operating a motor vehicle while his license to do so has been suspended or revoked, 10 points;

(f) failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance, 8 points;

(g) willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or to otherwise fail to report an accident in violation of the law, 4 points;

(h) reckless driving, 5 points;

(i) illegal drag racing or engaging in a speed contest in violation of the law, 6 points;

(j) operating a motor vehicle without a license to do so, 6 points *(this subsection (j) does not apply to* operating a motor vehicle within a period of 180 days *from the date the license expired)*;

(k) speeding, 3 points;

(l) all other moving violations, including operation of a motor vehicle without a license to do so *when the* license has expired in the previous 180 days, 2 points. *There* shall be no multiple application of cumulative points when two or more charges are filed involving a single occurrence. If there are two or more convictions involving a single occurrence, only

HeinOnline -- 1977 vol. II 1160 1977

the number of points for the specific conviction carrying the highest points shall be chargeable against that defendant.

(2) "Conviction" means a finding of guilt by duly constituted judicial authority, a plea of guilty, or a forfeiture of bail, bond, or other security deposited to secure appearance by a person charged with having committed any offense relating to the use or operation of a motor vehicle which is prohibited by law, ordinance, or administrative order.

(3) "Administrator" means the Montana highway patrol chief.

(4) "Bureau" means the Montana highway patrol bureau.

(5) "License" means any *type* of *license* or *permit* to operate a motor vehicle."

Section 49. Section 40-2905, R.C.M. 1947, is amended to read as follows:

"40-2905. "Casualty insurance" defined. (1) Casualty insurance includes:

(a) *vehicle* insurance *which is insurance* against loss of or damage to any land vehicle or aircraft or any draft or riding animal or to property while contained therein or thereon or being loaded or unloaded therein or therefrom from any hazard or cause and against any loss, liability, or expense resulting from or incidental to ownership, maintenance, or use of any such vehicle, aircraft, or animal, together with insurance against accidental death or accidental injury to individuals, including the named insured, while in, entering, alighting from, adjusting, repairing, cranking, or caused by being struck by a vehicle, aircraft, or draft or riding animal, if such insurance is issued as an incidental part of insurance on the vehicle, aircraft, or draft or riding animal;

(b) *liability* insurance *which is insurance* against legal liability for the death, injury, or disability of any human being or for damage to property and provision of medical, hospital, surgical, *and* disability benefits to injured persons and funeral and death benefits to dependents, beneficiaries, or personal representatives of persons killed, irrespective of legal liability of the insured, when issued as an incidental coverage with or supplemental to liability insurance;

(c) *workers'* compensation and employer's liability *which is insurance* of the obligations accepted by, imposed upon, or assumed by employers under law for death, disablement, or injury of employees;

(d) *burglary* and theft *which is insurance* against loss or damage by burglary, theft, robbery, forgery, fraud, *deceptive practices*, vandalism, *criminal* mischief, confiscation, or wrongful conversion, disposal, or concealment or from any attempt at any of the foregoing, including supplemental coverage for medical, hospital, surgical, and funeral expense incurred by the named insured or any other person as a result of bodily injury during the commission of a burglary, robbery, or theft by another; also insurance against loss of or damage to moneys, coins, bullion, securities, notes, drafts, acceptances, or any other valuable papers and documents, resulting from any cause;

HeinOnline -- 1977 vol. II 1161 1977

(e) *personal* property floater *which is insurance* upon personal effects against loss or damage from any cause under a personal property floater;

(f) *glass which is insurance* against loss or damage to glass, including its lettering, ornamentation, and fittings;

(g) *boiler* and machinery *which is insurance* against any liability and loss or damage to property or interest resulting from accident to or explosions of boilers, pipes, pressure containers, machinery, or apparatus and *from making* inspection of and *issuing* certificates of inspection upon boilers, machinery, and apparatus of any kind, whether or not insured;

(h) *leakage* and fire extinguishing equipment *which is insurance* against loss or damage to any property or interest caused by the breakage or leakage of sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus, water pipes, or containers or by water entering through leaks or openings in buildings and insurance against loss or damage to such sprinklers, hoses, pumps, and other fire extinguishing equipment or apparatus;

(i) *credit which is insurance* against loss or damage resulting from failure of debtors to pay their obligations to the insured;

(j) *malpractice which is insurance* against legal liability of the insured and against loss, damage, or expense incidental to a claim of such liability, including medical, hospital, surgical, and funeral benefits to injured persons, irrespective of legal liability of the insured, arising out of the death, injury, or disablement of any person or arising out of damage to the economic interest of any person, as the result of negligence in rendering expert, fiduciary, or professional service;

(k) *elevator which is insurance* against loss of or damage to any property of the insured, resulting from the ownership, maintenance, or use of elevators, except loss or damage by fire and *from making* inspection of and *issuing* certificates of inspection upon elevators;

(l) *livestock which is insurance* against loss or damage to livestock and *for* services of a veterinary for such animals;

(m) *entertainments which is insurance* indemnifying the producer of any motion picture, television, radio, theatrical, sport, spectacle, entertainment, or similar production, event, or exhibition against loss from interruption, postponement, or cancellation thereof due to death, accidental injury, or sickness of performers, participants, directors, or other principals;

(n) *miscellaneous which is insurance* against any other kind of loss, damage, or liability properly a subject of insurance and not within any other kind of insurance as defined in this chapter, if such insurance is not disapproved by the commissioner as being contrary to law or public policy.

(2) Provision of medical, hospital, surgical, and funeral benefits and of coverage against accidental death or injury, as incidental to and part of other insurance as stated under subdivisions (a) (vehicle), (b) (liability),

HeinOnline -- 1977 vol. II 1162 1977

(d) (burglary), and (j) (malpractice) of subsection (1) shall for all purposes be *considered* to be the same kind of insurance to which it is so incidental and shall not be subject to provisions of this code applicable to life or disability insurances."

Section 50. Section 40-2906, R.C.M. 1947, is amended to read as follows:

"40-2906. "Surety insurance" defined. Surety insurance includes:

(1) *fidelity* insurance which is insurance guaranteeing the fidelity of persons holding positions of public or private trust;

(2) *insurance* guaranteeing the performance of contracts, other than insurance policies, and guaranteeing and executing bonds, undertakings, and contracts of suretyship;

(3) *insurance* indemnifying banks, bankers, brokers, financial or moneyed corporations or associations against check forgery or alteration or against loss resulting from any cause of bills of exchange, notes, bonds, securities, evidences of debt, deeds, mortgages, warehouse receipts, or other valuable papers, documents, money, precious metals, and articles made therefrom, jewelry, watches, necklaces, bracelets, gems, *or* precious and semiprecious stones, including any loss while the same are being transported in armored motor vehicles, by mail, or by messenger, but not including any other risks of transportation or navigation; also insurance against loss or damage to such an insured's premises or to his furnishings, fixtures, equipment, safes, and vaults therein caused by burglary, robbery, theft, vandalism, or *criminal* mischief or any attempt thereat."

Section 51. Section 40-3324, R.C.M. 1947, is amended to read as follows:

"40-3324. Reporting and accounting for premiums. (1) All premiums or return premiums received by an agent or solicitor shall be trust funds so received by the licensee in a fiduciary capacity, and the agent or solicitor shall in the applicable regular course of business account for and pay the same to the insured, insurer, or agent entitled thereto. If the licensee establishes a separate deposit for funds so belonging to others in order to avoid a commingling of such fiduciary funds with his own funds, he may deposit and commingle in the same such separate deposit all such funds belonging to others so long as the amount of such deposit so held for each respective other person is reasonably ascertainable from the records and accounts of the licensee.

(2) Any agent or solicitor who, not being lawfully entitled thereto, diverts or appropriates such funds or any portion thereof to his own use *is,* upon conviction, guilty of *theft* and shall be punished as provided by law."

Section 52. Section 46-104, R.C.M. 1947, is amended to read as follows:

"46-104. Duties and powers of department. The department shall exercise general supervision over and, so far as possible, protect the livestock interests of the state from theft and disease and recommend legis-

lation which, in the judgment of the department, fosters this industry. The department may compel the attendance of witnesses, employ counsel to assist in the prosecution of violations of laws made for the protection of the livestock interests, and assist in the prosecution of persons charged with *illegal* branding or *theft of* livestock or any other crime under the laws of this state for the protection of stock owners. It may adopt rules governing the recording and use of livestock brands."

Section 53. Section 46-703, R.C.M. 1947, is amended to read as follows:

"**46-703. Duties.** The stock inspectors and detectives shall arrest all persons who in their presence violate the stock laws of this state. Every stock inspector and detective, on information that a person has committed an offense against the laws of this state *by engaging in illegal* branding or *theft of* stock of or an offense against the laws of this state for the protection of the rights and interests of stock owners, must make the necessary affidavit for the arrest and examination of the person and on a warrant issued for the person immediately arrest the person and bring him before the proper officer and notify the department of his acts."

Section 54. Section 66-1602, R.C.M. 1947, is amended to read as follows:

"**66-1602. Search warrant may issue.** Whenever any person makes oath before a magistrate that any property belonging to him has been *taken by theft* or *otherwise* without his consent, and that he has reason to believe or suspect and does suspect that such property has been pledged with any pawnbroker or junk dealer, such magistrate, if satisfied, must issue his warrant to search for the property so taken and, if found, to seize and bring the same before him."

Section 55. Section 67-2129, R.C.M. 1947, is amended to read as follows:

"**67-2129. Revocation.** (1) A registration may be revoked after notice and hearing upon a written finding of fact that the subdivider has:

(a) *failed* to comply with the terms of a cease and desist order;

(b) *been* convicted in any court subsequent to the filing of the application for registration of a crime involving fraud, *deceptive practices*, false pretenses, misrepresentation, false advertising, or dishonest dealing in real estate transactions;

(c) *disposed* of, concealed, or diverted any funds or assets of any person so as to defeat the rights of subdivision purchasers;

(d) *failed* faithfully to perform any stipulation or agreement made with the board as an inducement to grant any registration, to reinstate any registration, or to approve any promotional plan or public offering statement; or

(e) *made* intentional misrepresentations or concealed material facts in an application for registration.

(2) Findings of fact, if set forth in statutory language, shall be accom-

HeinOnline -- 1977 vol. II 1164 1977

panied by a concise and explicit statement of the underlying facts supporting the findings.

(3) If the board finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead."

Section 56. Section 69-1929, R.C.M. 1947, is amended to read as follows:

"**69-1929. Penalty when death caused by violation of this act.** When the death of any person is caused by the explosion of any powder, gunpowder, giant or Hercules powder, giant caps, or other highly explosive substance that has been stored, kept, handled, or transported contrary to the provisions of the foregoing sections, the person or persons who have so unlawfully stored, kept, handled, or transported such explosives or who may have knowingly or negligently permitted their agents, servants, or employees to so unlawfully store, keep, handle, or transport the same, *are* guilty of *negligent homicide* and, on conviction, shall be punished by imprisonment in the state *prison* for a period not exceeding *10* years."

Section 57. Section 72-116, R.C.M. 1947, is amended to read as follows:

"**72-116. Power of board to fix rates, schedules, and classifications.** *(1) The* board *shall* adopt all necessary rates, charges, and regulations to govern and regulate freight and passenger tariffs, to correct abuses, and prevent unjust discrimination and *intimidation* in the rates of freight and passenger tariffs on the different railroads in this state and to make the same effective by enforcing the penalties prescribed in this act. The board shall fairly and justly classify and subdivide all freight and merchandise of *whatever* character that may be transported over railroads of this state into such general and special classes or subdivisions as may be *considered* necessary or expedient. The board may fix different rates for different railroads and for different lines under the same management or for different parts of the same lines, if found necessary to do justice, and may make rates for express companies different from the rates fixed for railroads. *The* board shall also fix and establish for all or any connecting lines of railroad in this state reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads.

(2) The rates, tolls, or charges on any property which shall for any reason remain unclassified by the board shall not in any event exceed the highest rates fixed for any classification by *the* board. *The* board *may* entertain and hear complaints made by any shipper to the effect that unjust discrimination is being made as against the state of Montana or any point therein in the way of rates for the transportation of freight or passengers from points without the state to points within the state, and vice versa. *In* proper cases, where it appears that the United States interstate commerce commission law has been violated, *the* board *shall complain* to the interstate commerce commission of the United States and aid such commission in any investigation it may make concerning violations of the United States law by furnishing evidence and in any other

HeinOnline -- 1977 vol. II 1165 1977

manner which may seem best suited to enforce both the United States and state law and to protect the interests of the people."

Section 58. Section 72-126, R.C.M. 1947, is amended to read as follows:

"**72-126. Prohibition against rebates and discrimination.** If any railroad subject hereto, directly or indirectly or by any special rate, rebate, drawback, or other device, *charges, demands,* or *receives* from any person, firm, or corporation, a greater or less compensation for any service rendered or to be rendered in the transportation of property subject to the provisions of this act than that fixed by the commission for such service, such railroad *is* guilty of *intimidation,* and shall forfeit and pay to the state of Montana not less than *$500 or* more than *$2,000* for each offense. *Nothing in this section prevents* any railroad or railroad corporation from giving excursion rates to or from any point within or without the state."

Section 59. Section 72-127, R.C.M. 1947, is amended to read as follows:

"**72-127. Discrimination in rates and charges.** If any railroad subject to this act or its agents or officers hereafter *collects, charges, demands, or receives* from any person, company, firm, or corporation a greater rate, charge, or compensation than that fixed and established by the commission for the transportation of freight, *passengers,* or cars or for the use of any car on the line of its railroad or any line operated by it or for receiving, forwarding, handling, or storing any such freight car or for any other service performed or to be performed by it, such railroad and its agents and officers *are* guilty of *intimidation* and shall forfeit and pay to the state of Montana a sum not less than *$500 or* more than *$2,000.*"

Section 60. Section 79-811, R.C.M. 1947, is amended to read as follows:

"**79-811. Temporary suspension of treasurer.** *If, upon examination, the* board of examiners *finds* that the books of the state treasurer do not correspond with the amount of funds on hand, do not show the actual condition of the funds, that any moneys belonging to the state have been diverted or *taken by theft or* any *other means* from the treasury, without authority of law, or that the state treasurer has been guilty of negligence in keeping his books or of taking care of the public moneys, *the board* must certify the fact to the governor who, upon receipt of such certificate, must *immediately* take possession of all books, moneys, papers, and other property belonging to the state which have come into the possession of such state treasurer, by virtue of his office or otherwise, and must temporarily suspend *the treasurer* from office."

Section 61. Section 79-812, R.C.M. 1947, is amended to read as follows:

"**79-812. Appointment in place of suspended treasurer.** *(1)* The board of examiners must thereupon procure the services of an expert to examine the books, papers, and all matters connected with the office of

HeinOnline -- 1977 vol. II 1166 1977

the state treasurer so suspended, and if it appears to *the* board on such examination that *the* state treasurer has converted to his own use *or committed theft of* the public moneys or has been negligent in keeping his books or in taking care of the public moneys, the governor, on the certificate of *the* board of that fact, must appoint another person to fill the place of such suspended state treasurer, and such person so appointed must execute an official bond and enter upon the office of state treasurer, as provided by law.

(2) The governor must report all his acts done under this *section* and *79-811* to the next succeeding *legislature*, and the state treasurer so appointed holds his office until the suspended state treasurer is restored or his successor is elected and qualified."

Section 62. Section 79-2314, R.C.M. 1947, is amended to read as follows:

"**79-2314. Information from state agencies.** (1) All state agencies shall aid and assist the legislative auditor in the auditing of books, accounts, and records.

(2) The legislative auditor may examine at any time the books, accounts, and records, confidential or otherwise, of a state agency. *This* shall not be construed as authorizing the publication of information which the law prohibits publishing.

(3) The head of each state agency shall immediately notify the legislative auditor in writing upon the discovery of any *theft*, actual or suspected, involving state moneys or property under his control or for which he is responsible."

Section 63. Section 87A-2-403, R.C.M. 1947, is amended to read as follows:

"**87A-2-403. Power to transfer — good faith purchase of goods — "entrusting".** (1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though:

(a) the transferor was deceived as to the identity of the purchaser;

(b) the delivery was in exchange for a check which is later dishonored;

(c) it was agreed that the transaction was to be a "cash sale"; or

(d) the delivery was procured through fraud punishable as *theft* under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the par-

HeinOnline -- 1977 vol. II 1167 1977

ties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods *has* been such as to *constitute theft* under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the *chapters* on *secured transactions* (*chapter* 9), *bulk transfers* (*chapter* 6) and *documents* of *title* (*chapter* 7)."

Section 64. Section 89-714, R.C.M. 1947, is amended to read as follows:

"**89-714. Penalties.** Any person violating any of the provisions of this chapter is punishable as provided in 94-35-105, and if death *ensues* by reason of any of the acts prohibited by this chapter, the person guilty of the same may be convicted of *homicide.*"

Section 65. Section 91-608, R.C.M. 1947, is amended to read as follows:

"**91-608. Order to examine party charged with misappropriating estate.** When the public administrator complains to the district court or a judge thereof, on oath, that any person has concealed, *committed theft of,* or disposed of or has in his possession any money, goods, property, or effects to the possession of which such administrator is entitled in his official capacity, the court or judge may cite such person to appear and may examine him on oath touching the matter of such complaint."

Section 66. Section 91-2301, R.C.M. 1947, is amended to read as follows:

"**91-2301. Mishandling of estate before grant of letters testamentary.** If any person, before the granting of letters testamentary or of administration, *commits theft of* or alienates any of the moneys, goods, chattels, or effects of a decedent, he is charged therewith and liable to an action by the executor or administrator of the estate for double the value of the property so *mishandled,* to be recovered for the benefit of the estate."

Section 67. Section 91-2302, R.C.M. 1947, is amended to read as follows:

"**91-2302. Citation to person suspected of having mishandled estate.** If any executor or administrator or any person interested in the estate of a decedent complains to the court or judge, on oath, that any person is suspected *of having* concealed, smuggled, conveyed away, disposed of, *or committed theft of* any moneys, goods, or chattels of the decedent or has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings which contain evidences of or tend to disclose the right, title, interest, or claim of the decedent to any real or personal estate, any claim or demand, or any lost will, the court or judge may cite such person to appear before *the* court and may examine him on oath upon the matter of *the* complaint. If such person is not in the county where *the* decedent dies or where letters have been granted, he may be cited and examined either before the district court or judge of the county where the decedent dies or where letters have been granted. But if he appears and is found innocent, his necessary expenses must be allowed him out of the estate."

HeinOnline -- 1977 vol. II 1168 1977

Section 68. Section 91-2303, R.C.M. 1947, is amended to read as follows:

"**91-2303. Refusal to obey citation — order for disclosure.** If the person so cited refuses to appear and submit to an examination or to answer such interrogatories as may be put to him touching the matters of the complaint, the court or judge may, by warrant for that purpose, commit him to the county jail, there to remain in close custody until he submits to the order of the court or is discharged according to law. If, upon examination, it appears that he has concealed, smuggled, conveyed away, disposed of, *or committed theft of* any moneys, goods, or chattels of the decedent or that he has in his possession or knowledge any deeds, conveyances, bonds, contracts, or other writings containing evidence of or tending to disclose the right, title, interest, or claim of the decedent to any real or personal estate, claim, or demand or any lost will of the decedent, the court or judge may make an order requiring such person to disclose his knowledge thereof to the executor or administrator and may commit him to the county jail, there to remain until the order is complied with or he is discharged according to law; and all such interrogatories and answers must be in writing, signed by the party examined, and filed in the court. The order for such disclosure made upon such examination shall be prima facie evidence of the right of the executor or administrator to such property in any action brought for the recovery thereof, and any judgment recovered therein must be for double the value of the property as assessed by the court or jury or for the return of the property and damages in addition thereto equal to the value of such property. In addition to the examination of the party, witnesses may be produced and examined on either side."

Section 69. Section 93-4002, R.C.M. 1947, is amended to read as follows:

"**93-4002. When defendant may be arrested in a civil action.** The defendant may be arrested in the following cases:

(1) in an action for the recovery of money or damages, on a cause of action arising upon contract, express or implied, when the defendant is about to depart from the state, with intent to defraud his creditors; or when the action is for willful injury to person, to character, or to property, knowing the property to belong to another;

(2) in an action for a fine or penalty or for money or property fraudulently misapplied or converted to his own use by a public officer, an officer of a corporation, or an attorney, factor, broker, agent, or clerk, in the course of his employment as such, or by any other person in a fiduciary capacity; for misconduct or neglect in office or in a professional employment; or for a willful violation of duty;

(3) in an action to recover possession of personal property unjustly obtained, when the property or any part thereof has been concealed, removed, or disposed of so that it cannot be found or taken by the sheriff;

(4) when the defendant has been guilty of fraud in contracting the debt, incurring the obligation for which the action is brought, or in con-

HeinOnline -- 1977 vol. II 1169 1977

cealing or disposing of the property or for taking, detention, or conversion of which the action is brought;

(5) when the defendant has removed or disposed of his property or is about to do so with intent to defraud his creditors."

Section 70. Section 94-8-405, R.C.M. 1947, is amended to read as follows:

"**94-8-405. Obtaining money by means of gambling games or tricks considered theft.** Every person who, by means of any game, device, sleight-of-hand trick, or other means whatever, by the use of cards or other implements other than those mentioned in *94-8-406*, or while betting on sides or hands of any such game or play, fraudulently obtains from another person money or property of any description *is* guilty of *theft* of property of like value."

Section 71. Section 95-408, R.C.M. 1947, is amended to read as follows:

"**95-408. Stolen property.** *When* a person obtains property by *theft*, robbery, *or deceptive practices*, he may be tried in any county in which he exerted control over such property."

Section 72. Section 69-1931, R.C.M. 1947, is renumbered 94-8-209.1 and is amended to read as follows:

"**94-8-209.1. Destructive device and explosive defined.** (1) "Destructive device", as used in this chapter, *includes* but is not limited to the following weapons:

(a) *a* projectile containing *an* explosive or incendiary material or any other *similar* chemical substance, including, but not limited to, that which is commonly known as tracer or incendiary ammunition, except tracer ammunition manufactured for use in shotguns;

(b) *a* bomb, grenade, explosive missile, or similar device or *a* launching device therefor;

(c) *a* weapon of a caliber greater than .60 caliber which fires fixed ammunition or any ammunition therefor, other than a shotgun or shotgun ammunition;

(d) *a* rocket, rocket-propelled projectile, or similar device of a diameter greater than 0.60 inch, or *a* launching device therefor and *a* rocket, rocket-propelled projectile, or similar device containing *an* explosive or incendiary material or any other *similar* chemical substance other than the propellant for *the* device, except devices designed primarily for emergency or distress signaling purposes;

(e) *a* breakable container which contains a flammable liquid with a flashpoint of 150 degrees Fahrenheit or less and *which* has a wick or similar device capable of being ignited, other than a device which is commercially manufactured primarily for the purpose of illumination.

(2) "Explosive", as used in this chapter, *means* any explosive defined in 69-1901."

HeinOnline -- 1977 vol. II 1170 1977

Section 73. Section 69-1932, R.C.M. 1947, is renumbered 94-8-209.2 and is amended to read as follows:

"**94-8-209.2. Possession of a destructive device.** (1) *A* person who, with *the purpose* to commit a felony, has in his possession any destructive device on a public street or highway, in or near any theater, hall, school, college, church, hotel, other public building, or private habitation, in, on, or near any aircraft, railway passenger train, car, vessel engaged in carrying passengers for hire, or other public place ordinarily passed by human beings is guilty of *the offense of possession of a destructive device.*

(2) A person convicted of the offense of possesion of a destructive device shall be *imprisoned* in the state prison for a period of not more than 10 years."

Section 74. Section 94-6-105, R.C.M. 1947, is renumbered 94-8-209.3 and is amended to read as follows:

"**94-8-209.3. Possession of explosives.** (1) A person commits the offense of possession of explosives if he possesses, manufactures, transports, *buys, or sells an* explosive compound, *flammable material,* or timing, detonating, *or similar* device for use with *an* explosive compound or incendiary device and:

(a) has the purpose to use such explosive, *material,* or device to commit *an* offense; or

(b) knows that another has the purpose to use such explosive, *material,* or device to commit *an* offense.

(2) A person convicted of the offense of possession of explosives shall be imprisoned in the state prison for any term not to exceed 20 years."

Section 75. There is a new R.C.M. section numbered 94-8-209.4 that reads as follows:

94-8-209.4. Possession of a silencer. (1) A person commits the offense of possession of a silencer if he possesses, manufactures, transports, buys, or sells a silencer and has the purpose to use it to commit an offense or knows that another person has such a purpose.

(2) A person convicted of the offense of possession of a silencer is punishable by imprisonment in the state prison for a term of not less than 5 years or more than 30 years or a fine of not less than $1,000 or more than $20,000 or by both such fine and imprisonment.

Section 76. There is a new R.C.M. section numbered 94-8-209.5 that reads as follows:

94-8-209.5. Possession prima facie evidence of unlawful purpose. Possession of a silencer or of a bomb or similar device charged or filled with one or more explosives is prima facie evidence of a purpose to use the same to commit an offense.

Section 77. **Repealer.** Sections 69-1916, 94-5-601, 94-5-611, 94-5-612,

HeinOnline -- 1977 vol. II 1171 1977

94-6-101, 94-6-301, 94-7-101, 94-7-201, 94-8-223, 94-8-224, and 94-8-225, R.C.M. 1947, are repealed.

Approved April 14, 1977.

CHAPTER NO. 360

AN ACT TO AUTHORIZE ESTABLISHMENT OF SELF-INSURANCE PROGRAMS FOR STATE AND LOCAL GOVERNMENTAL ENTITIES WITH CERTAIN GUIDELINES; TO CLARIFY THE MEANS BY WHICH CLAIMS AGAINST GOVERNMENTAL ENTITIES MAY BE SETTLED; TO CLARIFY THE MEANS BY WHICH JUDGMENTS AGAINST GOVERNMENTAL ENTITIES MAY BE SATISFIED; AMENDING SECTIONS 82-4303, 82-4305, 82-4306, 82-4309, 82-4311, 82-4312, 82-4318, AND 82-4319, R.C.M. 1947; AND REPEALING SECTIONS 82-4313 THROUGH 82-4317, 82-4326, 83-701 THROUGH 83-706, 83-706.1, AND 83-707, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4303, R.C.M. 1947, is amended to read as follows:

"**82-4303. Comprehensive insurance plan for state — risks insured — deductible insurance.** *(1)* The department of administration *is* responsible for the acquisition and administration of all the insurance purchased for protection of the state, as defined *in this chapter.*

(2) The department of administration shall, after consultation with the departments, agencies, commissions, and other instrumentalities of the state, provide a comprehensive insurance plan for the state providing insurance coverage to the state in amounts determined and set by the department of administration and *may* purchase, renew, cancel, and modify all policies according to the comprehensive insurance plan. The plan may include property, casualty, liability, crime, and fidelity and any such other policies of insurance as the department of administration may from time to time deem reasonable and prudent.

(3) The department of administration may in its discretion elect to utilize a deductible insurance plan, either wholly or in part."

Section 2. Section 82-4305, R.C.M. 1947, is amended to read as follows:

"**82-4305. Apportionment of costs — creation of deductible reserve.** *(1)* The department of administration shall apportion the costs of all insurance purchased under this *chapter* to the individual state participants, and the costs shall be paid to the department *subject to appropriations by the legislature.*

(2) The department of administration, if it elects to utilize a deductible insurance plan, is authorized to charge the individual state participants an amount equal to the cost of a full-coverage insurance plan, until such time as a *deductible* reserve *is established.* In each subsequent year, the department *may* charge a sufficient amount over the actual cost of the deductible insurance to replenish such *deductible* reserves.

HeinOnline -- 1977 vol. II 1172 1977

(3) The department of administration may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that in its discretion, the department considers should be self-insured. Payments into the self-insurance reserve fund must be made from a legislative appropriation for that purpose. Proceeds of the fund may be used only to pay claims under this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund."

Section 3. Section 82-4306, R.C.M. 1947, is amended to read as follows:

"**82-4306. Political subdivisions.** *(1)* All political subdivisions of the state *may* procure insurance *separately or jointly with other subdivisions and may elect to use a deductible or self-insurance plan, wholly or in part.*

(2) A political subdivision that elects to establish a deductible plan may establish a deductible reserve.

(3) A political subdivision that elects to establish a self-insurance plan may accumulate a self-insurance reserve fund sufficient to provide self-insurance for all liability coverages that, in its discretion, the political subdivision considers should be self-insured. Payments into the reserve fund must be made from local legislative appropriations for that purpose. Proceeds of the fund may be used only to pay claims under this chapter and for actual and necessary expenses required for the efficient administration of the fund.

(4) Money in reserve funds established under this section not needed to meet expected expenditures shall be invested and all proceeds of the investment credited to the fund."

Section 4. Section 82-4309, R.C.M. 1947, is amended to read as follows:

"**82-4309. Political subdivision tax levy to pay premiums.** Notwithstanding any provisions of law to the contrary, all political subdivisions *may* levy an annual property tax in the amount necessary to *fund* the premium for insurance, *deductible reserve fund, and self-insurance reserve fund* as herein authorized, even though as a result of such levy the maximum levy as otherwise restricted by law is exceeded thereby, provided that the revenues derived therefrom may not be used for any other purpose."

Section 5. Section 82-4311, R.C.M. 1947, is amended to read as follows:

"**82-4311. Filing of claims against state — time of filing.** All claims against the state arising under the provisions of this act shall be presented to and filed with the *department of administration.*"

Section 6. Section 82-4312, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1173 1977

"**82-4312. Filing of claims against political subdivisions — time for filing.** All claims against a political subdivision arising under the provisions of this act shall be presented to and filed with the clerk or secretary of the political subdivision."

Section 7. There is a new R.C.M. section numbered 82-4312.1 that reads as follows:

82-4312.1. Limitation of actions. A claim against the state or a political subdivision is subject to the limitation of actions provided by law.

Section 8. Section 82-4318, R.C.M. 1947, is amended to read as follows:

"**82-4318. Compromise or settlement of claim against political subdivision.** The governing body of each political subdivision, after conferring with its legal officer or counsel, may compromise and settle any claim allowed by this act, subject to the terms of the insurance, if any. *A settlement involving a self-insurance reserve fund or deductible reserve fund must be approved by the district court where the claim is filed.*"

Section 9. Section 82-4319, R.C.M. 1947, is amended to read as follows:

"**82-4319. Compromise or settlement of claim against state.** The department of administration may compromise and settle any claim allowed by this act, subject to the terms of insurance, if any. *A settlement involving the self-insurance reserve fund or deductible reserve fund must be approved by the district court of Lewis and Clark County.*"

Section 10. There is a new R.C.M. section numbered 82-4335 that reads as follows:

82-4335. Judgments against governmental entities except state — how satisfied. (1) A political subdivision of the state shall satisfy a final judgment out of funds that may be available from the following sources:

(a) insurance;

(b) the general fund or any other funds legally available to the governing body;

(c) a property tax, otherwise properly authorized by law, collected by a special levy authorized by law, in an amount necessary to pay any unpaid portion of the judgment, except that such levy may not exceed 10 mills;

(d) proceeds from the sale of bonds issued by a county, city, or school district for the purpose of deriving revenue for the payment of the judgment liability. The governing body of a county, city, or school district is hereby authorized to issue such bonds pursuant to procedures established by law. Property taxes may be levied to amortize such bonds, provided the levy for payment of any such bonds or judgments may not exceed, in the aggregate, 10 mills annually.

(2) If a governmental entity pays a judgment within 2 years after the

HeinOnline -- 1977 vol. II 1174 1977

day on which the judgment is entered, no penalty or interest may be assessed against the governmental entity.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Repealer.** Sections 82-4313 through 82-4317, 82-4326, 83-701 through 83-706, 83-706.1, and 83-707, R.C.M. 1947, are repealed.

Approved April 14, 1977.

CHAPTER NO. 361

AN ACT TO INCLUDE THE USE OF DRUGS FOR DIAGNOSTIC PURPOSES WITHIN THE DEFINITION OF THE PRACTICE OF OPTOMETRY AND TO REQUIRE A COURSE IN PHARMACOLOGY BY OPTOMETRISTS FOR THE USE OF DIAGNOSTIC AGENTS; AMENDING SECTION 66-1301, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-1301, R.C.M. 1947, is amended to read as follows:

"**66-1301. Practice of optometry defined.** *(1)* The practice of optometry is the profession constituting the art and science of visual care and is hereby defined to be any one of the following acts:

(a) the optometric examination or optometric diagnosis of all of those physiological or anatomical parts or functions which consummate the process of human vision to ascertain the presence therein of abnormal conditions or functions which may be optometrically diagnosed, corrected, remedied, or relieved;

(b) the employment of any optometric means, excluding the use of surgery, for the purpose of detecting any condition of the process of vision which may have any significance in a complete optometric *eye and vision examination including the employment and administration of drugs topically applied for examination purposes, limited to, cycloplegics, mydriatics, topical anesthetics, dyes such as fluorescein, and for emergency use only, miotics;*

(c) the application or prescription of ophthalmic lenses, contact lenses, prisms, orthoptics, visual training, any physical, mechanical, or physiological therapy, and the furnishing or application of any prosthetic or therapeutic devices for the correction or relief of visual anomalies excluding surgery.

(2) Nothing in this section allows optometrists to treat diseases of the eye."

Section 2. There is a new R.C.M. section numbered 66-1301.2 that reads as follows:

66-1301.2. Use of drugs by optometrist. The use of drugs by a licensed optometrist for examination purposes as stated in 66-1301 is not prohibited by Title 66, chapter 15.

Section 3. There is a new R.C.M. section numbered 66-1305.1 that reads as follows:

66-1305.1. Course required. (1) In addition to the requirements of 66-1305, each person desiring to commence the practice of optometry shall satisfactorily complete a course prescribed by the board of medical examiners with consultation and approval by the board of optometry with particular emphasis on the topical application of diagnostic agents to the eye for the purpose of examination of the human eye and the analysis of ocular functions.

(2) A person presently licensed to practice optometry who wishes to employ diagnostic agents must satisfactorily complete a course referred to in subsection (1) and must pass an examination as provided in subsection (4).

(3) The course referred to in subsection (1) must be conducted by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the national commission on accrediting or the United States commissioner of education. The course must also be approved by the board.

(4) The board shall provide for an examination in competency in the use of diagnostic drugs and shall issue a certificate to those applicants who pass such examination.

Approved April 14, 1977.

CHAPTER NO. 362

AN ACT FOR THE GENERAL REVISION OF THE CROPLAND SPRAYING PROGRAM FOR INSECT CONTROL RELATING TO DEFINITIONS; CROPLAND SPRAYING PROGRAM—POWERS OF DEPARTMENT; CROPLAND SPRAYING PROGRAM—DUTIES OF DEPARTMENT; FINANCING OF CROPLAND SPRAYING PROGRAM; COMPUTATION AND COLLECTION OF ASSESSMENTS ON LANDOWNERS; RANGELAND SPRAYING PROGRAMS—POWERS OF DEPARTMENT; AMENDING SECTIONS 3-3501 THROUGH 3-3506, AND 16-1152, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 3-3501, R.C.M. 1947, is amended to read as follows:

"**3-3501. Definitions.** As used in this chapter *the following definitions apply:*

(1) "Cropland" means land used for the production of food and forage including the headlands, ditches, and rights-of-way adjacent to such land.

HeinOnline -- 1977 vol. II 1176 1977

(2) "Cropland spraying program" means the application of chemical or other substances to croplands for the purpose of *preventing or* destroying insect pests.

(3) *"Insect pest" includes the grasshopper, cutworm, pale western cutworm, army worm, chinch bug, and any other insect or arthropod generally recognized as a destroyer of grain, hay, range, and horticulture crops.*

(4) "Infestation" means that a pest exists in such numbers, under certain conditions, and at certain times as to destroy or substantially damage or threaten to destroy livestock or other agricultural crops.

(5) "Department" means the department of agriculture.

(6) "Alternative control program" means a system of controlling insect pest populations through biological or other means not involving toxic chemicals.

(7) "Emergency" means a serious insect pest infestation that meets the conditions of 79-2501."

Section 2. Section 3-3502, R.C.M. 1947, is amended to read as follows:

"3-3502. Insect detection surveillance and control programs. The department may:

(1) employ permanent and seasonal personnel to administer this chapter;

(2) survey *for and maintain surveillance of insect pests* during appropriate seasons and enter upon any croplands in the course of conducting such surveillance;

(3) *provide* insect pest *management services to particular agricultural commodity groups for the resolution of special or unusual insect pest problems;*

(4) *determine or assist a county to determine, upon investigation, whether a serious infestation exists or threatens to occur within a county;*

(5) *declare that an insect pest infestation constitutes a serious infestation;*

(6) operate, contract for, or assist a county to obtain spraying or other appropriate services to counteract an actual or threatening serious infestation, having first determined that any person contracting to supply such services is properly equipped to apply substances designated and approved by the department;

(7) conduct, cooperate in, or coordinate upon request by any affected county, insect pest management services for serious pest infestations in one or more counties;

(8) assist counties, upon request, to coordinate county insect pest management programs in contiguous counties."

Section 3. Section 3-3503, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1177 1977

"**3-3503. Duties of department.** The department shall:

(1) develop and publish a list of *pesticides approved for control of insect pests*;

(2) develop and publish technical guidelines *on techniques of controlling insect pests*;

(3) *notify a county of its survey results and state whether the infestation is normal or serious*;

(4) *review and comment on or review and approve all county agricultural insect pest management plans as provided by local government statutes, and consider whether the plan conforms to the technical guidelines of the department and whether implementation of the plan will probably counteract the condition of insect pest infestation in a timely and proper manner*;

(5) *consider whether an alternative control program would be as efficient as spraying on a ratio of total costs to total benefits and provide the county with a summary of its findings prior to conducting or approving any cropland spraying program. If the alternative control program is considered adequate, the department may conduct or approve such a program.*"

Section 4. Section 3-3504, R.C.M. 1947, is amended to read as follows:

"**3-3504. Financing of control program.** (1) *One-third of the* costs of a cropland spraying program *or alternative program conducted by the state* shall be *paid by* the state. Prior to *the* implementation of any state or county *control* program, the department and the *governing body* of any county for which the program is proposed shall enter into *an interlocal or management agreement* on the maximum amount of moneys each shall appropriate or provide toward the proposed program. If either party does not sign and approve the agreement, the program may not be conducted.

(2) Individual farm and ranch landowners may formally petition by written affidavit protesting their inclusion within the proposed cropland spraying program. The department or *local governing body* shall refrain from spraying any land petitioned to be excluded. Such excluded land remains subject to assessment under section 3-3505. *The governing body of any county for which a control program is intended shall proceed as provided by local government statutes.*

(3) If the department conducts the program, *it* shall pay all costs of the program. The county shall pay its share and the *landowner's* share to the department for deposit in the appropriate fund *as provided in 3-3505.*

(4) If the county conducts the program, *it* shall pay all costs of the program including its share. The department shall pay one-third of the costs of the cropland spraying program from monies appropriated for that purpose to the county in which the program was conducted. The county treasurer shall collect the *landowner's special assessment* as provided in 3-3505."

HeinOnline -- 1977 vol. II 1178 1977

Section 5. Section 3-3505, R.C.M. 1947, is amended to read as follows:

"**3-3505. Computation and collection of assessments on landowners.** Each owner of cropland benefited under a cropland spraying program is liable for such portion of the *landowner's* share of the program costs as his cropland is a portion of all cropland within the *boundaries of the program.* The county treasurer shall compute each landowner's liability and mail a special assessment therefor to each *owner or occupier of land within the boundaries of the program. Unless otherwise mutually agreed upon, this* assessment is due and payable within 32 days of mailing or 30 days of receipt if receipt is shown to be more than 2 days after mailing. A delinquent assessment is a lien upon the land assessed."

Section 6. Section 3-3506, R.C.M. 1947, is amended to read as follows:

"**3-3506. Rangeland control programs.** The department may enter into agreements with the United States department of agriculture for cooperative programs to control insect pest *infestations* on rangeland and to share the costs of such programs whenever funds have been appropriated and are available for that purpose."

Section 7. There is a new R.C.M. section numbered 3-3507 that reads as follows:

3-3507. Administrative procedures. The department may adopt rules necessary to carry out the intent of the act.

Section 8. Section 16-1152, R.C.M. 1947, is amended to read as follows:

"**16-1152. Tax levy for payment of warrants.** The *governing body of the county* shall annually determine the amount of such warrants drawn on the general fund for the purposes of controlling insect pests under a *control* program approved by the department of agriculture, and the succeeding year, shall levy a tax for the purpose of insect pest extermination sufficient in amount to reimburse said general fund for the money so paid out on such warrants, which said tax shall be levied upon all the property in the county and shall not exceed three (3) mills on each dollar of *taxable* valuation. If there be no money in the general fund with which to pay such warrants, they shall be registered and bear interest in the same manner as other county warrants, but in such case the interest shall be computed and added to the amount for which such tax is levied."

Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 14, 1977.

CHAPTER NO. 363

AN ACT TO AUTHORIZE ONLY MONTANA-CHARTERED BUILDING

HeinOnline -- 1977 vol. II 1179 1977

AND LOAN ASSOCIATIONS TO CONSOLIDATE OR MERGE AND TO PROHIBIT BRANCHING DE NOVO; AMENDING SECTION 7-113.2, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7-113.2, R.C.M. 1947, is amended to read as follows:

"**7-113.2. Consolidation and transfer — branching prohibited.** *(1) Only* building and loan associations *organized and chartered under the laws of the state of Montana may*, with the approval of the department, consolidate and become incorporated in one body, with or without any dissolution or division of the funds or property of any of them. *Any* association may transfer its engagements, funds, and property to any other association upon terms agreed upon by a majority vote of the respective board of directors, and ratified by a two-thirds vote of the shares present and voting in person or by proxy at a special meeting or meetings of the stockholders of the respective associations convened for that purpose, upon notice given as provided by law, the notice to state the object of the meeting. A transfer may not prejudice any right of any creditor of the association.

(2) Branching by merger or branching otherwise between a building and loan association organized and chartered under the laws of Montana and a building and loan association organized and chartered under the laws of any other state is prohibited. Branching de novo in Montana by a foreign-chartered building and loan association is prohibited."

Section 2. There is a new R.C.M. section numbered 7-113.3 that reads as follows:

7-113.3. Prospective application. Insofar as 7-113.2 limits or reduces the rights, powers or privileges of building and loan associations previously granted by law, it shall apply only to proposed consolidations or mergers of associations which are initiated by action taken by their board of directors and shareholders subsequent to the effective date of this act.

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved April 14, 1977.

CHAPTER NO. 364

AN ACT AMENDING THE MONTANA RECALL AND ADVISORY RECALL ACT, INITIATIVE NO. 73, TO CLARIFY THE SCOPE OF ITS APPLICATION, TO SPECIFY GROUNDS FOR RECALL, TO ESTABLISH MORE DEFINED RESPONSIBILITIES ON THE PART OF PETITIONERS, TO CORRECT AND CLARIFY CERTAIN ADMINISTRATIVE PROVISIONS OF THE ACT, TO REMOVE ADVISORY RECALL PROCEDURES FOR U. S. DISTRICT JUDGES, TO REMOVE THE APPLICATION OF THE ACT TO REPRESENTA-

HeinOnline -- 1977 vol. II 1180 1977

TIVES IN CONGRESS, TO CORRECT CERTAIN ERRORS IN FORM, AND TO REPEAL CONFLICTING STATUTES; AMENDING SECTIONS 1, 2, 4, 7, 8, 10, 11, 13, 15, 16, 17, AND 19 OF THE MONTANA RECALL AND ADVISORY RECALL ACT; AND REPEALING SECTIONS 11-721.1, 11-3132, 11-3220, AND 11-3540, R.C.M. 1947, AND SECTIONS 20, 21, 22, 23, AND 24 OF THE MONTANA RECALL AND ADVISORY RECALL ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 59-611 that reads as follows:

59-611. Definitions. As used in the Montana Recall Act, the following definitions apply:

(1) "Public office" means a position of duty, trust, or authority created by the constitution or by the legislature or by a political subdivision through authority conferred by the constitution or the legislature that meets the following criteria:

(a) the position must possess a delegation of a portion of the sovereign power of government to be exercised for the benefit of the public;

(b) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the constitution, the legislature, or by a political subdivision through legislative authority;

(c) the duties must be performed independently and without control of a superior power other than the law, unless the legislature has created the position and placed it under the general control of a superior office or body; and

(d) the position must have some permanency and continuity and not be only temporary or occasional.

(2) "Political subdivision" means a local government unit including but not limited to a county, city, or town established under authority of Article XI, section 1, of The Constitution of the State of Montana or a school district.

(3) "State-district" means a public service commission district, a legislative representative or senatorial district, or a judicial district.

Section 2. Section 1 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"**59-610. Short title.** This act shall be cited as the "Montana Recall Act"."

Section 3. Section 2 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"**59-612. Officers subject to recall.** *(1)* Every person holding a public office of the state or any of its political subdivisions, either by election or appointment, is subject to recall from such office.

(2) A public officer holding an elective office may be recalled by the qualified electors entitled to vote for his successor. A public officer holding an appointive office may be recalled by the qualified electors entitled to vote for the successor or successors of the elective officer or officers who have the authority to appoint a person to that position.

(3) Physical or mental lack of fitness, incompetence, neglect of duty, or conviction of malfeasance or misfeasance in office, violation of his oath of office or a felony offense enumerated in Title 94 is the only basis for recall. No person may be recalled for performing a mandatory duty of the office he holds or for not performing any act that, if performed, would subject him to prosecution for official misconduct."

Section 4. Section 4 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"**59-614. Number of electors required for recall petition.** A recall petition *may* not name more than one officer to be recalled. Recall petitions for elected or appointed state officers shall contain the signatures of qualified electors equalling at least 10% of the number of persons *registered to vote* at the preceding state general election. *A petition for the recall of a state-district officer must contain the signatures of qualified electors equalling at least 15% of the number of persons registered to vote in the last preceding election in that district.* Recall petitions for elected or appointed county officers shall contain the signatures of qualified electors equalling at least 15% of the number of persons *registered to vote* at the preceding county general election. Recall petitions for elected or appointed officers of *municipalities* or *school districts* shall contain the signatures of qualified electors equalling at least 20% of the number of persons *registered to vote* at the preceding general election for the *municipality* or *school district.*"

Section 5. Section 7 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"**59-617. Form of recall petition.** *(1)* The form of the recall petition shall be substantially as follows:

WARNING

A person who knowingly signs a name other than his own to this petition or who signs his name more than once upon a petition to recall the same officer at one election or who is not, at the time he signs this petition, a qualified elector of the state of Montana entitled to vote for the successor of the elected officer to be recalled or the successor or successors of the officer or officers who have the authority to appoint a person to the position held by the appointed officer to be recalled is punishable by a fine of no more than $500 or imprisonment in the county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years, or both.

RECALL PETITION

To the Honorable ....., Secretary of State *of* the State of Montana (or name and office of other filing officer): We, the undersigned *qualified* electors of the State of Montana (or name of appropriate *state-district or*

HeinOnline -- 1977 vol. II 1182 1977

political subdivision) respectfully *petition* that *an election be held as provided by law on the question of whether* ....., holding the office of ....., *should* be recalled for the following reasons: (Setting out *a general statement of* the reasons *for recall* in not more than 200 words). *By his signature each signer certifies:* I have personally signed this petition; I am a qualified elector of the *state* of Montana *and* (name of appropriate political subdivision); *and* my residence and post office address are correctly written after my name *to the best of my knowledge and belief.*

(2) Numbered lines shall follow the above heading. Each numbered line shall contain spaces for the signature, post-office address, and printed last name of the signer. Each separate sheet of the petition shall contain the heading and reasons for the proposed recall as prescribed above."

Section 6. Section 8 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"**59-618. Form of circulation sheets.** *(1)* The signatures on each petition shall be placed on sheets of paper known as "circulation sheets". *Each circulation sheet shall be substantially 8 ½ x 14 inches or a continuous sheet may be folded so as to meet this size limitation.* Such circulation sheets shall be ruled with a horizontal line one and one-half inches from the top thereof. The space above such line shall remain blank and shall be for the purpose of binding.

(2) The petition, for purposes of circulation, may be divided into sections, each section to contain not more than *25* circulation sheets.

(3) Before a petition may be circulated for signatures, a sample circulation sheet must be submitted to the officer with whom the petition must be filed in the form in which it will be circulated. The filing officer shall review the petition for sufficiency as to form and approve or reject the form of the petition, stating his reasons therefor, within 1 week of receiving the sheet.

(4) The petition form submitted must be accompanied by a written statement containing the reasons for the desired recall as stated on the petition. The truth of purported facts contained in the statement shall be sworn to by at least one of the petitioners before a person authorized to administer oaths.

(5) The filing officer shall serially number all approved petitions continuously from year to year."

Section 7. Section 10 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"**59-620. Who may petition — false signatures — penalties.** Every person who is a qualified elector of this state may sign a petition for recall of a state officer. *Every person who is a qualified elector of a district of the state from which a state-district officer is elected may sign a petition for recall of a state-district officer of that district or appointed by an officer or the officers of that election district.* Every person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision. *However, if a political subdivision is divided into election districts, a person must be a qualified elector*

HeinOnline -- 1977 vol. II 1183 1977

in the election district to be eligible to sign a petition to recall an officer elected from that election district. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the recall, or who is not at the time of the signing a qualified elector or any person *who* knowingly *makes a false entry upon an affidavit required in connection with the filing of a petition for the recall of an officer is guilty of unsworn falsification or tampering with public records or information, as appropriate, and is punishable as provided in 94-7-204 or 94-7-209, as applicable.*"

Section 8. There is a new R.C.M section numbered 59-621 that reads as follows:

59-621. Submission of circulation sheets — certification of signatures. (1) Signed circulation sheets or sections of a petition for recall must be submitted to the officer responsible for registration of electors in the county in which the signatures were obtained within 3 months of the date the form of the petition was approved under [section 8 of the Montana Recall Act, as amended].

(2) An affidavit, in substantially the following form, shall be attached to each circulation sheet or section submitted to the county officer:

(Name of person circulating petition), being first sworn, deposes and says: I circulated or assisted in circulating the petition to which this affidavit is attached, and I believe the signatures thereon are genuine, are the signatures of the persons whose names they purport to be, and that the signers knew the contents of the petition before signing the same.

..... (Signature)

Subscribed and sworn before me this .... day of ....., 19...

..... (Person authorized to take oaths)

Seal ..... (Title or notarial information)

Section 9. Section 11 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"**59-622. County clerk to verify signatures.** *(1)* The county clerk in each county in which such a petition is signed shall compare the signatures of the electors in such county with registration signatures on file in such clerk's office and, if satisfied the signatures are genuine, certify that fact to the *officer* with whom the recall petition *is to be* filed, *in substantially the following form*:

To the Honorable ....., Secretary of State of the State of Montana (or name and title of other officer):

I, ..., ... *(title) of* ..... County certify that I have compared the signatures on ..... sheets (specifying number of sheets) of the petition for recall *No.* ..... attached with the signatures of the registered voters as they appear upon the registration records of my office, and I believe ..... *(number)* signatures are *valid for the purpose of the petition. I further certify that the affidavit of the circulator of the (sheet) (section) of the petition is attached and that the post-office address is completed for each valid signature.*

HeinOnline -- 1977 vol. II 1184 1977

Signed: ..... *(Date)* ..... (Signature)
Seal ..... *(Title)*

(2) Every such certificate shall be prima facie evidence of the facts stated therein and of the qualifications of the registered voters whose signatures are certified, and the secretary of state or other *officer* receiving the recall petition shall consider and count only such signatures as are certified; provided that the *officer with whom the recall petition is filed* shall consider and *count* any remaining signatures of the registered voters which prove to be genuine *and such signatures* shall be considered and counted if they are attested to in the manner and form as provided for initiative and referendum petitions.

(3) The county clerk *may* not retain any petition or any part of it for more than 15 days. At the expiration of such period the county clerk shall deliver the same to the person *with* whom *the petition is required to be filed.*"

Section 10. Section 13 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"**59-624. Resignation of officer — proclamation of election.** If the officer named in the petition for recall submits *his resignation* in writing, it shall be accepted and become effective the day it is offered. The vacancy created by such resignation shall be filled as provided by law, provided that the *officer* named in the petition for recall *may* not be appointed to fill such vacancy. If the officer named in the petition for recall refuses to resign or does not resign within 5 days after the petition is filed, a special election shall be *called* unless the filing is within 90 days of a general election, in which case the question shall be placed on *a separate ballot at the same time as* the general election. The *call* of *a* special election shall be made by the governor in the case of a state *or state-district* officer *or* by the board or *officer* empowered by law to *call* special elections for *a* political subdivision in the case of any officer of a political subdivision of the state."

Section 11. Section 15 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"**59-626. Notice of recall election.** *The notice of a recall election shall be in substantially the following form:*

NOTICE OF RECALL ELECTION

Notice is hereby given pursuant to law that a recall election will be held on ..... *(Date)* for the purpose of voting upon the recall of ..... *who holds the office of* .....
DATED at ....., ... *(Date)*"

Section 12. Section 16 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"**59-627. Form of ballot.** *(1)* The ballot at such recall election shall set forth the statement contained in the recall petition stating the reasons for demanding the recall of such officer and the officer's statement of

HeinOnline -- 1977 vol. II 1185 1977

reasons why he should not be recalled. *Then the question of whether the officer should be recalled shall be placed on the ballot in a form similar to the following:*

☐ *FOR recalling ..... who holds the office of .....*

☐ *AGAINST recalling ..... who holds the office of .....*

(2) The form of the ballot shall be approved as provided in the election laws of this state."

Section 13. Section 17 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"**59-628. Officer to remain in office until results declared — filling of vacancy.** The officer named in the recall petition *continues* in office until *he resigns or* the results of the *recall* election are officially declared. If a majority of those voting on the question vote to remove the officer, the office *becomes* vacant and the vacancy *shall be* filled as provided by law, provided that the officer recalled *may* in no event be appointed to fill the vacancy."

Section 14. Section 19 of the Montana Recall and Advisory Recall Act, Initiative No. 73, is amended to read as follows:

"**59-630. Expenses of election.** Expenses of a recall election shall be paid *in the same manner as the expenses for any other election. The expenditure of such funds constitutes an emergency expenditure of funds, and the political subdivision affected may fund the costs of such an election through emergency funding procedures. In the event a recall election is held for a state or state-district officer, the legislature shall appropriate funds to reimburse the counties involved for costs incurred in running the election.*"

Section 15. **Repealer.** Sections 11-721.1, 11-3132, 11-3220, and 11-3540, R.C.M. 1947, and sections 20, 21, 22, 23, and 24 of the Montana Recall and Advisory Recall Act are repealed.

Approved April 14, 1977.

CHAPTER NO. 365

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO ELECTIONS AND TO REPEAL SECTIONS 23-3021, 23-3030, AND 23-4404, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-2601, R.C.M. 1947, is amended to read as follows:

"**23-2601. Definitions.** As used in *Title 23 and Title 37,* unless the context clearly indicates otherwise, *the following definitions apply:*

(1) "Election" means a general, special, *or* primary election *held to*

choose a public officer or submit an issue for the approval or rejection of the people.

(2) "General election" means an election held for the election of *public* officers throughout the state at times specified by law.

(3) "Special election" means an election called by the proper authorities to fill vacancies or to raise money.

(4) "Vacancy" means an office which does not have an incumbent who has a right to exercise its functions and take its fees or emoluments.

(5) "Primary" or "primary election" means a statutory procedure for nominating candidates to public office at the polls.

(6) "Party" means any political organization which at the last preceding election for governor polled at least 3% of the votes for governor.

(7) "Taxpayer" means a person who has paid a tax on property assessed on a county or city assessment roll next preceding the election at which a question is to be submitted to the vote of the taxpayers.

(8) "Registrar" means the county clerk and recorder and any regularly appointed deputy clerk and recorder.

(9) "Commissioners" means the board of county commissioners.

(10) "City" means any incorporated city or town.

(11) "Council" means any municipal council or commission."

Section 2. Section 23-4777, R.C.M. 1947, is amended to read as follows:

"**23-4777. Definitions.** As used in Title 23 *and Title 37, unless the context clearly indicates otherwise, the following definitions apply*:

(1) "Candidate" means an individual who has filed a declaration of nomination, certificate of nomination, or acceptance of nomination for public office as required by law, but does not include a candidate for national office who is subject to the provisions of federal election campaign laws.

(2) "Election" means a general, special, or primary election held to choose a public officer or submit an issue for the approval or rejection of the people.

(3) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection including, but not limited to, initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(4) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(5) "Contribution" means:

(a) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

HeinOnline -- 1977 vol. II 1187 1977

(b) a transfer of funds between political committees;

(c) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee; but

(d) not services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee *or* meals and lodging provided by individuals in their private residence for a candidate or other individual.

(6) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election, but "expenditure" does not mean:

(a) services, food, or lodging provided in a manner that they are not contributions under *subsection (5); or*

(b) payments by a candidate for his personal travel expenses or for food, clothing, lodging, or personal necessities for himself and his family.

(7) "Anything of value" means any goods that have a certain utility to the recipient that is real and that ordinarily is not given away free but is purchased.

(8) "Political committee" means a combination of two or more individuals, or a person other than an individual, the primary or incidental purpose of which is to support or oppose a candidate or issue or to influence the result of an election by any expenditure.

(9) "Individual" means a human being.

(10) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (1) of this section."

Section 3. There is a new R.C.M. section numbered 23-4796 that reads as follows:

23-4796. Commissioner of campaign finances and practices. In 23-4778 through 23-4795, "commissioner" means the commissioner of campaign finances and practices created by 23-4785(1), unless the context clearly indicates otherwise.

Section 4. Section 23-2605, R.C.M. 1947, is amended to read as follows:

"23-2605. Time of opening and closing of polls. (1) Except as provided in subsection (2):

(a) *in precincts having 100 or more registered electors, the* polls must be opened at 8 a.m. on the morning of election day and must be kept open continuously until 8 p.m. of that day;

(b) *in* precincts having less than 100 registered electors, the polls must be opened at 1 p.m. and closed at 8 p.m. of that day;

HeinOnline -- 1977 vol. II 1188 1977

(c) *whenever* all registered electors in any precinct have voted, the polls shall be closed immediately.

(2) If a special election is held by a county, city, high school district, or school district on the question of incurring an indebtedness or making a special or additional levy for any purpose, the polls shall open at 12 noon and be kept open continuously until 8 p.m. However, the poll hours shall be as specified in subsection (1) if the election is held on the same day, at the same polling places, and with the same judges and clerks as a general, county, school, or city election."

Section 5. Section 23-2704, R.C.M. 1947, is amended to read as follows:

"**23-2704. Notice and closing of registration for elections on incurring of state indebtedness.** (1) If the question of state indebtedness, issuance of bonds or debentures other than for refunding, or the levy of a tax for state purposes is submitted at an election other than a general biennial election, the registrar of each county shall publish in *a* newspaper *of general circulation in the county* a notice signed by him, stating that registration will close at noon on the 40th day prior to the date of the election unless the act providing for the submission of the question fixes a different time for the giving of notice. The notice shall be published 10 days or more prior to the date when registration will be closed unless the act providing for submission of the question fixes a different time for closing registration.

(2) If the question is to be submitted at a general biennial election, notice and the closing of registration shall be governed by the laws applying to general biennial elections. The provisions of 37-107 apply to the printing and distribution of copies of the proposed law."

Section 6. Section 23-2802, R.C.M. 1947, is amended to read as follows:

"**23-2802. Publication and printing of amendments to constitution.** If a proposed constitutional amendment or amendments are submitted to the people, the secretary of state shall *have* the proposed amendment or amendments published in full twice each month for 2 months previous to the election at which they are to be voted upon by the people in not less than one newspaper *of general circulation* in each county.

Section 7. Section 23-2901, R.C.M. 1947, is amended to read as follows:

"**23-2901. Election proclamation by the governor.** Sixty days or more before a general election, the governor shall issue an election proclamation and transmit a copy to each board of county commissioners. The proclamation shall contain:

(1) *a* statement of the time of the election and the offices to be filled;

(2) *an* offer of rewards stating: "There is a reward of $100 for the arrest and conviction of any person violating any of the provisions of *Title 23 or Title 37.* Rewards will be paid until the total amount expended reaches the sum of $5,000."

HeinOnline -- 1977 vol. II 1189 1977

Section 8. Section 23-3002, R.C.M. 1947, is amended to read as follows:

"**23-3002. County clerk as county registrar.** (1) Each county clerk and recorder is ex officio county registrar. He shall *serve* without extra pay or compensation.

(2) The official register of electors is an official record of the county clerk and recorder.

(3) Unless otherwise provided, the county clerk and recorder shall have custody of registration books, cards, and other records required by the election laws of this state."

Section 9. Section 23-3003, R.C.M. 1947, is amended to read as follows:

"**23-3003. Deputy registrars.** (1) All notaries public are deputy registrars in the county in which they reside.

(2) The commissioners shall appoint a minimum of two deputy registrars who are not notaries public, a minimum of one from each of the two major political parties, for each precinct in the county from lists of persons recommended by the political parties. If the parties fail to submit lists, the commissioners shall appoint deputy registrars without recommendations from the parties. The number of appointed deputy registrars for each county shall always be equally divided between the two major political parties. *An appointed* deputy registrar shall *be* a qualified resident elector in the precinct for which he is appointed.

(3) No deputy registrar *may* register *a* voter until *that* deputy registrar *has* been issued a certificate of approval by the county registrar certifying that *the* deputy registrar has received instructions on registration procedure from the county registrar.

(4) A deputy registrar who has been issued the certificate required by subsection (3) may register electors residing in any precinct of the county for which he is a deputy registrar.

(5) Within 3 days after a registration card is filled out, deputy registrars shall forward the card to the registrar. Registration cards properly executed prior to the registration deadline shall be accepted by the registrar for 3 days after the deadline."

Section 10. Section 23-3014, R.C.M. 1947, is amended to read as follows:

"**23-3014. Cancellation of registration for other reasons.** (1) The registrar shall cancel any registration card:

(a) *at* the written request of the person registered;

(b) *if* a certificate of the death of any elector is filed *or if an elector is reported as deceased by the department of health and environmental sciences in the department's reports submitted to the county under 91-4458*;

(c) *whenever* 45 days *or more* prior to the closing of registration, three

HeinOnline -- 1977 vol. II 1190 1977

qualified registered electors residing within the precinct challenge an elector by filing affidavits giving the name of the challenged elector, his registry number, his residence, and stating of the personal knowledge of the affiant the person registered does not reside at the place designated on his registration card;

(d) *whenever* the insanity of the elector is legally established;

(e) *whenever the incarceration of an elector in a penal institution for a felony conviction is legally established; or*

(f) *whenever* a certified copy of a court order directing the cancellation is filed with the registrar.

(2) Within 30 days after registration has been canceled, the registrar shall send written notice to the elector at the address shown on the registration card. If a person proves to the registrar that he is qualified, he may reregister."

Section 11. Section 23-3015, R.C.M. 1947, is amended to read as follows:

"**23-3015. Challenges prior to election.** (1) An elector may challenge the qualifications of another elector any time not later than 20 days prior to an election. The challenge must:

(a) *be* filed with the registrar and be signed by the elector;

(b) *be* verified by the affidavit of the elector that the elector designated is not entitled to vote;

(c) *state* the grounds of the challenge, objection, and disqualification.

(2) The registrar shall:

(a) *file* the affidavit of challenge in his office;

(b) *deliver* a correct copy of the affidavit to the judges of election together with a copy of the precinct registers, check lists, and other documents;

(c) *write* opposite the name of any person whose qualifications are challenged the words, "to be challenged";

(d) notify the elector within 5 days by certified or registered mail that his qualifications as an elector have been challenged.

(3) An elector's right to vote may be challenged on election day by any registered elector by orally stating to the election judges the grounds of the challenge.

(4) The election judges shall:

(a) *test* the qualifications of the elector challenged under oath if he applies to vote;

(b) *compare* the answers of the elector with the entries in the precinct register books; *and*

(c) *not* permit him to vote if the elector is found to be disqualified

HeinOnline -- 1977 vol. II 1191 1977

because the answers given do not correspond to the entry in the precinct registers or the elector is disqualified for any cause under the law or he refuses to take an oath or affirmation as to his qualifications.

(5) The election judges may require the challenged elector to produce one or more *electors* of the county to be examined under oath as to the qualifications of the challenged elector and may also request assistance from the county attorney and the registrar in determining the elector's qualifications."

Section 12. Section 23-3018, R.C.M. 1947, is amended to read as follows:

"**23-3018. Name on precinct register prima facie evidence of right to vote.** (1) A person *may* not vote at an election mentioned in *Title 23 or Title 37* unless his name appears on election day in the copy of the official precinct register furnished by the registrar to the election judges. The fact that his name appears in the copy of the precinct register is prima facie evidence of his right to vote.

(2) If the election judges have good reason to believe or if they are informed by a qualified elector that the person offering to vote is not the person registered in that name, he *may* not be allowed to vote until he has proved his identity by the oath of two reputable electors of the precinct in which he is registered.

Section 13. Section 23-3026, R.C.M. 1947, is amended to read as follows:

"**23-3026. Commissioners to provide registrar with sufficient help.** The commissioners shall provide the registrar with sufficient help for the duties imposed by *Title 23 or Title 37.* The cost of stationery, printing, publishing, and posting *is* a proper charge against the county."

Section 14. Section 23-3304, R.C.M. 1947, is amended to read as follows:

"**23-3304. Declaration of nomination.** (1) Each candidate in the primary election shall send a declaration of nomination to the secretary of state, registrar, or city clerk. Each candidate for governor must send a joint declaration of nomination with a candidate for lieutenant governor.

(2) Each candidate must sign the declaration and send with it the required filing fee or in the case of a candidate who cannot afford the filing fee, send with it the documents required in lieu of a filing fee. The declaration of nomination shall be acknowledged by a notary public if *sent* by mail or by the officer of the office at which the filing is made.

(3) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(4) Nominating declarations are filed:

(a) *in* the office of secretary of state for congressional offices, state or district offices to be voted for in more than one county, members of the *legislature*, and judges of the district court;

HeinOnline -- 1977 vol. II 1192 1977

(b) *in* the office of the registrar for county and district offices to be voted for in *only* one county, *other than a legislator or a judge of the district court,* and for precinct offices;

(c) *in* the office of the city clerk for all city officers.

(5) Filing fees are as follows:

(a) *for* offices having *an annual* salary of $1,000 or less, $10, except candidates for the legislature must pay $15;

(b) *for* offices having *an annual* salary of more than $1,000, 1% of the total annual salary;

(c) *for* the *office* of county commissioner:

(i) in counties of the first class, $40;

(ii) in counties of the second class, $35;

(iii) in counties of the third class, $30;

(iv) in counties of the fourth class, $25;

(v) in counties of other classes, $10;

(d) *for* offices in which compensation is paid in fees, $5;

(e) *for* state, county, and precinct committeemen, delegates to national conventions, and presidential electors, no fees are required.

(6) A person nominated by having his name written in on the primary ballot and desiring to accept the nomination *may* not have his name printed on the general election ballot unless he:

(a) *files* with the secretary of state, registrar, or city clerk within at least 10 days after the primary a written declaration indicating his acceptance of the nomination;

(b) *pays* the required filing fee *or if indigent, complies with subsection (7);*

(c) *received* at least 5% of the votes cast for the office at the last preceding general election.

(7) If a person is unable to pay a filing fee, the filing officer shall accept the following documents in lieu of a filing fee:

(a) from a write-in candidate, a verified statement that he is unable to pay the filing fee;

(b) from a candidate for nomination, a verified statement that he is unable to pay the filing fee and a written petition for nomination as a candidate that meets the following requirements:

(i) contains the name of the office to be filled, the candidate's name, residence, occupation, and business address;

(ii) is signed by 5% or more of the total vote cast for the successful candidate for the same office at the next preceding general election; and

HeinOnline -- 1977 vol. II 1193 1977

(iii) is signed by electors residing within the political division of the state in which the candidate petitions for nomination.

(8) The declaration for nomination shall be in *the* form and contain *the* information prescribed by the secretary of state. Every declaration must be signed by the elector seeking nomination."

Section 15. Section 23-3305, R.C.M. 1947, is amended to read as follows:

"**23-3305. Deadline for filing nominating declarations.** Nominating declarations shall be filed not later than 5 p.m., 40 days before the date of the primary election."

Section 16. Section 23-3308, R.C.M. 1947, is amended to read as follows:

"**23-3308. Arrangement of ballots.** (1) At the primary, there shall be a ballot for each political party entitled to participate. Each ballot shall be printed on a separate sheet of white paper of the same size, folded, and securely fastened at the top.

(2) Candidates' names shall be arranged alphabetically by surnames, under the offices and under the proper party designation. The names of the candidates for governor and lieutenant governor shall be arranged by the surname of the candidate for governor. When two or more persons are candidates for nomination for the same office, the registrar shall divide the ballot to provide a rotation of the names of the candidates as follows:

(a) *divide* all county ballot forms into sets equal in number to the greatest number of candidates for nomination or election to any office;

(b) *arrange* the sets so that candidates' names are rotated by removing one name from the top of the list for each nomination or office and place the name or number at the bottom of the list for each successive set of ballot forms; however, in printing ballots for use in any one precinct, only one set shall be used and they shall be identical.

(3) If an elector writes the name of a person upon a ballot and the person's name appears as a candidate upon another ballot, the ballot shall count for the person only as a candidate of the party upon whose ticket his name is written.

(4) If a person is nominated upon more than one ticket, not later than 10 days after the election he shall file written notification with the secretary of state, registrar, or city clerk *of* the party under which his name is to appear upon the ballot for the general election, and, if he fails to notify the proper officers, his name shall appear under the party with whom his nominating declaration was first filed.

(5) If a person fails to be nominated upon the party ticket contained in his nominating declaration, his name *may* not be printed upon any ballot with party designation.

(6) Title 23 and Title 37 do not preclude an elector from having his

HeinOnline -- 1977 vol. II 1194 1977

name printed upon the ballot as an independent candidate, and no candidate *may* have his name printed on more than one ticket.

(7) Ballots shall be printed on white paper in the form of the Australian ballot, and the candidates of each party shall be printed on a separate ticket.

(8) After preparing his ballot, the elector shall detach it from the remaining tickets and fold it so that the face is concealed and the official stamp is seen.

(9) The elector shall fold the remaining tickets, vote the marked ballot without leaving the polling place, and deposit the remaining tickets in a separate box marked as the blank ballot box.

(10) Immediately after the recount period, *as provided in 23-4103,* the tickets deposited in the blank ballot box *shall be destroyed.*"

Section 17. Section 23-3311, R.C.M. 1947, is amended to read as follows:

"**23-3311. Tally sheets — keeping and announcing the tally.** (1) The registrar shall furnish tally sheets for each political party having candidates in the primary election for each voting precinct. Tally sheets shall contain the names of the candidates, names of the political parties designated at the head, and be numbered in the order in which the names appear on the official ballot.

(2) Tally sheets shall show:

(a) *the* number and name of each person voted for;

(b) *the office* for nomination to which each person was voted for;

(c) *the total* number of votes cast for each candidate for nomination.

(3) The election clerks and judges shall audibly announce the tally or count and shall keep the tally in the form prescribed by the secretary of state. The tally or count shall be certified by the election clerks and judges.

(4) The election clerks shall in ink:

(a) *keep* tally upon the prescribed tally sheet of each political party;

(b) *total* the number of tallies and write the total immediately to the right of the last tallies for each candidate and also in the columns headed "total vote";

(c) *prepare* the certificate required by subsection (3);

(d) *immediately* upon completion of the count, sign the tally sheets, and each clerk shall certify which sheets were kept by him.

(5) If the judges are satisfied with the correctness of the tally sheets, they shall sign all the tally sheets.

(6) The election clerks shall then prepare a statement of that portion of the tally sheets showing the number and name and political party of

HeinOnline -- 1977 vol. II 1195 1977

each candidate for nomination and the office and total votes received by each in the precinct and shall prepare the certificate. The election clerks and judges who complete the count shall sign the statement and immediately post it in a conspicuous place outside of the polls. The statement shall remain posted for 10 days."

Section 18. Section 23-3312, R.C.M. 1947, is amended to read as follows:

"**23-3312. Duties of election clerks and judges after canvassing votes — seal.** (1) Immediately after canvassing votes, the election clerks and judges who complete the count shall enclose the pollbooks in separate envelopes and securely seal them. The election clerks and judges shall:

(a) *enclose* the tally sheets in separate envelopes and securely seal them;

(b) *enclose* the precinct registers in separate envelopes and securely seal them;

(c) *enclose* all ballots fastened together and in separate envelopes and securely seal them;

(d) *specify* in ink the contents and address each package to the registrar of the county in which the election precinct is situated;

(e) *mark* the sealed ballot packages on the outside showing what numbers are contained, but once sealed they *may* not be opened until ordered by the proper court.

(2) When the count is completed, the sealed ballots shall be placed in two ballot boxes, the boxes locked and the seal of the board pasted over the keyhole and rim of the lid so that to open the box the seal must be broken. The registrar or *those persons* making the abstracts of the votes *may* not break the seal nor *may* anyone break the seal except upon court order in case of contest or on order of the commissioners when the boxes are needed for the ensuing election."

Section 19. Section 23-3313, R.C.M. 1947, is amended to read as follows:

"**23-3313. Abstracts of votes — when and how made.** (1) At 8 a.m. on the third day after the close of any primary election or at 8 a.m. on a day sooner if all the returns are in, the registrar, taking two assistants who are justices of the peace, county commissioners, or either, shall open the returns and make abstracts of the votes.

(2) Abstracts of votes for nomination of each party for *congressional offices, state or district offices to be voted on in more than one county, members of the legislature, and judges of the district court* shall be on one sheet, separately for each political party. *The registrar, immediately after making the abstracts of votes, shall send by mail a copy of each of the abstracts to the secretary of state.*

(3) Abstracts of votes for county *and district offices to be voted on in only one county, other than a legislator or a judge of the district court,* and precinct offices shall be placed on separate sheets for each political

party, and the registrar shall certify the nomination for each party and enter upon his register of nominations the name of each of the persons having the highest number of votes for nomination. He shall notify each person who is nominated by mail.

(4) If there is a tie for the same nomination in one party, the registrar shall notify the affected persons to come to his office at a time set by the registrar. The registrar shall then decide publicly by lot which of the persons is the nominee. The registrar shall enter the name of the person chosen as nominee upon his register of nominations.

(5) The registrar shall, on receipt of the primary returns, make out a certificate stating the compensation the election clerks and judges are entitled to and transmit this certificate to the commissioners. The commissioners shall order the compensation paid out of the county treasury.

(6) In all primary elections, the person having the highest number of votes for nomination to any office is the nominee for his political party for that office."

Section 20. Section 23-3314, R.C.M. 1947, is amended to read as follows:

"**23-3314. Canvass by secretary of state — governor's certificate of nomination and proclamation — decision by lot in event of tie.** *(1)* The secretary of state shall, in the presence of the governor and the *superintendent of public instruction*, proceed not later than 15 days after the date of the primary election to canvass the votes given for nomination for *congressional offices, state or district offices to be voted on in more than one county, members of the legislature, and judges of the district court.*

(2) The governor shall grant a certificate of nomination to the person having the highest number of votes for each office and shall issue a proclamation declaring the nomination of each person by his party.

(3) When a tie exists between two or more persons for nomination in the same party, the secretary of state shall immediately give notice to the persons tied to attend in person or by attorney at his office at a time appointed by him. He shall then publicly decide by lot which person is nominated by his party. The governor shall issue his proclamation declaring the nomination of that person."

Section 21. Section 23-4016, R.C.M. 1947, is amended to read as follows:

"**23-4016. Composition and meeting of board of state canvassers.** Within 20 days after the election or sooner if the returns are all received, the state auditor, *superintendent of public instruction*, and attorney general shall meet as a board of state canvassers in the office of the secretary of state and determine the vote. The secretary of state, who is secretary of the board, shall make out and file in his office a statement of the canvass and transmit a copy to the governor."

Section 22. Section 23-3315, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1197 1977

"**23-3315. Error in ballot or other wrongful or neglectful act.** (1) *The court shall order an officer or person charged with a wrongful act or neglect to perform his duties or show cause why the order should not issue whenever* it appears by affidavit to the district court, to the supreme court, or to a supreme court judge:

(a) *that* an error or omission has occurred or is about to occur in the printing of the name of any candidate or other matter on the official primary nominating election ballots;

(b) *that* any error has been or is about to be committed in the printing of the ballots;

(c) *that* the name of any person or any other matter has been or is about to be wrongfully placed upon the ballots;

(d) *that* any wrongful act has been performed by any judge or clerk of the primary election, registrar, canvassing board or member, or by any person charged with a duty under *Title 23 or Title 37* or that any neglect of duty by any of the persons has occurred or is about to occur.

(2) Failure to obey the court order is contempt.

(3) Any person aggrieved by the refusal or failure of any person to perform any duty required by *Title 23 or Title 37*, without derogation of any other right or remedy, *is* entitled to seek a writ of mandamus in the district court and the proceeding shall be immediately heard and decided."

Section 23. Section 23-3316, R.C.M. 1947, is amended to read as follows:

"**23-3316. Contest — notice — hearing — how tried and decided — certificate.** (1) Five days or less after a person has been nominated, any person wishing to contest the nomination to any state, county, district, precinct, or city office shall give notice in writing to the person whose nomination he intends to contest briefly stating the cause for the contest.

(2) The contestant shall make application to the district court judge in the county where the contest is to be had. The judge shall then set the time for the hearing.

(3) The contestant shall serve notice 3 days before the hearing is scheduled. The notice shall state the time and place of the hearing.

(4) The judge of the district court shall hear and determine the case and make all necessary orders for the trial of the case and carrying his judgment into effect. The order of the judge shall express the will of a majority of the legal voters of the political party, as indicated by their votes, disregarding technicalities or errors in spelling.

(5) Each party is entitled to subpoenas.

(6) The registrar shall issue a certificate to the person declared nominated by the court. The certificate shall be conclusive evidence of the right of the person to hold the nomination."

Section 24. Section 23-3319, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1198 1977

"**23-3319. Certificates of nominations to be preserved — certification of candidates' names and descriptions — statement of votes received by candidate.** (1) The secretary of state, registrars, and city clerks shall preserve all certificates of nominations for 1 year. All certificates shall be open to public inspection under rules adopted by the various offices.

(2) Forty-five days or more before an election, the secretary of state shall certify to the registrars the name and description of each person nominated, as specified in the certificates of nomination filed with him."

Section 25. Section 23-3403, R.C.M. 1947, is amended to read as follows:

"**23-3403. Powers of county and city central committees — role of state central committee where no county central committee exists.** (1) The county and city central committee may:

(a) *make* rules for the government of its political party in each county not inconsistent with any of the provisions of *the election laws of this state or* the rules of its state political party;

(b) *elect* two county members of the state central committee, one *of whom* shall be a man and one *of whom* shall be a woman, elect the members of the congressional committee, and fill all vacancies and make rules in their jurisdiction.

(2) If there is no county central committee, the state central committee shall appoint a county central committee."

Section 26. Section 23-3405, R.C.M. 1947, is amended to read as follows:

"**23-3405. Organization of committee — meeting — county convention to elect delegates and alternates to state convention.** (1) The committee shall meet prior to the state convention of its political party and organize by electing a chairman and one or more vice-chairmen. The chairman or first vice-chairman shall be a woman. *The committee* shall elect a secretary and other officers as are proper. It is not necessary for the officers to be precinct committeemen.

(2) The committee may select managing or executive committees and authorize subcommittees to exercise all powers conferred upon the county, city, state, and congressional central committees by *the election laws of this state.*

(3) The chairman of the county central committee shall call the central committee meeting and not less than 4 days before the date of the central committee meeting shall publish the call in a newspaper published at the county seat and mail a copy of the call to each precinct committeeman. If party rules permit the use of a proxy, no proxy *may* be recognized unless held by an elector of the precinct of the committeeman executing it.

(4) The county chairman of the party shall preside at the county convention. No person other than a duly elected or appointed committeeman or officer of the committee is entitled to participate in the proceedings of the committee.

HeinOnline -- 1977 vol. II 1199 1977

(5) If a committeeman is absent, the convention may fill the vacancy by appointing some qualified elector of the party, resident in the precinct, to represent the precinct in the convention.

(6) The county convention shall elect delegates and alternate delegates to the state convention under rules of the state party. The chairman and secretary of the county convention shall issue and sign certificates of election of the delegates."

Section 27. Section 23-3506, R.C.M. 1947, is amended to read as follows:

"**23-3506. Registrar to provide printed ballots — other ballots ineffective.** Except as otherwise provided in *the election laws of this state*:

(1) *the* registrar shall provide printed ballots for every election for public officers. He shall print on the ballot the names of all candidates, including candidates for chief justice and justices of the supreme court and judges of the district courts;

(2) ballots other than those printed by the registrars may not be cast or counted in any election."

Section 28. Section 23-3512, R.C.M. 1947, is amended to read as follows:

"**23-3512. Columns and material to be printed on ballot.** (1) Each ballot shall contain three categories with at least one column for each category.

(2) At the head of the first column to the left shall be the words "STATE AND NATIONAL" in boldface type, followed by a list of all candidates for state and national offices, including supreme court justices, district court judges, and members of the *legislature*, and the list shall progressively continue to the top of the second column.

(3) Next shall be the *word "COUNTY"* in large boldface type and beneath the heading all candidates for county offices. The list shall progressively continue on to the top of the third column.

(4) Next shall be the words "INITIATIVES, REFERENDUMS, AND CONSTITUTIONAL AMENDMENTS" in boldface type, and listed thereunder shall be all proposed constitutional amendments and measures to be voted which do not involve the creation of any state levy, debt, or liability. If there are no such measures, this heading shall be eliminated.

(5) Following each except the last column, the words "VOTE IN THE NEXT COLUMN" shall appear.

(6) All measures involving the creation of a state levy, debt, or liability shall be submitted to the voters upon a separate official ballot.

(7) Each ballot shall be printed so that all the matters printed are equally apportioned among the three categories as nearly as possible."

Section 29. Section 23-3513, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1200 1977

"**23-3513. Order of placement.** (1) The order of offices on the ballot in the first column designated "STATE AND NATIONAL" shall be as follows:

(a) If the election is in a year in which a president of the United States is to be elected, in spaces separated from the balance of the party tickets by a heavy black line shall be the names and spaces for voting for candidates for president and vice-president. The names of candidates for president and vice-president for each political party shall be grouped together.

(b) United States senator;

(c) United States representative;

(d) Governor and lieutenant governor;

(e) Secretary of state;

(f) Attorney general;

(g) State auditor;

(h) Public service commissioners;

(i) State superintendent of public instruction;

(j) Clerk of the supreme court;

(k) Chief justice of the supreme court;

(l) *Justices* of the supreme court;

(m) District court judges;

(n) State senators;

(o) *Members* of the house of representatives.

(2) If any offices are not to be elected, they shall not be designated but the order of offices to be filled shall maintain their relative positions.

(3) In the column designated "COUNTY", the following order of placement shall be observed:

(a) *clerk* of the district court;

(b) *county* commissioner;

(c) *county* clerk and recorder;

(d) *sheriff*;

(e) *county* attorney;

(f) *county* auditor;

(g) *other* offices in the order designated by the registrar.

(4) In the third column constitutional amendments shall be followed by referendum and initiative measures."

Section 30. Section 23-3515, R.C.M. 1947, is amended to read as follows:

"**23-3515. Stub size and contents.** (1) The ballot shall be printed on the same leaf with a stub, separated by *perforation.*

(2) The stub shall extend the entire width of the ballot and have instructions printed on it.

(3) Upon the face of the stub shall be printed, in type called brevier capitals, the following:

(a) "This ballot should be marked with an 'X' in the square before the *name* of each person or candidate for whom the elector intends to vote. The elector may write in blank spaces, or paste over another name, the name of a person for whom he wishes to vote and vote by marking an 'X' in the square before the name."

(b) "If a ballot contains a constitutional amendment or other question to be submitted to a vote of the people, it is voted on by marking an 'X' in the square before the amendment or question."

(4) On the front of the stub shall be printed or stamped, by the registrar or other officer, the consecutive number of the ballot, beginning with number 1 and increasing in regular numerical order to the total number of ballots required for the precinct."

Section 31. Section 23-3606, R.C.M. 1947, is amended to read as follows:

"**23-3606. Method of voting.** (1) On receipt of his ballot, the elector must immediately retire to one of the booths and prepare his ballot.

(2) He shall prepare his ballot by marking an "x" in the square before the name of the person or persons for whom he intends to vote.

(3) If the ballot contains a constitutional amendment or other question to be submitted to the vote of the people, he shall mark an "x" in the applicable square indicating his vote either for or against the amendment or question.

(4) The elector may write in the blank spaces, or paste over any other name, the name of any person for whom he wishes to vote and *may* vote for that person by marking an "x" before the name. *When the ballot is marked in this manner, it must be counted the same as though the name is printed upon the ballot and marked by the voter.*

(5) After preparing his ballot the elector must fold it so the face of the ballot will be concealed and the endorsements may be seen and hand it to the election judges who shall announce the name of the elector and the printed or stamped number on the stub in a loud tone of voice. The judge must announce the voter's name and record the name in the pollbook. If the voting is in a city, the voter's residence shall also be announced and recorded in the pollbook.

(6) If the elector is entitled to vote and if the printed or stamped number is the same as that entered on the pollbooks as the number on the stub, the judge shall receive the ballot and remove the stub in sight of the elector, depositing each ballot in the ballot box and each stub in a box for detached ballot stubs.

HeinOnline -- 1977 vol. II 1202 1977

(7) Any elector who spoils his ballot may, on returning the spoiled ballot, receive another in place of it."

Section 32. Section 23-3610, R.C.M. 1947, is amended to read as follows:

"**23-3610. Marking precinct register book before elector votes — procedure.** (1) The election judges at every primary, general, or special election shall, in the precinct register book, mark a cross (X) upon the line opposite to the name of the elector.

(2) Before an elector is permitted to vote, the election judges shall require the elector to sign his name on the place designated in the precinct register.

(3) The election judges shall require an elector not able to sign his name to produce two electors who shall make an affidavit before *one or more of* the election judges in a form prescribed by the secretary of state.

(4) The affidavit shall be filed by the election judges and returned to the registrar with the returns of the election. One of the judges shall write the elector's name, *noting* the fact of his inability to sign, and the names of the two electors.

(5) If the elector fails or refuses to sign his name and if unable to write fails to procure two electors who will take the oath required, he *may* not vote.

(6) Each precinct shall keep a list of persons voting, and the name of each person who votes shall be entered in it and numbered in the order voting. This list is known as the pollbook."

Section 33. Section 23-3611, R.C.M. 1947, is amended to read as follows:

"**23-3611. Grounds of challenge.** A person offering to vote may be orally challenged by any elector of the county, upon the following grounds:

(1) *that* he is not the person whose name appears on the register or checklist;

(2) *that he is of unsound mind, as determined by a court*;

(3) *that* he has voted before *in* that *election*;

(4) *that* he has been convicted of a felony and *is serving a sentence in a penal institution.*"

Section 34. Section 23-3612, R.C.M. 1947, is amended to read as follows:

"**23-3612. Proceedings pursuant to challenges — oaths.** (1) If the challenge is on the ground that the person is not the person whose name appears on the official register, the election judges shall administer the following oath: "You do swear (or affirm) that you are the person whose name is entered on the official register and precinct list."

(2) If the challenge is on the ground that the person has voted before

HeinOnline -- 1977 vol. II 1203 1977

in that *election*, the judges shall administer this oath: "You do swear (or affirm) that you have not voted *before in* this *election*."

(3) If the challenge is on the ground that the person has been convicted of a felony *and is serving a sentence in a penal institution*, the judges shall administer the following oath: "You do swear (or affirm) *either* that you have not been convicted of a felony *or that, if you have been convicted of a felony, you are not serving a sentence in a penal institution.*""

Section 35. Section 23-3613, R.C.M. 1947, is amended to read as follows:

"**23-3613. Determination of challenges.** (1) Challenges on the grounds that the person is not the person whose name appears on the official register or that the person has before voted that day are determined in favor of the person challenged by his taking the oath tendered.

(2) A challenge that the person has been convicted of a felony and not pardoned must be determined in favor of the challenged on his taking the oath tendered."

Section 36. Section 23-3708, R.C.M. 1947, is amended to read as follows:

"**23-3708. Disposition of marked ballot upon receipt by registrar or clerk.** (1) Upon receipt of the envelope, the registrar, city clerk, or clerk of a first class school district shall immediately enclose it in a larger envelope, together with the elector's application, and seal *the larger envelope.*

(2) The registrar, city clerk, or clerk of a first class school district shall safely keep it in his office until delivered or mailed by him."

Section 37. Section 23-3711, R.C.M. 1947, is amended to read as follows:

"**23-3711. Duty of election judges — pollbooks and numbering ballots.** (1) The election judges, at the opening of the polls, shall note on the pollbooks opposite the numbers corresponding to the number of absentee ballots issued the fact that the ballots were issued and reserve the numbers for the absent or physically incapacitated voters. The notation may be made by writing the words "absent or physically incapacitated voters" opposite the numbers.

(2) The election judges shall insert only the *name* of the elector entitled to each particular number according to the certificate of the registrar or city clerk and the number of his ballot."

Section 38. Section 23-3713, R.C.M. 1947, is amended to read as follows:

"**23-3713. Envelopes containing ballots — deposit in box and rejection of ballot.** (1) While the polls are open on election day, the election judges shall first open the outer envelope only and compare the signature of the voter on the application and on the affirmation.

(2) If the election judges find that the signatures correspond, that the

HeinOnline -- 1977 vol. II 1204 1977

affirmation is sufficient, and that the absentee elector is qualified and has not yet voted, they shall open the absentee voter's envelope and take out the ballot or ballots and, without unfolding *them* or permitting *them* to be examined, ascertain whether the *stubs are* still attached and whether the *numbers correspond* to the *numbers* in the certificate of the registrar or city clerk.

(3) If so, they shall endorse *the ballots* the same way that other ballots are endorsed, detach the *stubs*, deposit the ballots in the proper ballot boxes, and make entries in their election records to show the elector has voted.

(4) If the affirmation is found defective, the numbers do not correspond, or the voter is unqualified, the election judges, without opening the absentee ballot, shall mark across the face of it "rejected as defective" or "rejected as not an elector".

(5) The absentee ballot envelope, when it has been voted, shall be deposited in the ballot box containing the general or party ballots and shall be retained and preserved in the manner provided for official ballots.

(6) If, upon opening the absentee ballot envelope, it is found that the stub of any ballot has been detached or that the number does not correspond to the number on the certificate of the registrar or clerk, the ballot shall be rejected. It shall be marked on back as "rejected for ....", filling the blank with the reason. This statement shall be dated and signed by a majority of the election judges.

(7) The rejected ballots, together with the absentee ballot envelope bearing the application, shall be enclosed in an envelope, sealed, and the judges shall write on the envelope, "rejected ballot of absentee voter" (writing in the elector's name). "The rejected ballot(s) is (are) ....."

(8) The election judges shall designate the rejected ballot as "general ballot", if it is a ballot for candidates.

(9) If the rejected ballot is on a question submitted to the vote of the electors, the judges shall designate it as ballot question No. .... on the envelope.

(10) A separate enclosing envelope shall be used for each absentee ballot rejected. This envelope shall be placed in the envelope in which the other ballots voted are required to be placed and shall not be opened without a court order.

(11) The registrar or clerk shall provide and deliver to the election judges suitable envelopes for enclosing rejected absentee ballots."

Section 39. Section 23-3715, R.C.M. 1947, is amended to read as follows:

"**23-3715. Opening of envelopes after deposit.** If an envelope containing an absentee ballot has been deposited unopened in the ballot box *and the envelope has not been marked rejected,* the envelope shall be opened without a court order and the ballot cast."

Section 40. Section 23-3801, R.C.M. 1947, is amended to read as follows:

"**23-3801. Voting machines — secretary of state.** (1) Before any voting machine can be used, the secretary of state shall:

(a) *examine* the machine to determine if it complies with the requirements of 23-3801 through *23-3819 and* 23-3822;

(b) *within* 30 days after examining a machine, file a report in his office on each machine examined;

(c) *within* 5 days after filing the report, transmit to the commissioners, city council, or other board having control of elections in each county or city a list of the machines approved.

(2) A machine shall not be used unless approved by the secretary of state 60 days or more prior to the election.

(3) The secretary of state may employ *and compensate* qualified mechanics who are electors to assist him in duties required by this chapter.

(4) The person or company submitting a machine for examination before the filing of the report shall pay the compensation and expenses of mechanics connected with the examination to the secretary of state for deposit in the state general fund."

Section 41. Section 23-3807, R.C.M. 1947, is amended to read as follows:

"**23-3807. Registrar to instruct election judges.** (1) Before each election, the registrar shall instruct all election judges in the use of the machine and their duties. He shall give to each election judge *who* has received instruction and is fully qualified to conduct the election with the machine a certificate to that effect.

(2) The registrar shall call meetings of the election judges as necessary for instruction. Election judges shall attend meetings as necessary to receive the proper instructions.

(3) An election judge *may* not serve if voting machines are used unless he has received instruction, is fully qualified to perform duties in connection with the machine, and has received a certificate to that effect from the *registrar*. However, this *section does* not prevent an emergency appointment of an election judge."

Section 42. Section 23-3822, R.C.M. 1947, is amended to read as follows:

"**23-3822. General election laws to apply.** All laws applicable to elections where voting is not done by machine and all penalties prescribed for violations of those laws apply to elections and precincts where voting machines are used if they are not in conflict with the provisions of 23-3801 through *23-3819*."

Section 43. Section 23-3905, R.C.M. 1947, is amended to read as follows:

"**23-3905. Procedure upon closing polls.** (1) In precincts where an

HeinOnline -- 1977 vol. II 1206 1977

electronic voting system is used, as soon as the polls are closed, the election judges shall secure the marking devices against further voting. They shall thereafter open the ballot box and count the number of ballots or envelopes containing ballots that have been cast to determine that the number of ballots does not exceed the number of voters shown on the poll or registry lists. If there is an excess, this fact shall be reported in writing to the appropriate election officer in charge with the reasons therefor, if known. The total number of voters shall be entered on the tally sheets. The election judges shall thereupon count the write-in votes and prepare a return of such votes on forms provided for this purpose. If ballot cards are used, all ballots on which write-in votes have been recorded shall be serially numbered, starting with the number one, and the same number shall be placed on the ballot card of the voter. The election *judges* shall compare the write-in votes with the votes cast on the ballot card, and if the total number of votes for any office exceeds the number allowed by law, a notation to that effect shall be entered on the back of the ballot card and *it* shall be returned to the counting location in an envelope marked "defective ballots". *Such* invalid votes *may* not be counted. So far as applicable, provisions relating to defective paper ballots shall apply.

(2) The election judges shall place all ballots that have been cast in the container provided for that purpose, which shall be sealed and delivered *immediately* by the election judges to the counting location or other designated place, together with the unused, void, and defective ballots and returns.

(3) All proceedings at the counting location shall be under the direction of the registrar or city clerk under the observation of at least three election judges designated by the commissioners or city council and shall be open to the public, but no persons except those employed and authorized for the purpose *may* touch any ballot, ballot container, or return. If any ballot is damaged or defective so that it cannot properly be counted by the automatic tabulating equipment, a true duplicate copy shall be made of the damaged ballot in the presence of witnesses and substituted for the damaged ballot. Likewise, a duplicate ballot shall be made of a defective ballot which *may* not include the invalid votes. All duplicate ballots shall be clearly labeled "duplicate", shall bear a serial number which shall be recorded on the damaged or defective ballot, and shall be counted in lieu of the damaged or defective ballot.

(4) The return printed by the automatic tabulating equipment, to which has been added the return of write-in and absentee votes, shall constitute the official return of each precinct or election district. Upon completion of the count the returns shall be open to the public."

Section 44. Section 23-4011, R.C.M. 1947, is amended to read as follows:

"23-4011. County canvass to be public — nonessentials to be disregarded. (1) The canvass shall be public. It shall proceed by opening the returns, determining the vote for each person and each proposition from each precinct, and *declaring* the results.

(2) The returns shall not be rejected *because of failure to* show who

HeinOnline -- 1977 vol. II 1207 1977

administered the oath to the election judges or clerks, *because of* failure to complete all the certificates in the pollbooks, or *because of* failure of any other act making up the returns that is not essential to determine for whom the votes were cast."

Section 45. Section 23-4013, R.C.M. 1947, is amended to read as follows:

"**23-4013. Declaration of persons elected.** (1) The board shall declare elected the persons having the highest number of votes given for each *county and district office voted for in only one county, other than a legislator or a judge of the district court and each precinct office.*

(2) If a recount shows that two or more persons received an equal and sufficient number of votes for the office of state senator or state representative, the county recount board shall certify this to the governor."

Section 46. Section 23-4014, R.C.M. 1947, is amended to read as follows:

"**23-4014. Certificates issued by the clerk.** (1) The clerk shall immediately deliver to each person *declared* elected *by the board* a certificate of election signed by him and authenticated with the seal of the board.

(2) The certificate shall state that the official bond must be filed within 30 days after notice of election or appointment and that failure to file the bond vacates the office."

Section 47. Section 23-4015, R.C.M. 1947, is amended to read as follows:

"**23-4015. State returns, how made and transmitted.** (1) After a general or special election, the clerk shall make an abstract of the vote for *congressional offices, state or district offices voted for in more than one county, members of the legislature, and judges of the district court.*

(2) The clerk shall seal the abstract, endorse it "Election Returns", and immediately send it to the secretary of state by *certified or* registered mail."

Section 48. Section 23-4103, R.C.M. 1947, is amended to read as follows:

"**23-4103. Conditions under which recount to be made.** A recount shall be made under any of the following conditions:

(1) If a candidate *for a county or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office* is defeated by a margin not exceeding ¼ of 1% of the total votes cast or by a margin not exceeding 10 votes, whichever is greater, he may within 5 days after the official canvass file with the registrar a verified petition stating he believes a recount will change the result and a recount of the votes for the office or nomination should be had.

(2) If a candidate *for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district*

HeinOnline -- 1977 vol. II 1208 1977

court is defeated by a margin not exceeding ¼ of 1% of the total votes cast for all candidates for the same position, he may within 5 days after the official canvass file a petition with the secretary of state as set forth in subsection (1). The secretary of state shall immediately notify each registrar whose county includes any precincts which voted for the same office by *certified or* registered mail, and a recount shall be conducted in those precincts.

(3) If a question submitted to the vote of the people of the state is decided by a margin not exceeding ¼ of 1% of the total votes cast for and against the question, a petition as set forth in subsection (1) may be filed with the secretary of state. This petition shall *be* signed by not less than 100 electors of the state representing at least five counties of the state and be filed within 5 days after the official canvass.

(4) The secretary of state shall immediately notify each registrar by *certified or* registered mail of the filing of the petition, and a recount shall be conducted in all precincts in each county.

(5) If there is a tie vote, the board making the canvass shall certify the vote:

(a) to the registrar, if the election was for a county or district office voted on in only one county, other than a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county;

(b) to the secretary of state, if the election was for a congressional office, a state or district office voted on in more than one county, the legislature, or judge of the district court or a ballot issue voted on in more than one county.

(6) When a tie has been certified to the registrar or secretary of state, as provided in subsection (5), he shall proceed as if a petition for a recount has been filed. If a tie exists after the recount, the tie shall be resolved as provided by law."

Section 49. Section 23-4117, R.C.M. 1947, is amended to read as follows:

"**23-4117. Procedure after recount.** (1) Immediately after the recount the county recount board shall certify the result.

(2) At least two members of the board shall sign the certificate, and it shall be attested to under seal by the registrar.

(3) The certificate shall set forth in substance the proceedings of the board and appearance of any candidates or representatives, and it shall adequately designate each precinct recounted, the vote of each precinct according to the official canvass previously made, *the* nomination, position, or question involved, and the correct vote of each precinct as determined by the recount.

(4) When the certificate relates to a recount for *a congressional office, a state or district office voted on in more than one county, a legislative office, or an office of judge of the district court or a ballot issue voted on in more than one county,* the certificate shall be made in duplicate.

HeinOnline -- 1977 vol. II 1209 1977

One copy shall be transmitted immediately to the secretary of state by *certified or* registered mail.

(5) *(a)* If the recount relates to *a county or district office voted for in only one county, other than a legislator or a judge of the district court, or a precinct office or a ballot issue voted on in only one county,* the county recount board shall immediately recanvass the returns as corrected by the certificate showing the result of the recount and make a corrected abstract of the votes.

(b) If the corrected abstract shows no change in the result, no further action *need* be taken.

(c) If there is a change in the result, a new certificate of election or nomination shall be issued to each candidate found to be elected or nominated."

Section 50. Section 23-4121, R.C.M. 1947, is amended to read as follows:

"**23-4121. Procedure upon tie vote for state executive officers — county officers other than county commissioner — commissioners.** (1) If there is a tie vote for governor *and* lieutenant governor, secretary of state, attorney general, state auditor, clerk of the supreme court, superintendent of public instruction, or any other state executive officer, the *legislature,* at its next regular session, shall elect a person to fill the office by joint ballot of the two houses.

(2) If there is a tie vote for clerk of the district court, county attorney, *or* any county officer, except county commissioner, the commissioners shall appoint an eligible person as in case of other vacancies in the office.

(3) If there is a tie vote for commissioner, the senior district judge shall appoint an eligible person to fill the office as in other cases of vacancy.

(4) If there is a tie vote for state officers, the secretary of state shall transmit a certified copy of the statement to the *legislature* showing the votes cast for the two or more persons having an equal and the highest number of votes."

Section 51. Section 23-4401, R.C.M. 1947, is amended to read as follows:

"**23-4401. Election of United States senators and representatives.** (1) United States senators and representatives shall be elected at the general election preceding commencement of the term to be filled.

(2) Nominations and elections shall be as provided by law for governor."

Section 52. Section 23-4402, R.C.M. 1947, is amended to read as follows:

"**23-4402. Vacancy in office of United States senator.** *(1)* If a vacancy occurs in the office of United States senator, *an election to fill the vacancy shall be held at the next general election. If the election is*

HeinOnline -- 1977 vol. II 1210 1977

invalid or not held at that time, the election to fill the vacancy shall be held at the next succeeding general election.

(2) The governor may make a temporary appointment to fill the vacancy until the election."

Section 53. There is a new R.C.M. section numbered 23-4405 that reads as follows:

23-4405. Vacancy in the office of United States representative. (1) Whenever a vacancy occurs in the office of United States representative, the governor shall immediately issue a writ of election to fill the vacancy.

(2) The election to fill the vacancy shall be held within 3 months from the time the vacancy occurs.

Section 54. Section 23-4737, R.C.M. 1947, is amended to read as follows:

"**23-4737. Payments in name of undisclosed principal.** No person *may* make a payment of his own money or of another *person's* money to any other person in connection with a nomination or election in any other name than that of the person who in truth supplies such money. *No* person *may* knowingly receive such payment or enter or cause the same to be entered in his accounts or records in another name than that of the person by whom it was actually furnished; provided, if the money *is* received from the treasurer of any political *committee*, it *is* sufficient to enter the same as received from *the* treasurer."

Section 55. Section 23-4757, R.C.M. 1947, is amended to read as follows:

"**23-4757. Forfeiture of nomination or office for violation of law, when not worked.** *If*, upon the trial of any action or proceeding under the provisions of *Title 23 or Title 37 to* contest the right of any person *to be* declared nominated or elected to any office or to annul or set aside such nomination or election or to remove a person from his office, it appears from the evidence that the offense complained of was not committed by the candidate or with his knowledge or consent or was committed without his sanction or connivance and that all reasonable means for preventing the commission of such offense at such election were taken by and on behalf of the candidate; that the offense or offenses complained of were trivial, unimportant, and limited in character and that in all other respects his participation in the election was free from such offenses or illegal acts; or that any act or omission of the candidate arose from inadvertence or from accidental miscalculation or from some other reasonable cause of a like nature and in any case did not arise from any want of good faith; and under the circumstances it seems to the court to be unjust that the candidate forfeit his nomination or office or be deprived of any office of which he is the incumbent, then the nomination or election of *the* candidate *is* not by reason of such offense or omission complained of void, nor *may* the candidate be removed from or deprived of his office."

Section 56. Section 23-4758, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1211 1977

"23-4758. **Punishment.** If, upon the trial of any action or proceeding under the provisions of *Title 23 or Title 37 to contest* the right of any person *to be* declared to be nominated to an office or elected to an office or to annul and set aside such election or to remove any person from his office, it *appears* that such person was guilty of any corrupt practice, illegal act, or undue influence, in or about such nomination or election, he shall be punished by being deprived of the nomination or office, as the case may be, and the vacancy therein shall be filled in the manner provided by law. The only *exceptions* to this judgment shall be *those* provided in *23-4757.* Such judgment *does* not prevent the candidate or officer from being proceeded against by indictment or criminal information for any such act or acts."

Section 57. Section 23-4759, R.C.M. 1947, is amended to read as follows:

"23-4759. **Time for commencing contest.** Any action to contest the right of any person *to be* declared elected to an office or to annul and set aside such election or to remove from or deprive any person of an office of which he is the incumbent, for any offense mentioned in *Title 23 or Title 37,* must, unless a different time be stated, be commenced within *1 year* after the return day of the election at which such offense was committed."

Section 58. Section 23-4760, R.C.M. 1947, is amended to read as follows:

"23-4760. **Court having jurisdiction of proceedings.** An application for filing a statement, payment of a claim, or correction of an error or false recital in a *filed* statement or an action or proceeding to annul and set aside the election of any person declared elected to an office or to remove or deprive any person of his office for an offense mentioned in *Title 23 or Title 37* or any petition to excuse any person or candidate in accordance with the power of the court to excuse, as provided in 23-4757, must be made or filed in the district court of the county in which the certificate of his nomination as a candidate for the office to which he is declared nominated or elected is filed or in which the incumbent resides."

Section 59. Section 23-4763, R.C.M. 1947, is amended to read as follows:

"23-4763. **Grounds for contest of nomination or office.** *An* elector of the state or of any political or municipal division thereof may contest the right of any person to any nomination or office for which *the* elector has the right to vote, for any of the following causes:

(1) on the ground of *a* deliberate, serious, and material violation of any provision of the law relating to nominations or elections;

(2) whenever the person whose right *is* contested was not, at the time of the election, eligible to such office;

(3) on account of illegal votes or an erroneous or fraudulent count or canvass of votes."

Section 60. Section 23-4767, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1212 1977

"23-4767. **Hearing of contest.** The petitioner (contestant) and the contestee may appear and produce evidence at the hearing, but no person other than the petitioner and contestee *may* be made a party to the proceedings on such petition; and no person other than *the* parties and their attorneys *may* be heard thereon, except by order of the court. If more than one petition is pending or the election of more than one person is contested, the court may, in its discretion, order the cases to be heard together and may apportion the costs, disbursements, and attorney's fees between them and shall finally determine all questions of law and fact, save only that the judge may, in his discretion, impanel a jury to decide on questions of fact. In the case of nominations or elections, *other than for federal congressional offices,* the court shall *immediately* certify its decision to the board or official issuing certificates of nomination or election, *and the* board or official shall thereupon issue certificates of nomination or election to the person or persons entitled thereto by *the court's* decision. If judgment of ouster against a defendant *is* rendered, the nomination or office shall be by the judgment declared vacant, *except as provided in 23-4762,* and shall thereupon be filled by a new election or by appointment as may be provided by law regarding vacancies in such nomination or office."

Section 61. Section 23-4770, R.C.M. 1947, is amended to read as follows:

"23-4770. **Advancement of cases — dismissal — privileges of witnesses.** Proceedings under *Title 23 or Title 37* shall be advanced on the docket upon request of either party for speedy trial, but the court may postpone or continue *the* trial if *necessary*, and in case of such continuance or postponement, the court may impose costs in its discretion as a condition thereof. No petition *may* be dismissed without the consent of the county attorney, unless the same *is* dismissed by the court. No person *may* be excused from testifying or producing papers or documents on the ground that his testimony or the production of papers or documents will tend to criminate him; but no admission, evidence, or paper made or advanced or produced by such person *or any evidence that is the direct result of such evidence or information that he may have so given may* be offered or used against him in any civil or criminal prosecution, except in a prosecution for perjury committed in such testimony."

Section 62. Section 23-4785, R.C.M. 1947, is amended to read as follows:

"23-4785. **Creation of office.** (1) There is *a* commissioner of campaign finances and practices, who shall be appointed by a majority of a *four-member* selection committee which shall be comprised of the speaker of the house, the president of the senate, and the minority floor leaders of both houses of the Montana legislature. However, if a majority of the members of the selection committee cannot agree upon the selection of a commissioner within 30 days after *a vacancy occurs or a term expires,* the Montana supreme court shall appoint a fifth public member to the selection committee. The majority of the five members of the selection committee shall then select the commissioner.

HeinOnline -- 1977 vol. II 1213 1977

(2) The individual selected to serve as the commissioner of campaign finances and practices shall be appointed for a *5-year* term, but he *is* thereafter ineligible to serve as the commissioner of campaign finances and practices and *is* precluded from being a candidate for public office as defined in this act for a period of 5 years from the time that his term as commissioner expires.

(3) If for any reason a vacancy should occur in the position of commissioner, a successor shall be appointed within 30 days as provided in subsection (1) to serve out the unexpired term. An individual who is selected to serve out the unexpired term of a preceding commissioner *is* entitled to be reappointed for a *5-year* term as provided in subsection (1).

(4) The commissioner may be removed from office by impeachment as provided in 95-2801 and 95-2802. He may also be prosecuted by the appropriate county attorney for official misconduct as specified in 94-7-401.

(5) The commissioner of campaign finances and practices *is entitled to* an annual salary of $21,000, and the salary commission may recommend salary increases to the legislature.

(6) The office of the commissioner *is* attached to the office of the secretary of state for administrative purposes only, as specified in 82A-108, except that the provisions of subsections (1)(b), (1)(c), (2)(a), (2)(b), (2)(d), (2)(e), and (3)(a) of 82A-108 do not apply."

Section 63. Section 23-4786, R.C.M. 1947, is amended to read as follows:

"**23-4786. Powers and duties of the commissioner.** (1) The commissioner of campaign finances and practices shall be responsible for investigating all of the alleged violations of the election laws contained in Title 23 *or Title 37* and shall in conjunction with the county attorneys be responsible for enforcing all of the state's election laws.

(2) The commissioner shall select an appropriate staff to enforce the provisions of Title 23 *and Title 37*, and he *may* hire and fire all personnel under his supervision.

(3) The commissioner may hire or retain attorneys who are properly licensed to practice before the supreme court of the state of Montana to prosecute violations of Title 23 *or Title 37*. Any properly licensed attorney so retained or hired shall exercise the powers of a special attorney general, and he *may* prosecute, subject to the control and supervision of the commissioner and the provisions of 23-4788, any criminal or civil action arising out of a violation of any provision of Title 23 *or Title 37*. All prosecutions shall be brought in the state district court for the county in which a violation has occurred or in the district court for Lewis and Clark County. The authority to prosecute as prescribed by this section includes the authority to:

(a) institute proceedings for the arrest of persons charged with or reasonably suspected of criminal violations of Title 23 *or Title 37*;

(b) attend and give advice to a grand jury when cases involving criminal violations of Title 23 *or Title 37* are presented;

HeinOnline -- 1977 vol. II 1214 1977

(c) draw and file indictments, informations, and criminal complaints;

(d) prosecute all actions for the recovery of debts, fines, penalties, *or* forfeitures accruing to the state or county from persons convicted of violating Title 23 *or Title 37*; and

(e) do any other act necessary to successfully prosecute a violation of any provision of Title 23 *or Title 37*.

(4) The commissioner shall prescribe forms for statements and other information required to be filed pursuant to Title 23 *or Title 37* and furnish forms and appropriate information to persons required to file statements and information.

(5) The commissioner shall prepare and publish a manual prescribing a uniform system for accounts for use by persons required to file statements pursuant to Title 23 *or Title 37*.

(6) The commissioner shall accept and file any information voluntarily supplied that exceeds the requirements of Title 23 *or Title 37*.

(7) The commissioner shall prescribe the manner in which the county clerks and recorders shall receive, file, collate, and maintain reports filed with them under Title 23 *or Title 37*.

(8) The commissioner shall make statements and other information filed with his office available for public inspection and copying during regular office hours and make copying facilities available free of charge or at a charge not to exceed actual cost.

(9) The commissioner shall preserve statements and other information filed with his office for a period of 10 years from date of receipt.

(10) The commissioner shall prepare and publish summaries of the statements received.

(11) The commissioner shall prepare and publish such other reports as he *considers* appropriate.

(12) The commissioner shall provide for wide public dissemination of summaries and reports.

(13) The commissioner *may* investigate all statements filed pursuant to the provisions of Title 23 *or Title 37* and shall also investigate alleged failures to file any statement or the alleged falsification of any statement filed pursuant to the provisions of Title 23 *or Title 37*. Upon the submission of a written complaint by any individual, the commissioner shall also investigate any other alleged violation of the provisions of Title 23 *or Title 37* or any rule adopted pursuant thereto.

(14) The commissioner shall promulgate and publish rules to carry out the provisions of Title 23 *or Title 37* and shall promulgate such rules in conformance with the Montana Administrative Procedure Act.

(15) The commissioner shall at the close of each fiscal year report to the legislature and the governor concerning the action he has taken, including the names, salaries, and duties of all individuals in his employ

HeinOnline -- 1977 vol. II 1215 1977

and the money he has disbursed. The commissioner shall also make further reports on the matters within his jurisdiction as the legislature may prescribe and shall also make recommendations for further legislation as may appear desirable.

(16) The commissioner shall be responsible for preparing, administering, and allocating the budget for his office.

(17) The commissioner *may* inspect any records, accounts, or books that must be kept pursuant to the provisions of Title 23 *or Title 37*, which are held by any political committee or candidate so long as such inspection is made during reasonable office hours.

(18) The commissioner *may* issue orders of noncompliance as prescribed by 23-4787.

(19) The commissioner *may* exercise all of the powers conferred upon him by law in any jurisdiction or political subdivision of the state.

(20) After receiving the final campaign contribution and expenditure report filed as required by Title 23, the commissioner shall inform the secretary of state or the city or county clerk and recorder that each candidate who has been properly elected to any public office has filed his final contribution and expenditure report as specified in 23-4778.

(21) The commissioner *may* administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of Title 23 *or Title 37*."

Section 64. Section 23-4787, R.C.M. 1947, is amended to read as follows:

"**23-4787. Inspection of statements and issuance of orders of noncompliance.** (1) Each statement filed with the commissioner during an election or within 60 days thereafter shall be inspected within 10 days after the date upon which the statement is filed. If a person has not satisfied the provisions of Title 23 *or Title 37*, the commissioner shall immediately notify *the* person of the noncompliance. Such an order of noncompliance shall be issued when:

(a) upon examination of the official ballot, it appears that the person has failed to file a statement as required by law or that a statement filed by a person does not conform to law; or

(b) it is determined that a statement filed with the commissioner does not conform to the requirements of Title 23 *or Title 37*, or that a person has failed to file a statement required by law.

(2) If an order of noncompliance is issued during a campaign period or within 60 days after an election, a candidate or political committee shall submit the necessary information *within* 5 days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the

HeinOnline -- 1977 vol. II 1216 1977

commissioner *may* initiate a civil or criminal action pursuant to the procedures outlined in 23-4788.

(3) If an order of noncompliance is issued during any other period than that described in subsection (2), a candidate or political committee shall submit the necessary information within 10 days after receiving the notice of noncompliance. Upon a failure to submit the required information within the time specified, the appropriate county attorney or the commissioner shall initiate a civil or criminal action pursuant to the procedures outlined in 23-4788.

(4) A candidate or political treasurer aggrieved by the issuance of an order of noncompliance may seek judicial review in the district court of the county in which the candidate resides or the county in which the political committee has its headquarters. All petitions for judicial review filed pursuant to this *section* shall be expeditiously reviewed by the appropriate district court.

(5) Within 120 days after the date of each election, the commissioner shall examine and compare each statement or report filed with the commissioner pursuant to the provisions of Title 23 *or Title 37* to determine whether a statement or report conforms to the provisions of the law. The examination shall include a comparison of all reports and statements received by the commissioner pursuant to the requirements of Title 23 *or Title 37.* The commissioner may investigate the source and authenticity of any contribution or expenditure listed in any report or statement filed pursuant to Title 23 *or Title 37* or the alleged failure to report any contribution or expenditure required to be reported pursuant to Title 23 *or Title 37.*"

Section 65. Section 23-4788, R.C.M. 1947, is amended to read as follows:

"**23-4788. Consultation and cooperation with county attorney.** (1) *Whenever* the commissioner determines that there appears to be sufficient evidence to justify a civil or criminal prosecution, he shall notify the county attorney of the county in which the alleged violation occurred and shall arrange to transmit to the county attorney all information relevant to the alleged violation. If the county attorney fails to initiate the appropriate civil or criminal action within 30 days after he receives notification of the alleged violation, the commissioner may then initiate the appropriate legal action.

(2) A county attorney may at any time prior to the expiration of the *30-day* time period specified in subsection (1), waive his right to prosecute and thereby authorize the commissioner to initiate the appropriate civil or criminal action.

(3) The provisions of subsection (1) do not apply to a situation in which the alleged violation has been committed by the county attorney of a county. In this instance, the commissioner is authorized to directly prosecute any alleged violation of Title 23 *or Title 37.*

(4) If a prosecution is undertaken by the commissioner, all court costs associated with the prosecution shall be paid by the state of Montana,

HeinOnline -- 1977 vol. II 1217 1977

and all fines and forfeitures imposed pursuant to a prosecution by the commissioner shall be deposited in the state general fund.

(5) Nothing in this act *prevents* a county attorney from inspecting any records, accounts, or books which must be kept pursuant to the provisions of Title 23 *or Title 37* that are held by any political committee or candidate involved in an election to be held within the county. However, such inspections must be conducted during reasonable office hours.

(6) A county attorney *may* administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, correspondence, memoranda, bank account statements of a political committee or candidate, or other records which are relevant or material for the purpose of conducting any investigation pursuant to the provisions of Title 23 *or Title 37.*"

Section 66. Section 23-4794, R.C.M. 1947, is amended to read as follows:

"**23-4794. Secretary of state to furnish copies of certain election laws to appropriate officials.** The secretary of state shall, at the expense of the state, furnish the county clerk and the city and town clerks *with* copies of *the election laws relating to penalties, campaign practices, campaign finances, and contests.* The public official with whom a candidate files a declaration or certificate of nomination shall transmit *one of these copies* to the candidate. Such copies shall also be furnished to any other person required to file a statement. Upon his own information or at the written request of any voter, the secretary of state shall provide a copy to any other individual who may be a candidate or who may otherwise be required to make a statement required by *Title 23 or Title 37.*"

Section 67. Section 23-4795, R.C.M. 1947, is amended to read as follows:

"**23-4795. Limitation on contributions.** (1) Aggregate contributions for all elections in a campaign by an individual, *other than the candidate,* to a candidate and political committees organized on his behalf are limited as follows:

(a) for candidates filed jointly for the office of governor and lieutenant governor, not to exceed $1,500;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $750;

(c) for a candidate for public service *commissioner,* not to exceed $400;

(d) for a candidate for district court judge, not to exceed $300;

(e) for a candidate for the legislature, not to exceed $250; and

(f) for a candidate for city or county office, not to exceed $200.

(2) An independent committee means a committee which is not organized on behalf of a candidate or which is not controlled either directly or indirectly by a candidate or candidate's committee and which does not

HeinOnline -- 1977 vol. II 1218 1977

act jointly with a candidate or candidate's committee in conjunction with the making of expenditures or accepting contributions. For the purpose of limitation on contributions, political party organizations are independent committees. Aggregate contributions by an independent committee to a candidate and political committees organized on his behalf for all elections in a campaign are limited as follows:

(a) for candidates filed jointly for the offices of governor and lieutenant governor, not to exceed $8,000;

(b) for a candidate to be elected for state office in a statewide election, other than the candidates for governor and lieutenant governor, not to exceed $2,000;

(c) for a candidate for public service commissioner, not to exceed $1,000;

(d) for a candidate for district court judge, not to exceed $250;

(e) for a candidate for the legislature, not to exceed $250;

(f) for a candidate for city or county office, not to exceed $200.

(3) The limitations imposed by this section do not apply to public funds contributed to a candidate under any public financing provision of this code."

Section 68. Section 37-101, R.C.M. 1947, is amended to read as follows:

"**37-101. Form of petition for referendum.** The following shall be substantially the form of petition for the referendum to the people on any act passed by the *legislature* of the state of Montana:

WARNING

Any person signing any name other than his own to this petition or signing the same more than once for the same measure at one election or who is not, at the time of signing the same, a qualified elector of this state is punishable by a fine not exceeding $500, imprisonment in the *county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years.*

Petition for referendum.

To the Honorable ...., Secretary of State of the state of Montana:

We, the undersigned citizens and qualified electors of the state of Montana, respectfully order that Senate (House) Bill Number ...., entitled (title of act), passed by the .... *legislature* of the state of Montana, at the regular (special) session of *the legislature* be referred to the people of the state for their approval or rejection at the general or special election to be held on the .... day of ...., 19.., and each for himself says: I have personally signed this petition; I am a qualified elector of the state of Montana; and my residence, post-office address, legislative representative district number, and voting precinct are correctly written after my name.

Name ..... Residence .....

HeinOnline -- 1977 vol. II 1219 1977

Post-office address .....
If in city, street and number .....
Legislative representative district number .....
Voting precinct .....

(Here follow numbered lines for signatures.)"

Section 69. Section 37-102, R.C.M. 1947, is amended to read as follows:

"**37-102. Form of petition for initiative.** *(1)* The following shall be substantially the form of petition for any law of the state of Montana proposed by the initiative:

WARNING

Any person signing any name other than his own to this petition or signing the same more than once for the same measure at one election or who is not, at the time of signing the same, a qualified elector of this state is punishable by a fine not exceeding $500, imprisonment in the *county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years.*

Petition for Initiative.

To the Honorable ...., Secretary of State of the *state* of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully demand that the following proposed law be submitted to the qualified electors of the state of Montana, for their approval or rejection, at the general or special election to be held on the .... day of ...., 19.., and each for himself says:

I have personally signed this petition, and my residence, post-office address, legislative representative district, and voting precinct are correctly written after my name.

Name ..... Residence.....
Post-office address .....
If in city, street and number .....
Legislative representative district.....
Voting precinct.....

(Numbered lines for names on each sheet.)

(2) Every sheet for petitioner's signature shall be attached to a full and correct copy of the title and text of the measure so proposed by initiative petition; but *the* petition may be filed with the secretary of state in numbered sections, for convenience in handling, and referendum petitions may be filed in sections in like manner."

Section 70. Section 37-201, R.C.M. 1947, is amended to read as follows:

"**37-201. Form for people's initiative petition on the question of calling a constitutional convention.** The following shall be substantially the form for the people's initiative petition on the question of calling a constitutional convention:

HeinOnline -- 1977 vol. II 1220 1977

WARNING

Any person signing any name other than his own to this petition or signing the same more than once for the same measure at one election or who is not, at the time of signing the same, a qualified elector of this state is punishable by a fine not exceeding $500, imprisonment in the *county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years.*

PEOPLE'S INITIATIVE PETITION
ON THE QUESTION OF CALLING
A CONSTITUTIONAL CONVENTION

To the Honorable ...., Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully request that the question of whether there shall be an unlimited convention to revise, alter, or amend the constitution be submitted to the qualified electors of the state of Montana for their approval or rejection at the general election to be held on the .... day of ...., 19.., and each qualified elector says for himself:

I have personally signed this petition, and my residence, *post-office* address, and voting precinct are correctly written after my name.

Name ..... Residence .....
Post-office Address .....
If in city, street and number .....
Voting precinct .... Representative Dist. No. .....
(Each sheet shall be in substantially the form above and contain numbered lines for names.)"

Section 71. Section 37-202, R.C.M. 1947, is amended to read as follows:

"37-202. **Form for people's initiative petition for constitutional amendment.** The following shall be substantially the form for people's initiative petition for constitutional amendment:

WARNING

Any person signing any name other than his own to this petition or signing the same more than once for the same measure at one election, or who is not, at the time of signing the same, a qualified elector of this state is punishable by a fine not exceeding $500, imprisonment in the *county jail for a term not to exceed 6 months, or both, or imprisonment in the state prison for a term not to exceed 10 years.*

PEOPLE'S INITIATIVE PETITION
FOR CONSTITUTIONAL AMENDMENT

To the Honorable ...., Secretary of State of the state of Montana:

We, the undersigned qualified electors of the state of Montana, respectfully request that the following proposed constitutional amendment be submitted to the qualified electors of the state of Montana, for their approval or rejection, at the statewide election to be held on the .... day of ...., 19.., and each qualified elector says for himself:

HeinOnline -- 1977 vol. II 1221 1977

I have personally signed this petition, and my residence, *post-office* address, and voting precinct are correctly written after my name.

Name ..... Residence .....
Post-office Address .....
If in city, street and number .....
Voting precinct .... Representative Dist. No. .....
(Each sheet for petitioner's signature shall be in substantially the form above and contain numbered lines for names. A full and correct copy of the title and text of the proposed constitutional amendment shall be included in or attached to each sheet of the petition.)"

Section 72. Section 37-103, R.C.M. 1947, is amended to read as follows:

"**37-103. County clerk to verify signatures.** *(1)* The county clerk of each county in which any petition *for initiative or referendum is* signed shall compare the signatures of the electors signing the same with their signatures on the registration books and blanks on file in his office, for the preceding general election, and shall thereupon attach to the sheets of *the* petition containing *the* signatures his certificate to the secretary of state, substantially as follows:

State of Montana, County of ....

To the Honorable ...., Secretary of State for Montana:

I, ..., county clerk of the county of ...., hereby certify that I have compared the signatures on (number of sheets) of the referendum (initiative) petition, attached hereto, with the signatures of said electors as they appear on the registration books and blanks in my office; and I *certify* that the signatures of ..... *(number)* signers are genuine *and are marked thus on the petition* ....., and I further certify that ..... *(number) signers marked thus on the petition* ..... do not appear on the registration books and blanks in my office.

Signed: .....

....., County Clerk.

(Seal of Office)

By .....
Deputy .....

(2) Each certificate *is* prima facie evidence of the facts stated therein and of the qualifications of the electors whose signatures are thus certified to be genuine, and the secretary of state shall consider and count only *those* signatures on *the* petitions as *are* certified by *the* county clerks to be genuine. *The* secretary of state may consider and count such of the remaining signatures as may be proved to be genuine *whenever* the parties so signing were legally qualified to sign such petitions, *but* the official certificate of a notary public of the county in which the signer resides *is* required as to the fact for each of *the* last-named signatures. *The* secretary of state shall further compare and verify the official signatures and seals of all notaries so certifying with their signatures and seals filed in his office. Such notaries' certificate shall be substantially in the following form:

HeinOnline -- 1977 vol. II 1222 1977

State of Montana, ss.

County of .....

I, ..., a duly qualified and acting notary public in and for the above-named county and state, do hereby certify: that I am personally acquainted with each of the following named electors whose signatures are affixed to the annexed petition, and I know of my own knowledge that they are qualified electors of the state of Montana and of the county, legislative representative districts, and precincts written after their several names in the annexed petition, and that their residence and post-office address is correctly stated therein, to wit: (Names of such electors.)

In Testimony Whereof, I have hereunto set my hand and official seal this .... day of ...., 19...

Notary Public, in and for .... County,
State of Montana.

(3) The county clerk *may* not retain in his possession any such petition or any part thereof for a longer period than *2* days for the first *200* signatures thereon and *1* additional day for each *200* additional signatures or fraction thereof on the sheets presented to him, and at the expiration of such time he shall forward the same to the secretary of state, with his certificate attached thereto, as above provided. The forms herein given are not mandatory and if substantially followed in any petition, *will* be sufficient, disregarding clerical and technical errors."

Section 73. Section 37-104.1, R.C.M. 1947, is amended to read as follows:

"**37-104.1. Statements by attorney general and secretary of state.** The secretary of state prior to certifying and numbering of *a* referendum, initiative, or constitutional amendment to the several counties of Montana as provided by 37-105 shall transmit a copy of the measure to be voted upon to the attorney general. Within 10 days after the measure is filed with him, the attorney general shall provide and return to the secretary of state a statement in ordinary plain language explaining in not more than 100 words the general purpose of the measure submitted. In the case of referendum measures, the secretary of state shall prepare a statement setting forth the vote by which the referendum passed each house of the *legislature.* The statement by the secretary of state shall precede the attorney general's statement on the printed form. The statement as prepared by the attorney general, and the statement of the secretary of state for referendum measures only, shall be in addition to the legislative title of the measure. *On the printing of the ballot* the statement of the secretary of state for referendum measures only and the statement of the attorney general shall precede the other title of the measure. In providing the statement, the attorney general shall give a true and impartial statement of the purpose of the measure in plain, easily understood language and in such manner as *is* not an argument or likely to create prejudice either for or against the measure."

Section 74. There is a new R.C.M. section numbered 37-111 that reads as follows:

HeinOnline -- 1977 vol. II 1223 1977

37-111. Informational pamphlets. (1) Whenever a ballot issue is to be submitted to the people, the secretary of state shall have printed pamphlets containing the information specified in 37-107.

(2) Whenever more than one ballot issue is to be voted on at a single election, the secretary of state may publish a single pamphlet for all of the ballot issues.

(3) The pamphlets are to be distributed as provided in 37-107.

Section 75. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 76. **Repealer.** Sections 23-3021, 23-3030, and 23-4404, R.C.M. 1947, are repealed.

Approved April 14, 1977.

CHAPTER NO. 366

AN ACT TO CREATE AN HISTORIC RECORDS NETWORK BETWEEN THE MONTANA HISTORICAL SOCIETY AND THE MONTANA UNIVERSITY SYSTEM; AMENDING SECTIONS 44-517 AND 44-523, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-517, R.C.M. 1947, is amended to read as follows:

"**44-517. Definition of terms.** As used in this act:

(1) "Society" means the Montana historical society and includes:

(a) *the* historical and miscellaneous libraries and their contents;

(b) *any* museums and art galleries and their contents acquired by the trustees;

(c) *any* historical places, sites, or monuments acquired or developed by the society;

(d) *any* divisions, departments, and activities operated in conjunction with the historical library as are established by the trustees; and

(e) *any* books, papers, maps, charts, manuscripts, photographs, writings, records, objects of history and art, paintings, engravings, relics, collections of artifacts and minerals, furniture, or fixtures acquired by the trustees.

(2) "Trustees" means the board of trustees of the Montana historical society.

(3) "Committee" means the executive committee of the board of trustees of the Montana historical society.

HeinOnline -- 1977 vol. II 1224 1977

(4) "Historic records" means manuscripts, papers, maps, charts, journals, diaries, photographs, business records, voice recordings, films, video tapes, or other records illustrative of the history of Montana in particular, and generally of the region.

(5) "Historic records network" means an agreement between the Montana historical society and the Montana university system to facilitate exchange and cooperation in the use, acquisition, and preservation of historic records."

Section 2. Section 44-523, R.C.M. 1947, is amended to read as follows:

"44-523. Powers and duties of trustees. The powers and duties of the trustees are as follows:

(1) *to* elect annually from among their number a president, a vice-president, and a secretary*;*

(2) *to* adopt bylaws for their own government and to make rules and regulations, not inconsistent with law, for the proper administration of the society in the interests of preserving the rich heritage of this state and its people*;*

(3) *to* appoint a director, fix his salary, and prescribe his duties and responsibilities*;*

(4) *to* create such classes of memberships in the society as they deem desirable, to determine the qualifications for any class of membership, and to set the fees to be paid for such memberships*;*

(5) *to* sell or exchange publications and other museum or art objects and use the money arising from such sales for the operation of the society and for the acquisition of historical materials and objects of art*;*

(6) *to* sell or exchange surplus or duplicate books, surplus museum or art objects or artifacts not pertinent to the region encompassed by the Montana historical society mission and to use the money arising from such sales exclusively for acquisitions of library, art, and museum artifacts*;*

(7) *to* see that the collections and properties of the society are maintained in good order and repair*;*

(8) *to* report to the governor and the legislature biennially. The report shall include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.

(9) *to* accept, receive and administer in the name of the society, any gifts, donations, properties, securities, bequests and legacies that may be made to the society. Moneys received by donation, gift, bequest or legacy, unless otherwise provided by the donor, shall be deposited in the state treasury and used for the general operation of the society.

(10) *to* collect, assemble, preserve, and display where appropriate, all obtainable books, pamphlets, maps, charts, manuscripts, journals, diaries, papers, business records, paintings, drawings, engravings, photographs, statuary, models, relics, and all other materials illustrative of the history

HeinOnline -- 1977 vol. II 1225 1977

of Montana in particular, and generally of the Pacific Northwest, Northern Rocky Mountain and Northern Great Plains regions, and of the United States of America when pertinent; to procure from pioneers, early settlers, and others, narratives of the events relative to the early settlement of Montana, the Indian occupancy, Indian and other wars, overland travel and immigration to the territories of the west, and all other related documents of Montana's history, development and society; to gather contemporary information, specimens, and all other materials which exhibit faithfully the distinctive historical and contemporary characteristics of the area with particular attention to Indian, military and pioneer artifacts and implements; to collect and preserve such natural history objects as fossils, plants, minerals and animals; to collect and preserve books, maps, manuscripts, and other materials as will tend to facilitate historical, scientific, and antiquarian research; to promote the study of Montana history by lectures and publications; to generally foster and encourage the fine arts and cultural activities in Montana; to receive for and on behalf of the state by donation or otherwise, art objects of any kind and description and to exhibit and circulate such objects in Montana and elsewhere; and to microfilm papers or documents in danger of disappearance or injury;

(11) to coordinate the administration of the historic records network established in 44-523.1."

Section 3. There is a new R.C.M. section numbered 44-523.1 that reads as follows:

44-523.1. Creation and purpose of historic records network. (1) The trustees of the Montana historical society shall establish and coordinate the administration of an historic records network.

(2) The staff of the society shall aid staff archivists and librarians at the university units in their work of acquiring, cataloguing, processing, microfilming, and preserving historic records.

Section 4. There is a new R.C.M. section numbered 44-523.2 that reads as follows:

44-523.2. Funding. The historic records network shall operate within the budgets of the historical society and the university system.

Approved April 14, 1977.

CHAPTER NO. 367

AN ACT CONCERNING PIRACY OF SOUND RECORDINGS AND LIVE PERFORMANCES AND THE TRANSFER OF RECORDED SOUND WITHOUT PERMISSION OF THE LAWFUL OWNER; PROVIDING PENALTIES FOR VIOLATIONS AND AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 85-601 that reads as follows:

HeinOnline -- 1977 vol. II 1226 1977

85-601. Definitions. As used in this act, the following definitions apply:

(1) "Person" means any individual, firm, partnership, corporation, or association.

(2) "Owner" means the person who owns the original fixation of sounds embodied in a master phonograph record, master disc, master tape, master film, or other device used for reproducing sounds on phonograph records, discs, tapes, films, or other articles upon which sound is recorded and from which the transferred recorded sounds are directly derived.

(3) "Performer" means the person or persons appearing in a performance.

(4) "Sound recording" means a phonograph record, disc, wire, tape, film, or other article on which sound is recorded.

Section 2. There is a new R.C.M. section numbered 85-602 that reads as follows:

85-602. Unauthorized manufacture of sound recordings prohibited. (1) No person may knowingly, without the consent of the owner, transfer or cause to be transferred any sounds recorded on a sound recording with the intent to sell or cause to be sold for profit any sound recordings onto which such sounds are transferred or to use such sound recordings to promote the sale of any product.

(2) No person may knowingly and without the consent of the performer transfer or cause to be transferred to any sound recording any performance, whether live before an audience or transmitted by wire or through the air by radio or television, with the intent to sell or cause to be sold for profit or to be used to promote the sale of any product such sound recording onto which such performance is so transferred.

(3) A person convicted of violating this section shall be imprisoned in the state prison for any term not to exceed 10 years.

Section 3. There is a new R.C.M. section numbered 85-603 that reads as follows:

85-603. Sale of unauthorized sound recordings prohibited. (1) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording that has been produced without the consent of the owner. Possession of 5 or more duplicate copies or 20 or more individual copies of such sound recording produced without the consent of the owner creates a rebuttable presumption that the copies are intended for sale or distribution in violation of this section.

(2) No person may knowingly, or with reasonable grounds to know, advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recordings embodying any performance, whether live before an audience or transmitted by wire or through the air by radio or television, without the prior express written consent of the performer.

HeinOnline -- 1977 vol. II 1227 1977

(3) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

Section 4. There is a new R.C.M. section numbered 85-604 that reads as follows:

85-604. Sale of sound recording without name of manufacturer and name of performer or group prohibited. (1) No person may advertise, offer for sale or resale, sell or resell, or distribute or possess for such purposes any sound recording unless the outside cover, box, or jacket clearly and conspicuously discloses the name and address of its manufacturer and the name of the performer actually producing the sounds recorded.

(2) A person convicted of violating this section shall be fined no more than $500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

Section 5. There is a new R.C.M. section numbered 85-605 that reads as follows:

85-605. Forfeiture. Any article produced in violation of 85-602, 85-603, or 85-604 and any equipment used to produce it are subject to forfeiture to and destruction by the appropriate law enforcement agency.

Section 6. There is a new R.C.M. section numbered 85-606 that reads as follows:

85-606. Exceptions. This act does not apply to:

(1) any broadcaster who, in connection with a radio, television, or cable broadcast transmission or for the purpose of archival preservation, transfers any sounds recorded on a sound recording;

(2) any person who transfers such sounds in the home for personal use, without compensation; or

(3) any person who transfers a single copy of such sounds for bona fide educational purposes, provided that no person directly or indirectly derives any pecuniary gain from such transfer.

Section 7. There is a new R.C.M. section numbered 85-607 that reads as follows:

85-607. Civil litigation. This act neither enlarges nor diminishes the rights of parties in civil litigation.

Section 8. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 9. **Effective date.** This act is effective on its passage and approval.

Approved April 14, 1977.

HeinOnline -- 1977 vol. II 1228 1977

CHAPTER NO. 368

AN ACT PROVIDING FOR QUALIFICATION OF MILITARY SERVICE FOR POLICE RETIREMENT PURPOSES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-1842.1 that reads as follows:

11-1842.1. Election to qualify previous military service. (1) A member with 15 years or more of service may at any time prior to his retirement make a written election with the board to qualify all or any portion of his active service in the armed forces of the United States for the purpose of calculating retirement benefits, up to a maximum of 5 years if he is not otherwise eligible to receive credit. To qualify this service he must contribute to the account the actuarial cost of granting the service to be determined by the board based on his compensation and normal contribution rate as of his 16th year and as many succeeding years as are required to qualify this service with interest from the date he becomes eligible for this benefit to the date he contributes. He may not qualify more of his military service than he has service in excess of 15 years. Military service purchased under this section may not be used in the determination of eligibility for a service retirement requiring a minimum of 20 years service.

(2) If a member has retired from active duty in the armed forces of the United States with normal service retirement benefits, he may not qualify his military service under subsection (1). However, a member who is serving or has served in the military reserves with the expectation of receiving a military service pension may qualify his active military service under subsection (1) if his active duty in the armed forces of the United States is not more than 25% of the total of all his years of military service, including reserve and active duty time.

Approved April 14, 1977.

CHAPTER NO. 369

AN ACT TO DELETE THE REQUIREMENT THAT A REGISTRAR MUST NOTIFY ELECTORS WHOSE VOTING REGISTRATION IS BEING CANCELED; AMENDING SECTION 23-3013, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-3013, R.C.M. 1947, is amended to read as follows:

"23-3013. Cancellation of registry for failure to vote — reregistration. (1) Except as provided in subsection (3) of this section, within sixty

(60) days after every general election in which a president is elected, the registrar shall:

(a) Compare the electors who have voted in each precinct, as shown by the official pollbooks, with the official register of each precinct;

(b) Remove the registry cards of all electors who have failed to vote, mark each card "canceled," and place canceled cards for the entire county in alphabetical order in the "canceled file".

(2) An elector whose card is removed and canceled may register in the same manner as his original registration was made.

(3) The registration of an elector who actually votes by absentee ballot shall not be canceled if his ballot is received and rejected by the registrar within ten (10) days succeeding the election.

(4) When the registrar has completed cancellation of voters as provided in this section, a notice of cancellation shall be published once a week for two weeks in a newspaper of general circulation in the county. The notice shall be run R.O.P. in a display advertisement and shall be in a form prescribed by the secretary of state."

Approved April 14, 1977.

CHAPTER NO. 370

AN ACT PROVIDING FOR THE DUTIES OF PERSONAL REPRESENTATIVES OR SPECIAL ADMINISTRATORS IN ESTATES INVOLVING ALIEN HEIRS AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 91A-2-112 that reads as follows:

91A-2-112. Duties of personal representatives and special administrators in estates involving alien heirs. In any estate where money or property does not vest in any alien person because of the provisions of 91A-2-111, it shall be the duty of the personal representative or special administrator, within 30 days of having completed and filed the inventory and statement of value, to furnish the attorney general with the following written information and file a copy in the probate proceedings:

(1) the names and addresses of the alien heirs, devisees, legatees, or beneficiaries in the estate;

(2) the share or proportionate share of each of the alien heirs;

(3) the stated value of the entire estate.

Section 2. This act shall be effective upon passage and approval.

Approved April 14, 1977.

HeinOnline -- 1977 vol. II 1230 1977

Note: Section 1 was erroneously enrolled as 91A-2-112. This section will appear in R.C.M. as 91A-2-111.1.

CHAPTER NO. 371

AN ACT TO AUTHORIZE THE DEPARTMENT OF ADMINISTRATION TO PRACTICE ARCHITECTURE ON ALL STATE BUILDING PROJECTS UP TO $25,000 IN VALUE; AMENDING SECTION 82-3320, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-3320, R.C.M. 1947, is amended to read as follows:

"**82-3320. Policy regarding practice of architecture — preparation of working drawings by department limited.** (1) It is the policy of the state not to engage in the practice of architecture; however, this policy shall not be construed as prohibiting the department of administration from

(a) Engaging in pre-planning functions necessary to prepare a building program for presentation to the legislative assembly,

(b) Supervising construction as provided in section 82-3318, subsection (7), or

(c) Preparing working drawings for minor projects.

(2) The department of administration is expressly prohibited from preparing working drawings for the construction of a building, when the total cost of the construction will exceed *$25,000.*"

Approved April 14, 1977.

CHAPTER NO. 372

AN ACT TO INCREASE THE AMOUNT OF MONEY DEPOSITED TO THE STATE PARK ACCOUNT IN THE EARMARKED REVENUE FUND FROM THE GASOLINE DEALERS' LICENSE TAX; AMENDING SECTION 32-2601, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2601, R.C.M. 1947, is amended to read as follows:

"**32-2601. Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund,

HeinOnline -- 1977 vol. II 1231 1977

shall be used and expended as provided in this section. So much of that money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by section 79-410. Subject to that provision, *9/10 of 1%* of all money shall be deposited in the state park account in the earmarked revenue fund. All of the remainder of the money shall be used and expended by the department of highways on the federal-aid highways in this state selected and designated under the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to the federal highway system of federal-aid roads where the county seat is not on the system, and on the other roads which have been or may be authorized by the laws of Montana, and for collection of the license taxes and the enforcement of the Montana highway code, under Article VIII, section 6 of the constitution of this state. The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with sections 32-2605 through 32-2607; nothing in this act conflicts with those federal-aid highway acts and the rules by which they are administered. The department may enter into cooperative agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(2) Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed, except for the payment of refunds under section 84-1855. The legislature hereby finds as a fact that of all the fuel sold in the state for consumption in internal combustion engines, not less than *9/10 of 1%* is used for propelling boats on waterways of this state."

Approved April 14, 1977.

CHAPTER NO. 373

AN ACT PROVIDING FOR THE EDITING AND PUBLISHING OF THE PROCEEDINGS OF THE 1972 CONSTITUTIONAL CONVENTION AND CREATING A THREE-MEMBER COMMITTEE TO SUPERVISE THE EDITING AND PUBLISHING; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Creation of supervisory committee.** (1) The legislative council shall appoint a three-member committee to supervise the staff of the legislative council in the editing and publishing of the proceedings of the 1972 constitutional convention.

HeinOnline -- 1977 vol. II 1232 1977

(2) The committee shall consist of one senator, one representative, and one constitutional convention delegate.

(3) The committee shall be appointed within 10 days of passage and approval of this act.

(4) While engaged in committee business, members of the committee are entitled to:

(a) a mileage allowance as provided in 59-801;

(b) expenses as provided in 59-538 and 59-539; and

(c) a salary equal to one-fourth the daily rate of a grade 8, step 1, classified state employee, for every 6 hours or fraction thereof spent away from home.

Section 2. **Committee duties.** The committee will determine editorial guidelines and the format of publication and will prepare a style manual to be followed in the preparation for publication.

Section 3. **Vacancy on committee.** (1) Whenever a vacancy occurs on the committee, the legislative council shall appoint a person to fill the vacancy so as to maintain the composition of the committee as specified in subsection (2) of section 1.

(2) A vacancy exists whenever the senator member of the committee ceases to be a senator or the representative member ceases to be a representative or whenever a member is unable to perform the functions required by committee membership.

Section 4. **Distribution of copies.** (1) The committee shall have printed and delivered to the executive director of the legislative council 1,000 hard-bound copies of the proceedings of the 1972 constitutional convention.

(2) Of these 1,000 copies, 60 copies are to be distributed by the legislative council, free of charge, in the following manner:

(a) law library — 4 copies;

(b) state library — 10 copies;

(c) office of the governor — 1 copy;

(d) office of the lieutenant governor — 1 copy;

(e) office of the secretary of state — 1 copy;

(f) office of the attorney general — 1 copy;

(g) office of the superintendent of public instruction — 1 copy;

(h) office of the state auditor — 1 copy;

(i) supreme court — 5 copies;

(j) each state department — 1 copy;

(k) Montana historical society — 5 copies;

HeinOnline -- 1977 vol. II 1233 1977

(l) office of the legislative council — 10 copies;

(3) The remaining copies are to be sold to the public at a price to be determined by the committee which will approximate preparation and publication costs.

Section 5. **Committee termination.** Upon delivery of the 1,000 copies to the executive director of the legislative council, the committee terminates.

Section 6. **Effective date.** This bill is effective immediately upon passage and approval.

Approved April 15, 1977.

CHAPTER NO. 374

AN ACT TO AMEND SECTIONS 84-4939 AND 84-4940, R.C.M. 1947, RELATING TO ESTIMATED TAX BY SPECIFYING NO PENALTY PROVISIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4939, R.C.M. 1947, is amended to read as follows:

"**84-4939. Declaration of estimated tax.** (1) Every individual, except farmers, ranchers or stockmen, shall, at the time prescribed in subsection (3) of this section, make a declaration of his estimated tax for the taxable year, if his net income from sources other than wages, salaries, bonus, or other emolument can reasonably be expected to equal or exceed his net income from wages, salaries, bonus or other emolument, which wages, salaries, bonus or other emolument are subject to withholding.

(2) In the declaration required under subsection (1) of this section the individual shall state:

(a) The amount which he estimates as the amount of tax under section 84-4902 for the taxable year;

(b) The amount which he estimates will be withheld from wages paid by his employer if said individual is an employee.

(c) The excess of the amount estimated under subparagraph (a) over the amount estimated under subparagraph (b) which excess for purposes of this section shall be considered the estimated tax for the taxable year.

(d) Such other information as may be prescribed in rules and regulations promulgated by the department.

(3) The declaration required under subsection (1) of this section shall be filed with the department on or before April fifteenth of the taxable year except that if the requirements of subsection (1) of this section are first met:

HeinOnline -- 1977 vol. II 1234 1977

(a) After April first and before October first of the taxable year the declaration shall be filed on or before October fifteenth of the taxable year.

(b) After October first of the taxable year the declaration shall be filed on or before February fifteenth of the succeeding taxable year.

Provided that the declaration required to be filed during 1955 may be filed not later than October 15, 1955 if the requirements of subsection (1) of this section are fulfilled at any time prior to October 2, 1955.

(4) An individual may make amendments of a declaration filed during the taxable year under subsection (3) of this section under rules and regulations prescribed by the department.

(5) If on or before February fifteenth of the succeeding taxable year, the taxpayer files a return for the taxable year for which the declaration is required and pays in full the amount computed on their return as payable then under rules and regulations prescribed by the department.

(a) If the declaration is not required to be filed during the taxable year but is required to be filed on or before such February fifteenth, such return shall for the purposes of this section be considered as such declaration; and

(b) If the tax shown on the return is greater than the estimated tax shown in a declaration previously made or in the last amendments thereof such return shall for the purposes of this section be considered as the amendment of the declaration permitted by subsection (4) of this section to be filed on or before such February fifteenth.

(6) The department shall promulgate rules and regulations governing reasonable extensions of time for filing declarations and paying the estimated tax, except in the case of taxpayers who are abroad, and no such extension shall be for more than six (6) months.

(7) If the taxpayer is unable to make his own declaration, the declaration shall be made by a duly authorized agent or by the guardian or other person charged with the care of the person or property of such taxpayer.

(8) Any individual who fails to file a declaration of estimated tax as required by this section is not subject to the penalties set forth in 84-4924."

Section 2. Section 84-4940, R.C.M. 1947, is amended to read as follows:

"**84-4940. Installment payments of estimated tax.** (1) Estimated tax provided for in section 84-4939 shall be paid as follows:

(a) If the declaration is filed on or before April fifteenth of the taxable year the estimated tax shall be paid in two (2) equal installments. The first installment shall be paid at the time of filing of the declaration and the second or last installment shall be paid on October fifteenth of the taxable year:

(b) If the declaration is filed after April fifteenth and not after October fifteenth of the taxable year and is not required by subsection (3) of

HeinOnline -- 1977 vol. II 1235 1977

section 84-4939 to be filed on or before April fifteenth of the taxable year the estimated tax shall be paid at the time of filing of the declaration;

(c) If the declaration is filed after October fifteenth of the taxable year and is not required by subsection (3) of section 84-4939 to be filed on or before October fifteenth of the taxable year, the estimated tax shall be paid in full at the time of filing of the declaration.

(d) If the declaration is filed after the time prescribed in section 84-4939 including cases where extensions of time have been granted paragraphs (b) and (c) of this subsection shall not apply and there shall be paid at the time of such filing all installments of estimated tax which would have been payable on or before such time if the declaration had been filed within the time prescribed in subsection (3) of section 84-4939 and the remaining installments shall be paid at the times at which and in the amounts in which they would have been payable if the declaration had been so filed. Provided that payments required under this section for purposes of the taxable year 1955 shall be limited to fifty per cent (50%) of the total estimated tax for 1955.

(2) If any amendment of a declaration is filed after April fifteenth and before October fifteenth of the taxable year the remaining installment, if any, shall be ratably increased or decreased as the case may be; to reflect the respective increase or decrease in the estimated tax by reason of such amendment and if any amendment is made after October fifteenth of the taxable year any increase in the estimated tax by reason thereof shall be paid at the time of making such amendment.

(3) At the election of the individual any installment of the estimated tax may be paid prior to the date prescribed for its payment.

(4) Payment of the estimated tax or any installment thereof shall be considered payment on account of the tax for the taxable year.

(5) The application of this section of this act to taxable years of less than twelve (12) months shall be as prescribed in the rules and regulations promulgated by the department.

(6) In the application of this section of this act to taxpayers reporting income on a fiscal year basis there shall be substituted for the dates specified therein the months corresponding thereto.

(7) An individual who fails to pay an estimated tax as required by this section is not subject to the penalties set forth in 84-4924."

Approved April 15, 1977.

CHAPTER NO. 375

AN ACT TO REPEAL SECTIONS 84-6301 THROUGH 84-6308, R.C.M. 1947, RELATING TO THE IMPORTER'S TAX ON GASOLINE PURCHASED OUTSIDE THE STATE AND USED IN THE STATE.

HeinOnline -- 1977 vol. II 1236 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 84-6301 through 84-6308, R.C.M. 1947, are repealed.

Approved April 15, 1977.

CHAPTER NO. 376

AN ACT TO PROVIDE FINANCIAL SUPPORT FOR THE MONTANA UNIVERSITY SYSTEM.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Tax levy for first year.** For the year 1977 there is levied upon the taxable value of all real and personal property in the state of Montana, subject to taxation for the year 1977, 6 mills or so much thereof as is necessary to raise the amount appropriated by the legislature from the earmarked revenue fund for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to board of regents' supervision.

Section 2. **Tax levy for second year.** For the year 1978 there is levied upon the taxable value of all real and personal property in the state of Montana, subject to taxation for the year 1978, 6 mills or so much thereof as is necessary to raise the amount appropriated by the legislature from the earmarked revenue fund for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to board of regents' supervision.

Section 3. **Purpose of tax levies.** The levies made by sections 1 and 2 of this act are for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to board of regents' supervision, as provided in referendum measure No. 65 passed by vote of the people at the general election held November 5, 1968; and the funds raised therefrom shall be deposited in the earmarked revenue fund.

Approved April 15, 1977.

CHAPTER NO. 377

AN ACT TO ALLOW WAIVER OF FILING OF A MONTHLY SPECIAL FUEL USER'S TAX RETURN FOR A USER WHO ESTABLISHES THAT HIS ANNUAL TAX LIABILITY WILL BE $100 OR LESS; AMENDING SECTION 84-1835, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1835, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1237 1977

"**84-1835. Returns and payments.** (a) Returns: For the purpose of determining the amount of his liability for the tax herein imposed, each special fuel dealer and each special fuel user shall file with the department, on forms prescribed by said department, a monthly tax return.

Upon annual application the department shall waive the filing of a monthly tax return of any special fuel user who establishes that such user's *annual* tax liability is or will be *$100* or less.

Such user shall make an annual report and return to the department, on forms prescribed by said department on or before the 25th day of January of each year hereafter. Should the department determine that a user filing annual returns as herein provided is delinquent in making reports and payments, it shall require such person to file monthly returns as herein provided. Such return, annual or monthly, shall contain a declaration by the person making the same, to the effect that the statements contained are true and are made under penalties of perjury, which declarations shall have the same force and effect as a verification. The return shall show such information as the department may reasonably require for the proper administration and enforcement of this act; provided, however, that if a special fuel dealer or user is also a wholesale distributor of special fuel at a location where special fuel is delivered into the supply tank of a motor vehicle, and if separate storage is provided thereat from which special fuel is delivered or placed into fuel supply tanks of motor vehicles, the monthly return to the department need not include inventory control data covering bulk storage from which wholesale distribution of special fuel is made. The special fuel dealer or special fuel user shall file the return on or before the twenty-fifth (25th) day of the next succeeding calendar month following the monthly period to which it relates; provided, however, that for good cause the department may grant a taxpayer a reasonable extension of time for filing, but not to exceed thirty (30) days.

Any claim, statement, remittance, or other document which is transmitted to this state through the United States mail, shall be deemed filed and received by this state on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. Any claim, statement, remittance or other document which is mailed but not received by this state or where received with a cancellation mark that is illegible, erroneous, or omitted, shall be deemed filed and received on the date mailed if the sender establishes by competent evidence that the claim, statement, remittance, or other document was deposited in the United States mail on or before the date due for filing. In cases of such nonreceipt of a claim, statement, remittance, or other document, the sender must file with the state a duplicate within thirty (30) days after written notification is given to the sender by the state of its nonreceipt of such claim, statement, remittance, or other document.

If any claim, statement, remittance or other document is sent by United States registered mail, certified mail or certificate of mailing, a record authenticated by the United States Post Office of such registration, certification or certificate shall be considered competent evidence that the report, claim, tax return, statement, remittance or other document was

HeinOnline -- 1977 vol. II 1238 1977

mailed to the addressee, and the date of registration, certification or certificate shall be deemed the postmarked date.

If the final filing date falls on a Saturday, Sunday or legal holiday, the next secular or business day shall be the final filing date. Such reports shall be considered filed or received on the date or as provided in this chapter.

(b) Computation: The tax imposed by this act shall be computed as follows: (1) with respect to special fuel used by the seller thereof as a special fuel dealer, by multiplying the tax rate per gallon provided in this act by the number of gallons of special fuel delivered or placed by him into the supply tank or tanks of a motor vehicle, (2) with respect to special fuel as to which the tax has not been paid to a special fuel dealer in this state and which has been consumed by the purchaser thereof as a special fuel user, by multiplying the tax rate per gallon provided in this act by the number of gallons of special fuel consumed by him in the propulsion of motor vehicles on the highways of this state.

(c) Payments: The monthly tax return shall be accompanied by remittance covering the tax due hereunder on account of the use as defined in 84-1831(f) of special fuels during the preceding month.

(d) Refusal or failure to file return or pay tax when due: In case of any special fuel dealer or special fuel user who refuses or fails to file a return required by this act within the time prescribed by subsection (a) of this section, there is hereby imposed a penalty of twenty-five dollars ($25) or a sum equal to twenty-five per cent (25%) of the tax due, whichever is greater, together with interest at the rate of one per cent (1%) on the tax due, for each calendar month or fraction thereof during which such refusal or failure continues; provided, however, that if any such special fuel dealer or special fuel user shall establish to the satisfaction of the department that his failure to file a return within the time prescribed was due to reasonable cause, the department shall waive the penalty provided by this subsection.

(e) Failure to pay tax: Where a special fuel dealer or a special fuel user files a return, but fails to pay in whole or in part the tax due hereunder, there shall be added to the amount due and unpaid, interest at the rate of one per cent (1%) per month or fraction thereof, from the date such tax was due to the date of payment in full thereof.

(f) Deficiency: If it be determined by the department that the tax reported by any special fuel dealer or special fuel user is deficient, it shall proceed to assess the deficiency on the basis of information available to it and there shall be added to this deficiency interest at the rate of one per cent (1%) per month or fraction thereof from the date the return was due.

(g) Determination if no return made: If any special fuel dealer or special fuel user, whether or not he is licensed as such, fails, neglects, or refuses to file a special fuel tax return when due, the department shall, on the basis of information available, to it, determine the tax liability of the special fuel dealer or special fuel user for the period during which no return was filed, and to the tax as thus determined, the department shall add the penalty and interest provided in subsection (d) above.

HeinOnline -- 1977 vol. II 1239 1977

An assessment made by the department pursuant to this subsection or to subsection (f) of this section shall be presumed to be correct, and in any case where the validity of the assessment is drawn in question, the burden shall be on the person who challenges the assessment to establish by a fair preponderance of the evidence that it is erroneous or excessive as the case may be.

(h) Fraudulent return: If any special fuel dealer or special fuel user shall file a false or fraudulent return with intent to evade the tax imposed by this act, there shall be added to the amount of deficiency determined by the department a penalty equal to twenty-five per cent (25%) of the deficiency together with interest at one per cent (1%) per month, or fraction thereof, on such deficiency from the date such tax was due to the date of payment, in addition to all other penalties prescribed by law.

(i) Limitation: Except in the case of a fraudulent return or of neglect, or refusal to make a return, every deficiency shall be assessed under subsection (f) above within five (5) years after the twenty-fifth day of the next succeeding calendar month following the monthly period for which the amount is proposed to be determined or within five (5) years after the return is filed, whichever period expires the later."

Approved April 15, 1977.

CHAPTER NO. 378

AN ACT TO REVISE THE MAKEUP OF THE BOARD OF REAL ESTATE; AMENDING SECTION 82A-1602.23, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-1602.23, R.C.M. 1947, is amended to read as follows:

"**82A-1602.23. Board of real estate — appointment — qualifications — term.** (1) There is a board of real estate.

(2) The board consists of five members. The members are appointed by the governor. The members shall:

(a) Be residents of this state. At least two members shall be active and licensed real estate brokers *or salesmen* and have been actively engaged in the real estate business as a broker *or salesman* in this state for not less than 5 continuous years before appointment. *One member shall be a representative of the public who is not a state government officer or employee and who is not engaged in business as a real estate broker or salesman.*

(b) Be appointed so not more than *three members, and not more than two board licensees* are from the same congressional district. If a member takes up residence in a district different from the one in which he resided at the time of appointment, he vacates his membership on the board.

(c) Be appointed, in the event of a vacancy, by appointing a resident from the same district as the member whose office has been vacated.

(3) Not more than three members, including the chairman, shall be from the same political party.

(4) The members shall serve for a term of 4 years."

Section 2. There is a new R.C.M. section that reads as follows:

Board chairman. The members of the board shall elect a chairman from among their number.

Section 3. There is a new R.C.M. section that reads as follows:

Transition. The governor shall immediately after July 1, 1977, fill the vacancy created by the absence of the director of agriculture. Except for the director of agriculture, this act does not prevent those persons serving as members of the board of real estate on July 1, 1977, from completing their terms in office. The governor shall fill all vacancies occurring, by expiration of term or otherwise, in accordance with 82A-1602.23, as amended by this act.

Approved April 15, 1977.

CHAPTER NO. 379

AN ACT SUBROGATING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE RIGHTS OF RECIPIENTS OF MEDICAL ASSISTANCE; AMENDING SECTIONS 71-235, 71-308, 71-511, 71-1524, AND 93-2601-51, R.C.M. 1947.

WHEREAS, it is necessary that the department of social and rehabilitation services pursue third parties who may be liable for medical expenses incurred by recipients of medical assistance and relatives responsible for the support of recipients of public assistance.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 71-241.1 that reads as follows:

71-241.1. Subrogation and third party liability. (1) The state department is subrogated to the right of each needy person who is a recipient of medical benefits under Titles XIX or XX of the Social Security Act to recover damages or compensation from a third party to the extent necessary to reimburse the state department for medical benefits paid to or on behalf of the needy person. Upon determination that a third party is liable for the medical expenses of a needy person under this section, the department shall immediately notify the third party of the subrogation.

(2) The state department may, in the name of the needy person to

whom or on whose behalf medical benefits have been paid and to whose rights the department has been subrogated, commence and prosecute to final conclusion any action which may be necessary to recover from a third party compensation or damages for medical costs incurred by the needy person. From the amount collected from legal proceedings or as a result of settlement, the department shall retain the full amount previously paid as medical benefits, allocating to the county and federal government a share proportionate to their contribution and, after deducting the costs of the proceeding, deliver the remainder to the needy person. The total amounts awarded as compensation for pain and suffering or which are punitive in nature shall be delivered to the needy person. This section does not affect the needy person's right to initiate and prosecute to final conclusion an action for damages or compensation in his own name.

(3) A needy person who is a recipient of medical benefits, or his legal representative, shall notify the state department of any action initiated, or of any compromise or settlement agreed to by the needy person, or his legal representative, for the recovery of compensation or damages for medical expenses to which medical benefits have been applied.

Notice shall be given by service upon the state department of the legal instrument initiating the action or embodying the compromise or settlement.

(4) No portion of attorney's fees may be withheld from the amount collected from legal proceedings or as a result of settlement which is due the state department under subsection (1) without prior approval of the state department.

(5) As used in this section, "third party" means an individual, institution, corporation, or public or private agency which is or may be liable to pay all or part of the medical cost of injury, disease, or disability of a needy person to which Titles XIX or XX benefits have been applied, and includes but is not limited to insurers, health service organizations, and those liable in tort.

Section 2. Section 71-235, R.C.M. 1947, is amended to read as follows:

"71-235. Living relatives — jointly and severally liable — scale of contribution. *(1)* The living relatives of each needy person named in this act are jointly and severally liable in the order named in 71-233 to *the* needy person for the monthly amounts of money determined in accordance with the following scale, to wit:

RELATIVES' CONTRIBUTION SCALE

A. Net monthly income of responsible relatives in one family in dollars	B. Number of persons dependent upon income exclusive of applicant									
	1	2	3	4	5	6	7	8	9	10 and over
	C. Maximum required monthly contribution									
Under 304.....	0	0	0	0	0	0	0	0	0	0
305 to 399.....	22	0	0	0	0	0	0	0	0	0

HeinOnline -- 1977 vol. II 1242 1977

400 to 489.....	43	14	0	0	0	0	0	0	0	0
490 to 619.....	72	43	29	22	7	0	0	0	0	0
620 to 739.....	101	72	58	50	36	29	14	0	0	0
740 to 869.....	130	101	86	79	65	58	43	29	14	0
870 to 1024.....	144	130	115	108	94	86	72	58	43	29
1025 to 1179.....	144	144	144	144	130	123	108	94	79	65
1180 to 1339.....	144	144	144	144	144	144	144	130	115	101
1340 and up	144	144	144	144	144	144	144	144	144	130

(2) For the purposes of this act:

(a) *a* needy person is one who is eligible for public assistance under the laws of this state; *and*

(b) "*net* monthly income" *means* one-twelfth of the difference between the net income for the taxable year as the term net income is defined in 84-4901(10) and the state income tax paid as determined by the state income tax return filed during the current year.

(3) In those cases where both spouses classify as responsible relatives of needy persons during the same period of time, the liability for contribution of each *spouse* during that time *is* one-half of the amount shown in the scale established by this act.

(4) Whenever the responsible relative owes a duty of support to a minor dependent child and public assistance moneys have been paid to or on behalf of that child, the liability for contribution is measured by the lesser of the amount of public assistance paid or the amount of support ordered by court decree.

(5) A person who is receiving public assistance on behalf of a minor dependent child may not be held liable for contribution for the period during which public assistance was received."

Section 3. Section 71-308, R.C.M. 1947, is amended to read as follows:

"**71-308. Medical aid and hospitalization.** (1) Medical aid and hospitalization for nonresidents within the county and county residents unable to provide *these* necessities for themselves are the legal and financial duty and responsibility of the board of county commissioners, except as otherwise provided in other parts of this act, *and are* payable from the county poor fund. The board of county commissioners shall make provisions for competent and skilled medical or surgical services as *are* approved by the department of health and environmental sciences or the state medical association or, in the case of osteopathic practitioners, by the state osteopathic association or chiropractors by the state chiropractic association or optometrical services as approved by the Montana optometric association *or* dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by physicians appointed by the board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of the medical attendance.

HeinOnline -- 1977 vol. II 1243 1977

(3) The board of county commissioners shall make suitable arrangements to provide respectable burial for nonresidents within the county and county residents for whom *the* expenses are not otherwise available.

(4) The department of social and rehabilitation services may promulgate rules to determine under what circumstances persons in the county are unable to provide medical aid and hospitalization for themselves, including the power to define the term "medically needy". *However, the* definition may not allow payment by a county for general assistance-medical for persons whose income exceeds 300% of the limitation for obtaining regular county general assistance.

(5) In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment. *To the extent necessary for reimbursement of medical benefits paid to or on behalf of an individual, the county or state is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses. The provisions of 71-241.1 which relate to medical benefits provided under Titles XIX and XX of the Social Security Act apply to medical benefits provided for in this section."*

Section 4. Section 71-511, R.C.M. 1947, is amended to read as follows:

"71-511. Payment of public assistance money — subrogation of the department of social and rehabilitation services — schedule of payments. *(1) A* payment of public assistance money made to or for the benefit of *a* dependent child creates a debt due and owing to the department of social and rehabilitation services by the natural or adoptive parents who are legally responsible for the support of *the child* by statute or court decree in an amount equal to the amount of public assistance paid. *However,* where the support obligation is based upon a court decree, the debt *is* limited to the amount of *the* court decree.

(2) The department *is* subrogated to the right of *the* child or person having the care, custody, and control of *the* child to prosecute any support action or execute any administrative remedy existing under the laws of the state to obtain reimbursement of monies thus expended. If a court decree enters judgment for an amount of support to be paid by an obligor parent, the department *is* subrogated to the debt created by *the* order and *the* money judgment *is* in favor of the department. *No obligee may commence an action to recover support due and owing to him without first filing an affidavit with the court stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the state department in writing of the pending action.*

(3) In no case *may* a debt arising under this section be incurred by or collected from a parent or other person *while he* is the recipient of public assistance monies for the benefit of minor dependent children.

(4) The remedies herein provided are in addition to and not in lieu of existing common law and statutory law.

(5) The department or its legal representatives may at any time consistent with the income, earning capacity, and resources of the debtor peti-

HeinOnline -- 1977 vol. II 1244 1977

tion the court having jurisdiction over the particular case to set or reset a level and schedule *of* payments to be paid upon the debt."

Section 5. Section 71-1524, R.C.M. 1947, is amended to read as follows:

"**71-1524. Exclusion of lien.** No applicant hereunder *may* be required to execute an agreement for lien on his real property. No lien may be imposed against the property of *an* individual prior to his death on account of medical assistance paid or to be paid on his behalf (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of *the* individual). There *may* be no adjustment or recovery (except, in the case of an individual who was 65 years of age or older when he received *the* assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age 18 or is blind or permanently and totally disabled) of any medical assistance correctly paid on behalf of *an* individual. *To the extent necessary for reimbursement of medical assistance paid to an individual, the state department is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses, as provided in 71-241.1.* Recoveries shall be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this act are hereby extended to provide for the recovery of all medical assistance paid under 71-1511 through 71-1524 and likewise to all medical aid to the aged assistance paid by the state department during the period of time July 1, 1965, through June 30, 1967."

Section 6. Section 93-2601-51, R.C.M. 1947, is amended to read as follows:

"**93-2601-51. Contents and filing of petition for support — venue.** *(1)* The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(2) At the time of filing the petition the obligee shall also file with the court an affidavit as required by 71-511 stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the department of social and rehabilitation services in writing of the pending action.

(3) The petition may be filed in the appropriate court of any state in which the obligee resides. The court *may* not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus,

HeinOnline -- 1977 vol. II 1245 1977

adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement."

Section 7. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 1977.

Section 8. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 15, 1977.

CHAPTER NO. 380

AN ACT TO REGULATE THE RELATIONSHIP BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS; PROVIDING FOR THE LICENSING OF NEW MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS; PROVIDING FOR ADMINISTRATION BY THE DEPARTMENT OF BUSINESS REGULATION; PROVIDING FOR THE REGULATION AND REVIEW OF TRANSACTIONS BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS; PROVIDING FOR THE LIMITATION OF NEW MOTOR VEHICLE DEALER'S PRODUCTS LIABILITY; PROVIDING FOR NOTICE, HEARING, AND APPEAL IN DISPUTES BETWEEN NEW MOTOR VEHICLE DEALERS AND NEW MOTOR VEHICLE MANUFACTURERS, DISTRIBUTORS, AND IMPORTERS; PROHIBITING COERCION OF NEW MOTOR VEHICLE DEALERS; AND PROVIDING FOR CIVIL AND CRIMINAL PENALTIES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 51-601 that reads as follows:

51-601. Definitions. As used in this act, the following definitions apply:

(1) "Community" means the relevant market area of a franchise. For the purposes of this act, the relevant market area of a franchise is the county or counties in which the franchisee is located.

(2) "Distributor" or "wholesaler" means a person who sells or distributes new motor vehicles to new motor vehicle dealers in this state or who maintains distributor representatives in this state.

(3) "Distributor branch" means a branch office maintained or availed of by a distributor or wholesaler for the sale of new motor vehicles to

HeinOnline -- 1977 vol. II 1246 1977

new motor vehicle dealers in this state for directing or supervising its representatives in this state.

(4) "Factory branch" means a branch office maintained or availed of by a manufacturer for the sale of new motor vehicles to distributors or for the sale of new motor vehicles to new motor vehicle dealers in this state or for directing or supervising its representatives in this state.

(5) "Franchise" means a contract between or among two or more persons when all of the following conditions are included:

(a) a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) the franchisee is granted the right to offer, sell, and service in this state new motor vehicles manufactured or distributed by the franchisor;

(c) the franchisee, as a separate business, constitutes a component of franchisor's distribution system; and

(d) the operation of the franchisee's business is substantially reliant on the franchisor for the continued supply of new motor vehicles, parts, and accessories.

(6) "Franchisee" means a person who receives new motor vehicles from the franchisor under a franchise and who offers, sells, and services such new motor vehicles to and for the general public.

(7) "Franchisor" means a person who manufacturers, imports, or distributes new motor vehicles and who may enter into a franchise.

(8) "Importer" means a person who transports or arranges for the transportation of a foreign manufactured new motor vehicle into the United States for sale in this state.

(9) "Manufacturer" means a person who manufactures or assembles new motor vehicles or who manufactures or installs on previously assembled truck chassis special bodies or equipment, which when installed form an integral part of the new motor vehicle and which constitutes a major manufacturing alteration, but does not include a person who installs a camper on a pickup truck.

(10) "Motor vehicle" means a self-propelled vehicle including without limitation an automobile, motor bus, motorcycle, truck, and a truck-tractor.

(11) "New motor vehicle dealer" means a person who buys, sells, exchanges, or offers or attempts to negotiate a sale or exchange or any interest in or who is engaged in the business of selling new motor vehicles or used motor vehicles taken in trade on new motor vehicles.

(12) "Department" means the department of business regulation.

Section 2. There is a new R.C.M. section numbered 51-602 that reads as follows:

51-602. Persons subject to licensing. (1) No manufacturer, distributor, factory branch, or distributor branch may engage in business in

Montana except in accordance with the requirements of this act. The provisions of this act do not apply to a public officer engaged in the discharge of his official duties or to a trustee, receiver, or other officer acting under the jurisdiction of a court; to financial institutions disposing of repossessed vehicles; or to a person disposing of his personal vehicle. The provisions of this act regulating and licensing manufacturers, distributors, factory branches, distributor branches, and franchisors apply only to those manufacturers, distributors, factory branches, distributor branches, and franchisors of motor vehicles as defined by this act.

(2) A manufacturer, distributor, factory branch, distributor branch, importer, or franchisor transacting business within Montana by offering, selling, trading, consigning, or otherwise transferring a new motor vehicle to a new motor vehicle dealer must be licensed by the state of Montana. The department shall issue licenses to qualified applicants upon receipt of a license fee in the amount of $15 accompanied by the information required in this section. The following information shall be submitted by an applicant upon forms supplied by the department:

(a) the name and address of the applicant;

(b) the make and model of each new motor vehicle to be franchised;

(c) the name and address of each of the applicant's franchisees within the state; and

(d) the name and address of each factory branch, distributor branch, agent or representative within the state.

(3) The license may be renewed each year if the applicant is in compliance with the provisions of this act, remits a renewal fee in the amount of $15, and notifies the department of any changes in the information previously supplied.

(4) No new motor vehicle may be sold in this state unless either the manufacturer on direct dealership of domestic vehicles, the importer of foreign manufactured vehicles on direct dealership, or the distributor on indirect dealerships of either domestic or foreign vehicles is licensed as provided in this act. The obtaining of a license under this act conclusively establishes that a manufacturer, distributor, or importer is subject to the laws of this state regulating manufacturers, importers, and distributors.

Section 3. There is a new R.C.M. section numbered 51-603 that reads as follows:

51-603. Administration. The department shall supervise and regulate all persons required by this act to be licensed. In the supervision and regulation thereof the department may:

(1) make investigations it considers necessary;

(2) conduct hearings and compel attendance of witnesses at the hearings pursuant to Title 82, chapter 42; and

(3) prescribe rules it determines necessary to carry out the provisions of this act.

HeinOnline -- 1977 vol. II 1248 1977

Section 4. There is a new R.C.M. section numbered 51-604 that reads as follows:

51-604. Filing agreement — product liability. (1) A franchisee must, at the time he applies for a new motor vehicle dealer license under the provisions of 53-118 file with the department a certified copy of his written agreement with a manufacturer and a certificate of appointment as dealer or distributor. The certificate of appointment must be signed by an authorized agent of the manufacturer of domestic vehicles whenever there is a direct manufacturer dealer agreement or by an authorized agent of the distributor whenever the manufacturer is wholesaling through an appointed distributorship. The certificate must be signed by an authorized agent of the importer of foreign-made vehicles whenever there is a direct importer-dealer agreement or by an authorized agent of the distributor whenever there is an indirect distributor-dealer agreement. The distributor's certificate of appointment must be signed by an authorized agent of the manufacturer of domestically manufactured vehicles or by an authorized agent of the manufacturer or importer of foreign-made vehicles.

(2) A franchisee need not file a written agreement or certificate of appointment if the manufacturer on direct dealerships or distributor on indirect dealerships or importer on direct dealerships uses the identical basic agreement for all its franchised dealers or distributors in this state and certifies in the certificate of appointment that the blanket agreement is on file and the written agreement with the particular dealer or distributor, respectively, is identical with the filed blanket agreement and that he has filed with the department one such agreement together with a list of franchised dealers or distributors.

(3) A manufacturer, distributor, or importer shall notify the department within 30 days of any revision of or addition to the basic agreement on file or of any franchise supplement to the agreement. Annual renewal of a certificate filed as provided in this section is not required.

(4) A manufacturer on direct dealerships, distributor on indirect dealerships, or importer on direct dealerships who has filed with the department an agreement used by all its franchisees in this state together with a list of all such franchisees and who fails to notify the department within 30 days of any revision, change, or addition thereto is guilty of a misdemeanor and upon conviction shall be fined not to exceed $500.

(5) A manufacturer must file with the department a copy of the delivery and preparation obligations required to be performed by a dealer prior to the delivery of a new motor vehicle to a buyer. These delivery and preparation obligations constitute the dealer's only responsibility for product liability as between the dealer and the manufacturer. Any mechanical, body, or parts defects arising from an express or implied warranty of the manufacturer constitute the manufacturer's product or warranty liability only; provided, however, that this section shall not effect the obligations of new motor vehicle dealers to perform such warranty repair and maintenance as may be required by law or contract. The manufacturer must compensate an authorized dealer who performs work to rectify the manufacturer's product or warranty defect or delivery and

HeinOnline -- 1977 vol. II 1249 1977

preparation obligations at the dealer's regular established retail rate for similar work.

(6) The dealer must furnish the purchaser of a new vehicle with a signed copy of the manufacturer's delivery and preparation requirements indicating that each of those requirements has been performed.

Section 5. There is a new R.C.M. section numbered 51-605 that reads as follows:

51-605. Limitations on cancellation and termination. (1) Notwithstanding the terms, provisions, or conditions of any agreement or franchise, no franchisor may cancel, terminate, or refuse to continue a franchise unless the franchisor has cause for termination or noncontinuance.

(2) No franchisor may enter into a franchise for the purpose of establishing an additional new motor vehicle dealership in any community in which the same line-make is then represented unless there is good cause for an additional new motor vehicle dealership under a franchise and that it is in the public interest.

(3) If a franchisor seeks to terminate or not continue a franchise or seeks to enter into a franchise establishing an additional new motor vehicle dealership of the same line-make, the franchisor shall, not less than 30 days prior to the intended action, and the franchisee may, at any time, file a notice with the department of intention to terminate or not continue the franchise or to enter into a franchise for additional representation of the same line-make. No notice of intention to terminate or not continue a franchise may be required from a franchisor until the conclusion of any review proceeding of that intention offered to the franchisee under the franchise. This section does not apply to an intended termination or noncontinuance of a franchise that the franchisee elects voluntarily, pursuant to a plan established by a franchisor, to submit to binding arbitration.

(4) Upon receiving a notice of intention under the provisions of subsection (3) of this section, the department shall, within 5 days of receipt of a notice of intention, send by certified mail, with return receipt requested, a copy of the notice to the franchisor and to the franchisee whose franchise the franchisor seeks to establish, terminate, or not continue. If the notice states an intent to establish an additional new motor vehicle dealership, a copy of the notice shall be sent within 5 days of receipt to all franchisees in the community who are then engaged in the business of offering to sell or selling the same line-make. Copies of notices shall be addressed to the principal place of business of each recipient and to the statutory agent of each corporate recipient. The department may also give a copy of the franchisor's notice to any other parties whom the department may consider interested persons, such copy to be in the form and substance and given in the manner the department finds appropriate.

(5) A person who receives or is entitled to receive a copy of a notice provided for in subsection (4) of this section may object to the approval of the proposed action by filing a written objection with the department within 15 days from the date the notice was received by the person entitled to receive the notice. If no objection is filed within 15 days from the date the notice was received, the proposed action shall be approved.

HeinOnline -- 1977 vol. II 1250 1977

(6) If a timely objection has been filed, the department shall enter an order fixing the time, which shall be within 30 days of the date of the order, and place of a hearing on the objection and shall send by certified mail with return receipt requested a copy of the notice provided for in subsection (4) of this section.

(7) The department may upon request continue the date of hearing for a period of 30 days and may upon application, but not ex parte, continue the date of hearing for an additional period of 30 days.

(8) Upon hearing, the franchisor has the burden of proof to establish that good cause exists to terminate or not continue the franchise. When there is an objection to the establishment of a new motor vehicle dealership, the burden of proof that good cause does exist shall be with the franchisor.

(9) The rules of evidence for such hearing shall be those found in Title 82, chapter 42. The department shall reasonably apportion all costs between the parties.

(10) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, the following do not constitute good cause for the termination or noncontinuance of a franchise:

(a) a change in ownership of the franchisee's dealership;

(b) the fact that the franchisee refused to purchase or accept delivery of a new motor vehicle, part, accessory, or any other commodity or service not ordered by the franchisee.

(11) In instances where the change in ownership has the effect of the sale of the franchise, the franchisor may not without good cause withhold its consent to the sale. Good cause relates only to the transferee's financial and managerial capabilities or to the inability of the transferee to comply with a state or federal law relating to new motor vehicle dealerships. The burden of establishing good cause is upon the franchisor.

(12) Notwithstanding the terms, provisions, or conditions of an agreement or franchise, in the event of the sale or transfer of ownership of the franchisee's dealership by sale or transfer of the business or by stock transfer to the dealer's spouse, son, or daughter, the franchisor shall give effect to such a change in the franchise unless the transfer of the franchisee's new motor vehicle dealer's license is denied or the new owner is unable to obtain a license under the laws of this state.

(13) The department may issue subpoenas, administer oaths, compel the attendance of witnesses, and production of books, papers, documents, and all other evidence. The department may apply to the district court of the county in which the hearing is held for a court order enforcing this section. The hearing shall be conducted pursuant to Title 82, chapter 42.

(14) If a franchisor enters into or attempts to enter into a franchise, whether upon termination or refusal to continue another franchise or upon the establishment of an additional new motor vehicle dealership in a community where the same line-make is then represented without first

HeinOnline -- 1977 vol. II 1251 1977

complying with the provisions of this act, no license under 53-118 may be issued to that franchisee or proposed franchisee to engage in the business of selling new motor vehicles manufactured or distributed by that franchisor.

(15) In determining whether good cause has been established for terminating or not continuing a franchise, the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by the franchise;

(b) investment necessarily made and obligations incurred by the franchisee in the performance of his part of the franchise;

(c) permanency of the investment;

(d) whether it is injurious to the public welfare for the business of the franchisee to be discontinued;

(e) whether the franchisee has adequate new motor vehicle facilities, equipment, parts, and qualified management, sales, and service personnel to reasonably provide consumer care for the new motor vehicles sold at retail by the franchisee and any other new motor vehicle of the same line-make;

(f) whether the franchisee refuses to honor warranties of the franchisor to be performed by the franchisee if the franchisor reimburses the franchisee for such warranty work performed by the franchisee; and

(g) except as provided in subsection (10) of this section, failure by the franchisee to substantially comply with those requirements of the franchise that are determined by the department to be reasonable and material.

(16) In determining whether good cause has been established for entering into an additional franchise for the same line-make the department shall take into consideration the existing circumstances, including but not limited to:

(a) amount of business transacted by other franchisees of the same line-make in that community;

(b) investment necessarily made and obligations incurred by other franchisees of the same line-make in that community in the performance of their part of their franchises; and

(c) whether the franchisees of the same line-make in that community are providing adequate consumer care for the new motor vehicle products of the line-make which shall include the adequacy of new motor vehicle dealer sales and service facilities, equipment, supply of parts, and qualified management, sales, and service personnel.

(17) A transcript of the testimony of each witness taken at the hearing shall be made and preserved. Within 30 days after the hearing, the department shall make written findings of fact and conclusions and enter a final order.

(18) Any party to the hearing before the department may appeal pursuant to Title 82, chapter 42.

HeinOnline -- 1977 vol. II 1252 1977

Section 6. There is a new R.C.M. section numbered 51-606 that reads as follows:

51-606. Coercion prohibited. (1) A manufacturer of new motor vehicles, factory branch, distributor, distributor branch, importer, field representative, officer, agent, or any representative thereof may not coerce or attempt to coerce a new motor vehicle dealer to accept delivery of a new motor vehicle, a part, or an accessory therefor, or any other commodity that has not been ordered by the dealer.

(2) A manufacturer, factory branch, distributor, distributor branch, importer, field representative, officer, agent or representative thereof may not coerce or attempt to coerce a new motor vehicle dealer to enter into an agreement with such manufacturer, factory branch, distributor, distributor branch, or representative thereof or do any other act unfair to the dealer by:

(a) threatening to cancel or not renew a franchise existing between the manufacturer, factory branch, distributor, distributor branch, or representative thereof and the dealer; or

(b) threatening to withhold, delay, or disrupt the receipt of new motor vehicles or any motor vehicle parts or supplies ordered by the dealer from the manufacturer, factory branch, distributor, distributor branch, importer, or representative or agent thereof.

Section 7. There is a new R.C.M. section numbered 51-607 that reads as follows:

51-607. Penalties. (1) A person who violates any provision of this act is guilty of a misdemeanor and upon conviction shall be fined not less than $500 or more than $1,000 for each violation. Each day that a violation continues or occurs constitutes a separate violation.

(2) If any new motor vehicle dealer incurs pecuniary loss due to a violation of this act by a manufacturer, distributor, importer, or factory branch or representative or agent thereof, the dealer may recover damages therefor in a court of competent jurisdiction in amount equal to three times the pecuniary loss, together with costs including reasonable attorney's fees.

Section 8. There is a new R.C.M. section numbered 51-608 that reads as follows:

51-608. Cease and desist orders. When the department has reasonable cause to believe, from information furnished to or from an investigation made by it, that any person is engaged in any business regulated by this act without being licensed as required, it shall immediately issue and serve upon such person, by certified mail, a cease and desist order, requiring him to cease and desist from further engaging in that business. Upon failure of that person to comply with the order, the department shall file an action in the district court of Lewis and Clark County to restrain and enjoin the person from engaging in the business. The court in the action shall proceed as in other actions for injunctions.

HeinOnline -- 1977 vol. II 1253 1977

Section 9. **Effective date.** This act shall be effective upon passage and approval and shall be applicable to all acts and transactions commenced or completed after such effective date.

Section 10. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 15, 1977.

CHAPTER NO. 381

AN ACT PROVIDING FOR THE SUCCESSION OF INTEREST BY DESIGNATED FAMILY MEMBERS TO THE OWNERSHIP INTERESTS OF A MOTOR VEHICLE DEALERSHIP UPON THE DEATH OR INCOMPETENCY OF THE DEALER; PROVIDING A METHOD OF PROTEST BY MANUFACTURERS, DISTRIBUTORS, OR IMPORTERS; PROVIDING NOTICE AND OPPORTUNITY FOR HEARING BEFORE THE DEPARTMENT OF BUSINESS REGULATION; PROVIDING FOR APPEAL TO THE DISTRICT COURT; PROVIDING PENALTIES AND DAMAGES; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 51-609 that reads as follows:

51-609. Definitions. As used in 51-609 through 51-615, the following definitions apply:

(1) "Department" means the department of business regulation.

(2) "Dealer" means a person who, for commission or profit, engages in the business of buying, selling, exchanging, or acting as a broker of motor vehicles under a franchise or distribution agreement.

(3) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a dealer who, in the case of a deceased dealer, is entitled to inherit the dealer's ownership interest in the dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed him in the motor vehicle dealership, or under the laws of intestate succession of this state or who, in the case of an incapacitated dealer, has been appointed by a court as the legal representative of the dealer's property. The term includes the appointed and qualified personal representative and the testamentary trustee of a deceased dealer.

(4) "Person" means an individual, corporation, partnership, association, firm, or other legal entity.

Section 2. There is a new R.C.M. section numbered 51-610 that reads as follows:

HeinOnline -- 1977 vol. II 1254 1977

51-610. Right of designated family member to succeed in dealership ownership. (1) Any designated family member of a deceased or incapacitated dealer may succeed the dealer in the ownership or operation of the dealership under the existing franchise or distribution agreement provided he gives the manufacturer, factory branch, distributor, or importer of new motor vehicles written notice of his intention to do so within 120 days of the dealer's death or incapacity and unless there exists good cause for refusal to honor such succession on the part of the manufacturer, factory branch, distributor, or importer.

(2) The manufacturer, factory branch, distributor, or importer may request, and the designated family member shall provide, upon request, personal and financial data that is reasonably necessary to determine whether the succession should be honored.

Section 3. There is a new R.C.M. section numbered 51-611 that reads as follows:

51-611. Refusal to honor succession to ownership — notice required. (1) If a manufacturer, factory branch, distributor, or importer believes that good cause exists for refusing to honor the succession to the ownership and operation of a dealership by a family member of a deceased or incapacitated dealer under the existing franchise agreement, the manufacturer, factory branch, distributor, or importer may, within 30 days of receipt of notice of the designated family member's intent to succeed the dealer in the ownership and operation of the dealership, serve upon the designated family member and the department notice of its refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date such notice is served.

(2) The notice must state the specific grounds for the refusal to honor the succession and of its intent to discontinue the existing franchise agreement with the dealership no sooner than 60 days from the date such notice is served.

(3) If notice of refusal and discontinuance is not timely served upon the family member and the department or if the department rules in favor of the complainant in a hearing held pursuant to 51-612, the franchise agreement shall continue in effect subject to termination only as otherwise permitted by law.

Section 4. There is a new R.C.M. section numbered 51-612 that reads as follows:

51-612. Procedure to determine right to succeed. (1) Any designated family member who receives notice of the manufacturer's, factory branch, distributor's, or importer's refusal to honor his succession to the ownership and operation of the dealership may, within the 60-day period, file with the department a verified complaint for a hearing and determination by the department on whether good cause exists for refusal and discontinuance.

(2) The manufacturer, factory branch, distributor, or importer must establish good cause for refusal by showing that the succession would be

HeinOnline -- 1977 vol. II 1255 1977

detrimental to the public interest or to the representation of the manufacturer, factory branch, distributor, or importer.

(3) The franchise agreement shall continue in effect until the final determination of the issues raised in the complaint.

(4) If the manufacturer, factory branch, distributor, or importer prevails, the department shall include in its order approving the termination of the franchise agreement reasonable conditions affording the complainant an opportunity to receive fair and reasonable compensation for the value of the dealership.

(5) Any decision by the department may be reviewed pursuant to 82-4216.

Section 5. There is a new R.C.M. section numbered 51-613 that reads as follows:

51-613. Written designation of succession unaffected. This act does not preclude a dealer from designating any person as his successor by written instrument filed with the manufacturer, factory branch, distributor, or importer.

Section 6. There is a new R.C.M. section numbered 51-614 that reads as follows:

51-614. Violation — penalty. Any person violating the provisions of 51-609 through 51-615 shall, upon conviction, be fined no more than $5,000.

Section 7. There is a new R.C.M. section numbered 51-615 that reads as follows:

51-615. Civil damages. Any dealer suffering pecuniary loss due to a violation of 51-609 through 51-615, upon prevailing in a civil action therefor, is entitled to damages equal to three times the pecuniary loss together with court costs and reasonable attorneys' fees.

Section 8. **Effective date.** This act is effective upon passage and approval and shall apply to all acts and transactions commenced or completed after the effective date.

Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 15, 1977.

CHAPTER NO. 382

AN ACT TO PROVIDE A PORTION OF THE FUEL TAX FOR DEVELOPMENT AND MAINTENANCE OF SNOWMOBILE FACILITIES; AMENDING SECTION 32-2601, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2601, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1256 1977

"**32-2601. Distribution and use of proceeds of gasoline dealers' license tax.** (1) All money received in payment of license taxes under the Distributor's Gasoline License Tax Act, except those amounts paid out of the department of revenue's suspense account for gasoline tax refund, shall be used and expended as provided in this section. So much of that money on hand at any time as may be needed to pay highway bonds and interest thereon when due and to accumulate and maintain a reserve therefor, as provided in laws and in resolutions of the state board of examiners authorizing such bonds, shall be deposited in the highway bond account in the sinking fund established by 79-410. Subject to that provision, *6/10 of 1%* of all money shall be deposited in the state park account *and 3/10 of 1% of all money shall be deposited in a snowmobile account* in the earmarked revenue fund. All of the remainder of the money shall be used and expended by the department of highways on the federal-aid highways in this state selected and designated under the Federal-Aid Act, approved July 11, 1916, and the Federal Highway Act, approved November 9, 1921, and all amendments thereto, and on highways leading from each county seat in the state to the federal highway system of federal-aid roads where the county seat is not on the system and on the other roads which have been or may be authorized by the laws of Montana and for collection of the license taxes and the enforcement of the Montana highway code under *Article* VIII, section 6, of the constitution of this state. The department shall, in expending this money, carry forward construction from year to year, using the money expended through the matching up of federal-aid allotments to Montana upon the federal highway system in the various parts of the state in accordance with 32-2605 through 32-2607; nothing in this act conflicts with those federal-aid highway acts and the rules by which they are administered. The department may enter into *cooperative* agreements with the national park service and the federal highway administration for the purpose of maintaining national park approach roads in Montana.

(2) Money credited to the state park account in the earmarked revenue fund shall be used only for the creation, improvement, and maintenance of state parks where motor boating is allowed, except for the payment of refunds under 84-1855. The legislature hereby finds as a fact that of all the fuel sold in the state for consumption in internal combustion engines, not less than *6/10 of 1%* is used for propelling boats on waterways of this state.

(3) Money credited to the snowmobile account may be used only to develop and maintain facilities open to the general public at no admission cost, and to promote snowmobile safety. For the 2 years following July 1, 1977, 15% of the amount deposited in the snowmobile fund each year shall be used to promote snowmobile safety. Thereafter, 10% of the amount deposited in the snowmobile fund shall be used to promote snowmobile safety. The legislature finds that of all fuels sold in this state for consumption in internal combustion engines, not less than 3/10 of 1% is used for propelling snowmobiles on public lands of this state."

Approved April 15, 1977.

HeinOnline -- 1977 vol. II 1257 1977

CHAPTER NO. 383

AN ACT PROVIDING FOR THE LICENSING AND REGULATION OF HOME HEALTH AGENCIES IN MONTANA BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 69-7301 that reads as follows:

69-7301. Definitions. As used in this act, the following definitions apply:

(1) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(2) "Home health agency" means a public or private agency, organization, facility, or subdivision thereof which is engaged in providing home health services to individuals and families where they are presently residing or in ambulatory care settings, for the purpose of preventing disease and promoting, maintaining, or restoring health or minimizing the effects of illness or disability.

(3) "Home health services" means a broad range of health and social services furnished to individuals and families by a home health agency, or by others under arrangements with the agency, in the place where they are presently residing or in ambulatory care settings. Services must include the services of a licensed registered nurse and at least one other therapeutic service and may include additional support services.

(4) "Person" means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not.

(5) "Skilled nursing services" means the services of a licensed registered nurse or nurses.

(6) "Supportive services" means services which include but are not limited to the use of medical appliances; medical supplies, other than drugs and biologicals prescribed by a physician; and the collection of blood and other samples for laboratory analysis.

(7) "Therapeutic services" means services which include:

(a) physical, occupational, or speech therapy;

(b) medical social services;

(c) home health-aid services;

(d) nutritional guidance; or

(e) homemaker services.

HeinOnline -- 1977 vol. II 1258 1977

Section 2. There is a new R.C.M. section numbered 69-7302 that reads as follows:

69-7302. License required — duration — transfer prohibited — display. (1) A person may not conduct, maintain, or operate a home health agency without a license issued by the department.

(2) The license shall expire 1 year following its date of issue. Renewal may be obtained annually.

(3) A license is valid only for the home health agency and premises for which it was issued. A license may not be sold, assigned, or transferred.

(4) Upon discontinuance of the operation or of transfer of ownership of an agency, the license must be returned to the department.

(5) The license shall be displayed in a conspicuous place inside the home health agency office.

Section 3. There is a new R.C.M. section numbered 69-7303 that reads as follows:

69-7303. Certificate of need. (1) A new agency must be awarded a certificate of need from the department prior to applying for a license.

(2) An existing agency must be awarded a certificate of need from the department prior to an expansion of geographic area of service or the addition of a new service.

(3) No certificate of need may be issued unless an agency:

(a) is necessary to provide required health care in the area to be served;

(b) can be economically accomplished and maintained; and

(c) will contribute to the orderly development of adequate and effective health services.

(4) In making the determination to issue the certificate of need based on the determinations enumerated in subsection (3) the following shall be considered:

(a) the compatibility with needs shown in the appropriate state plan; and such other criteria and standards established by the department;

(b) the availability of services which may serve as alternates or substitutes;

(c) the need for special equipment and services in the area;

(d) the possible economics and improvement in services to be anticipated;

(e) the adequacy of financial resources and sources of future revenues; and

(f) the availability of sufficient manpower in professional disciplines.

HeinOnline -- 1977 vol. II 1259 1977

(5) An application for a certificate of need must be submitted to the department in a form together with information as the department may prescribe. The application must include:

(a) a narrative description of the proposed project;

(b) the number and type of services to be provided;

(c) the estimated cost;

(d) the source of financing; and

(e) the expected time for completion of the proposed project.

(6) Within 7 days after receipt of the application for certificate of need by the department, the department shall send notice to every licensed home health agency within the state of Montana located within 100 miles of the applicant.

(7) The department shall notify the applicant, in writing, of approval or disapproval of the proposal within 90 days after the application is submitted to the department, otherwise the application automatically is approved and the certificate of need granted.

(8) A certificate of need is valid for 1 year from the date of issue, but may be extended by the department for a period of 6 months.

(9) If the department disapproves an application, the department must notify the applicant of its actions and afford the applicant an opportunity to request a hearing before the board of health and environmental sciences. The applicant must notify the department to request a hearing within 15 days after receipt of the notice of disapproval. If the decision, after hearing, is adverse, the applicant may appeal to the district court as provided in 82-4216.

Section 4. There is a new R.C.M. section numbered 69-7304 that reads as follows:

69-7304. Application for license. Application for the license shall be made in the manner as prescribed by the department.

Section 5. There is a new R.C.M. section numbered 69-7305 that reads as follows:

69-7305. Issuance and renewal of licenses. On receipt of a new or renewal application, the department or its authorized agent shall inspect the agency. If minimum standards, described in 69-7308 are met, the department shall issue a license for 1 year.

Section 6. There is a new R.C.M. section numbered 69-7306 that reads as follows:

69-7306. License fees. An annual fee of $20 shall be paid to the department for the license, and the fee shall be deposited in the state general fund.

Section 7. There is a new R.C.M. section numbered 69-7307 that reads as follows:

HeinOnline -- 1977 vol. II 1260 1977

69-7307. Denial, suspension, or revocation of license. The department may deny, suspend, or revoke a license for noncompliance with this act or rules adopted by the department.

Section 8. There is a new R.C.M. section numbered 69-7308 that reads as follows:

69-7308. Standards for licensure. (1) The minimum standards which home health agencies must meet in order to be licensed shall be as outlined in P.L. 89-97, section 1861(m), which authorizes the conditions of participation for home health agencies under Title XVIII of the Social Security Act.

(2) All phases of an agency's operation shall be without discrimination against individuals or groups of individuals on the basis of race, creed, color, national origin, sex, age.

Section 9. There is a new R.C.M. section numbered 69-7309 that reads as follows:

69-7309. Rulemaking authorized. The department may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of this act in accordance with the Montana Administrative Procedure Act.

Section 10. There is a new R.C.M. section numbered 69-7310 that reads as follows:

69-7310. Penalties. (1) A person who violates this act is subject to the penalties provided for in 69-5221.

(2) The department, on advice of the attorney general, may maintain an action for injunction or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a home health agency which is in violation of this act or the rules promulgated pursuant to this act.

(3) A person who establishes a new home health agency, or expands the geographic service area or adds a new service to an existing home health agency, without a certificate of need issued by the department, is guilty of a misdemeanor and shall be fined not less than $1,000 or more than $10,000, the fine to be deposited in the state general fund.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Effective date.** This act is effective upon passage and approval.

Approved April 15, 1977.

CHAPTER NO. 384

AN ACT TO AUTHORIZE THE USE OF VIDEOTAPE EQUIPMENT TO

RECORD THE TESTIMONY OF THE VICTIM IN A CASE ARISING UNDER SECTION 94-5-503, R.C.M. 1947, SEXUAL INTERCOURSE WITHOUT CONSENT.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 95-1814 that reads as follows:

95-1814. Videotape testimony allowed. For any prosecution commenced under 94-5-503, the testimony of the victim, at the request of such victim and with the concurrence of the prosecuting attorney, may be recorded by means of videotape for presentation at trial. The testimony so recorded may be presented at trial and shall be received into evidence. The victim need not be physically present in the courtroom when the videotape is admitted into evidence.

Section 2. There is a new R.C.M. section numbered 95-1815 that reads as follows:

95-1815. Videotape proceedings — who may attend. (1) The procedural and evidentiary rules of the state of Montana which are applicable to criminal trials within the state of Montana shall apply to the videotape proceedings authorized by 95-1814 through 95-1816.

(2) The district court judge, the prosecuting attorney, the victim, the defendant, the defendant's attorney, and such persons as are deemed necessary by the court to make the recordings authorized under 95-1814 through 95-1816 shall be allowed to attend the videotape proceedings.

Section 3. There is a new R.C.M. section numbered 95-1816 that reads as follows:

95-1816. Court record — privacy of victim. Videotapes which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the victim.

Approved April 15, 1977.

CHAPTER NO. 385

AN ACT TO EXEMPT MANAGERS OF LOW INCOME, GOVERNMENT-SUBSIDIZED HOUSING COMPLEXES FROM THE REAL ESTATE LICENSE ACT OF 1963; AMENDING SECTION 66-1926, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-1926, R.C.M. 1947, is amended to read as follows:

"**66-1926. Exempted classes.** A single act performed, for a commission or compensation of any kind, in the buying, selling, exchanging, leas-

HeinOnline -- 1977 vol. II 1262 1977

ing, or renting of real estate or in negotiating therefor for others, except as hereinafter specified, shall constitute the person performing any of such acts a real estate broker or real estate salesman. The provisions of this act, however, shall not:

(1) apply to any person who, as owner or lessor, shall perform any of the aforesaid acts with reference to property owned or leased by himself or to an auctioneer employed by the owner or lessor to aid and assist in conducting a public sale held by such owner or lessor;

(2) apply to any person acting as *attorney-in-fact* under the duly executed power of attorney from the owner of any real estate authorizing the final consummation of any contract for the purchase, sale, exchange, renting, or leasing of any real estate;

(3) be construed to include in any way the services rendered by any *attorney-at-law* in the performance of his duty as such *attorney-at-law;*

(4) apply to any person duly appointed by a court for purpose of evaluation or appraising an estate in a probate matter;

(5) be held to include, while acting as such, a receiver, a trustee in bankruptcy, an administrator or executor, any person selling real estate under order of any court, a trustee under a trust agreement, deed of trust, or will, or an auctioneer employed by a receiver, trustee in bankruptcy, administrator, executor, or trustee to aid and assist in conducting a public sale held by any such officer;

(6) apply to public officials in the conduct of their official duties;

(7) apply to any person, partnership, association, or corporation, foreign or domestic, performing any act with respect to prospecting, leasing, drilling, or operating land for hydrocarbons and hard minerals or disposing of any hydrocarbons, hard minerals, or mining rights therein, whether upon a royalty basis or otherwise; *or*

(8) apply to persons acting as managers of housing complexes for low income persons which are subsidized, directly or indirectly, by this state or an agency or subdivision thereof or by the government of the United States or an agency thereof."

Approved April 15, 1977.

CHAPTER NO. 386

AN ACT TO PROVIDE FOR COLLECTION OF DELINQUENT TAXES OWED BY CORPORATIONS DELINQUENT IN FILING THEIR ANNUAL CORPORATE REPORT; AMENDING SECTION 87-136, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-136, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1263 1977

"**87-136. Collection — reciprocity with other states in effecting collection of unpaid unemployment compensation taxes.** (1) If, after due notice, any employer defaults in any payment of contributions or interest thereon, the amount due shall be collected by civil action in the name of the division, Montana department of labor and industry, and the employer adjudged in default shall pay the costs of such action. Civil actions brought under this section to collect contributions or interest thereon from an employer shall be heard by the court at the earliest possible date and shall be entitled to preference upon the calendar of the court over all other civil actions except petitions for judicial review under this act and cases arising under the *workers'* compensation law of this state. Action for the collection of contributions due shall be brought within 5 years after the due date of such contributions, otherwise to be barred as provided in 93-2604.

(2) The courts of this state shall recognize and enforce liabilities for unemployment contributions imposed by other states which extend a like comity to this state. The division, Montana department of labor and industry, is hereby empowered to sue in the courts of any other jurisdiction which extends such comity, to collect unemployment contributions and interest due this state. The officials of other states which by statute or otherwise extend a like comity to this state may sue in the courts of this state, to collect for such contributions and interest and penalties, if any, due such state; in any such case the administrator may through his attorney or attorneys institute and conduct such suit for such other state. Venue of such proceedings shall be the same as for actions to collect delinquent contributions, penalties and interest due under this act. A certificate by the secretary of any such state under the great seal of such state attesting the authority of such official or officials to collect unemployment compensation contributions, penalties and interest shall be conclusive evidence of such authority.

(3) Any contractor, who is or becomes an employer under the provisions of this act, who contracts with any subcontractor, who also is or becomes an employer under the provisions of this act, shall withhold sufficient money on the contract to guarantee that all contributions, penalties, and interest are paid upon completion of the contract. It shall be the duty of any subcontractor who is or becomes an employer under the provisions of this act, to furnish the contractor with a certification issued by the employment security division, prior to final payment for the particular job, stating that said subcontractor is current and in full compliance with the provisions of this act. Failure to comply with the provisions of this section shall render the contractor directly liable for all contributions, penalties and interest due from the subcontractor on the particular job and the administrator has all of the remedies of collection against the contractor under the provisions of this act as though the services in question were performed directly for the contractor.

(4) When a corporation subject to Montana corporate law has failed to file the annual corporation report with the Montana secretary of state, as required by law, the division shall hold the president, vice-president, secretary and treasurer jointly and severally liable for any contributions due for the period in which the corporation is delinquent in filing the

HeinOnline -- 1977 vol. II 1264 1977

annual corporation report. If the required annual corporation report is made and filed after the time specified, such officers may not, on account of prior failure to make report, be held liable for the contributions thereafter accruing."

Approved April 15, 1977.

CHAPTER NO. 387

AN ACT TO EXEMPT FROM TAXATION BUILDINGS OWNED BY A PUBLIC ENTITY AND LOCATED UPON PUBLIC AIRPORTS AND LEASED TO PRIVATE INTERESTS; AMENDING SECTION 84-207, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-207, R.C.M. 1947, is amended to read as follows:

"**84-207. Privilege tax upon possession and use of tax-exempt property — exceptions.** From and after the effective date of this act there is imposed and there shall be collected a tax upon the possession or other beneficial use enjoyed by any private individual, association, or corporation of any property, real or personal, which for any reason is exempt from taxation. *No tax may be imposed upon the possession or other beneficial use of buildings owned by public entities and located upon public airports. However, privately owned buildings located on such airport property are subject to tax.* No tax shall be imposed upon the possession or other beneficial use of public lands occupied under the terms of mineral, timber or grazing leases or permits issued by the United States or the state of Montana or upon any easement unless the lease, permit or easement entitles the lessee or permittee to exclusive possession of the premises to which the lease, permit or easement relates."

Approved April 15, 1977.

CHAPTER NO. 388

AN ACT REGARDING THE USE AND ADMINISTRATION OF CORPORAL PUNISHMENT IN PUBLIC SCHOOLS; AMENDING SECTION 75-6109, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6109, R.C.M. 1947, is amended to read as follows:

"**75-6109. Power of teacher over pupils and undue punishment.** Any teacher *or principal* shall have the authority to hold any pupil to a strict accountability for any disorderly conduct in school, on the way to or from school, or during intermission or recess. Whenever a *principal*

shall deem it necessary to inflict corporal punishment in order to maintain orderly conduct of a pupil, he shall administer such corporal punishment without undue anger and only in the presence of *a witness*. Before any corporal punishment is administered, the parent or guardian shall be notified of the *principal's* intention to so punish his child; except that in cases of open and flagrant defiance of the teacher, *principal*, or of the authority of the school, the teacher *or principal* may administer corporal punishment without giving such notice.

Any teacher in a district not employing a district superintendent or a principal of the school where the teacher is assigned shall have the authority to suspend a pupil for good cause *and to administer corporal punishment in the presence of a witness, without undue anger.* Where a district superintendent or principal is employed only he shall have the authority to suspend a pupil for good cause. Whenever a teacher suspends a pupil, he shall notify the trustees immediately of such action, and the trustees shall meet as soon as practicable to consider the suspension action of the teacher.

It shall be the duty of any teacher to report the truancy or incorrigibility of any pupil to the district superintendent, principal, or the trustees, whichever is applicable.

Any teacher *or principal* who shall maltreat or abuse any pupil by administering any undue or severe punishment shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined not more than $100."

Approved April 15, 1977.

CHAPTER NO. 389

AN ACT TO CHANGE THE DEPOSIT OF SURPLUS PROPERTY INCOME FROM THE FEDERAL AND PRIVATE GRANT CLEARANCE FUND TO THE REVOLVING FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-3104, R.C.M. 1947, is amended to read as follows:

"**82-3104. Agency for surplus property — authorization for financing.** The state agency for surplus property shall be self-sustaining and shall pay for its operation and maintenance directly from receipts from surplus property which shall be deposited in the treasury in the *revolving* fund. At any time the state board of *public* education deems that sufficient surplus has accumulated in the surplus property account, over and above the necessary funds for proper expenditures and reasonable reserve, a rebate shall be made to all institutions as listed in section 82-3102(a) which have participated in surplus property purchases during the particular period in which this surplus has accumulated. This rebate shall be determined on a ratio of business transacted by each such insti-

HeinOnline -- 1977 vol. II 1266 1977

tution to the total business transacted by the state agency during the time involved."

Approved April 15, 1977.

CHAPTER NO. 390

AN ACT TO DESIGNATE A STATE MAINTENANCE SYSTEM FOR PUBLIC HIGHWAYS AND TO PROVIDE ADDITIONAL FUNDING THEREFOR BY INCREASING THE TAX ON GASOLINE AND SPECIAL FUELS BY ¼ CENT PER GALLON; AMENDING SECTIONS 84-1832.1 AND 84-1847, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 32-2407.1 that reads as follows:

32-2407.1. State maintenance system. The commission shall designate the following public highways in the state to be included in the state maintenance system:

(1) the federal-aid interstate system as defined by 32-2203(18);

(2) the federal-aid primary system as defined by 32-2203(19) and urban extensions thereto;

(3) those portions of the federal-aid secondary system defined by 32-2203(20) and urban extensions thereto, as are designated by the commission;

(4) other public highways or portions thereof which are not included within the systems above named, which are designated by the commission.

Section 2. There is a new R.C.M. section numbered 32-2402.2 that reads as follows:

32-2402.2. Highway department maintenance responsibility. The department shall have the responsibility for maintenance of all public highways or portions thereof that it maintained on July 1, 1976.

Section 3. There is a new R.C.M. section numbered 32-2402.3 that reads as follows:

32-2402.3. Department maintenance agreements with local governments. The department may enter into an agreement with a local governing body to maintain portions of public highways within its boundaries upon such terms and conditions as may be agreed upon.

Section 4. Section 84-1832.1, R.C.M. 1947, is amended to read as follows:

"84-1832.1. Tax to be collected on diesel fuel and liquid petroleum gas, when. The state department of revenue shall, under the provisions of rules and regulations issued by the department, collect or cause

to be collected from the owners or operators of motor vehicles a tax in an amount equal to *10 cents* for each gallon of diesel fuel or other volatile liquid except liquid petroleum gas, of less than forty-six degrees (46°) A.P.I. (American Petroleum Institute) gravity test when actually sold or used to produce motor power to propel motor vehicles upon the public highways or streets within the state of Montana, or used in motor vehicles, motorized equipment and the internal combustion of any and all engines including stationary engines used in connection with any and all work performed under any and all contracts pertaining to the construction, reconstruction or improvement of any highway or street and their appurtenances awarded by any and all public agencies, including federal, state, county, municipalities, or other political subdivisions."

Section 5. Section 84-1847, R.C.M. 1947, is amended to read as follows:

"**84-1847. Gasoline license tax — amount.** Every distributor shall pay to the state department of revenue a license tax for the privilege of engaging in and carrying on business in this state in an amount equal to one cent (1¢) for each gallon of aviation gasoline, which shall be allocated to the aeronautics commission, as provided by section 1-501, R.C.M. 1947, as amended, and *8 cents* for each gallon of all other gasoline distributed by him within the state and upon which the gasoline license tax has not been paid by any other distributor. Gasoline exported or sold for export out of the state of Montana shall not be included in the measure of the distributor's license tax."

Section 6. There is a new R.C.M. section numbered 32-2407.4 that reads as follows:

32-2407.4. Funding highway system maintenance. For the purpose of funding the increased cost of maintaining the state highway system as designated in 32-2407.1, ¼ cent per gallon of the special fuel tax collected under 84-1832.1 and ¼ cent per gallon of the gasoline license tax collected under 84-1847 are allocated therefor.

Approved April 15, 1977.

Note: Sections 2 and 3 were erroneously enrolled as 32-2402.2 and 32-2402.3. These sections will appear in R.C.M. 1947 as 32-2407.2 and 32-2407.3.

CHAPTER NO. 391

AN ACT PROHIBITING THE SHOWING BY MOVIE THEATERS OF OFFENSIVE VIOLENT PREVIEWS WHEN MINORS ARE PERMITTED TO ATTEND THE MOVIE THEN BEING FEATURED; AMENDING SECTION 94-8-110.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-8-110.1, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1268 1977

"**94-8-110.1. Public display of offensive material.** (1) A person is guilty of public display of offensive sexual material when, with knowledge of its character and content, he displays or permits to be displayed in or on any window, showcase, newsstand, display rack, wall, door, billboard, marquee or similar place, any pictorial, three-dimensional or other visual representation of a person or a portion thereof of the human body that predominantly appeals to prurient interest in sex, and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and is utterly without redeeming social importance for minors; and does not

(a) separate that material by an opaque structure from other materials displayed, and

(b) establish, by official identification, that each person viewing the displayed material is at least eighteen (18) years of age.

(2) A theater may not display previews or projections advertising or promoting motion pictures if such previews or projections contain a display of offensive sexual *or offensive violent* material and if minors are permitted to attend the showing of the motion picture then being featured.

(3) For purposes of this section, "offensive violent material" means material which is so violent as to be patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

(4) A drive-in movie screen may not display any material prohibited by *subsection (1)* in such manner that the display is easily visible from any public street, sidewalk, thoroughfare or transportation facility.

(5) A person convicted of the public display of offensive sexual material *or convicted of otherwise violating this section* shall be fined at least five hundred dollars ($500) but not more than one thousand dollars ($1,000), or imprisoned in the county jail for a term not to exceed six (6) months, or both."

Approved April 15, 1977.

CHAPTER NO. 392

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VIII, SECTION 12, OF THE MONTANA CONSTITUTION TO ADD A SECTION AUTHORIZING ESTABLISHMENT OF AN INTERIM LEGISLATIVE COMMITTEE TO APPROVE OR DISAPPROVE BUDGET AMENDMENTS TO SPEND FUNDS NOT APPROPRIATED AT THE PRECEDING SESSION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 12, Article VIII, of the Montana constitution is amended to read as follows:

HeinOnline -- 1977 vol. II 1269 1977

"Section 12. **Strict accountability.** The legislature shall by law insure strict accountability of all revenue received and money spent by the state and counties, cities, towns, and all other local governmental entities. *In order to insure strict accountability, the legislature shall establish by law a committee comprised of members of both houses of the legislature which may, between sessions of the legislature, approve or disapprove for expenditure by any institution or agency of the state funds which were not available for consideration by the legislature.*"

Section 2. **Effective date.** If approved by the electorate, this amendment is effective January 1, 1979.

Section 3. **Submission to electors.** This amendment shall be submitted to the electors of the state of Montana at the general election to be held November 7, 1978, by printing on the ballot the full title of this act and the following:

☐ FOR authorizing a joint interim committee of the legislature to approve or reject budget amendments to spend funds not appropriated at the preceding session.

☐ AGAINST authorizing a joint interim committee of the legislature to approve or reject budget amendments to spend funds not appropriated at the preceding session.

Approved (Constitutional Amendment).

CHAPTER NO. 393

AN ACT ESTABLISHING THE METHOD OF ASSESSING SWINE AFTER 1976; ENACTING A NEW R.C.M. SECTION AND AMENDING SECTION 84-202, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-5222 that reads as follows:

84-5222. Assessment of swine. (1) Each swine producer shall submit a statement in the manner prescribed by the department of revenue showing the number of pigs owned in each of the following classes as of January 1:

(a) market hogs, which are hogs between 3 months and 6 months of age, and which have a conclusively presumed weight factor of 150 pounds;

(b) breeding sows, which have a conclusively presumed weight factor of 300 pounds;

(c) breeding boars, which have a conclusively presumed weight factor of 300 pounds.

(2) The department shall determine market value of swine by multiplying the following average USDA Omaha quotation price over the pre-

HeinOnline -- 1977 vol. II 1270 1977

ceding 5 years, less $2 per hundred in the case of market hogs and breeding sows, times the conclusively presumed weight of each pig in the class:

(a) market hogs—USDA Omaha quotation for grades 1 to 3 at 200 to 240 pounds;

(b) breeding sows—USDA Omaha quotation for sows at 270 to 330 pounds;

(c) breeding boars—valued the same as market hogs.

(3) The department shall apply the same equalization factor to swine as to other classes of livestock.

(4) The department shall publish the most recent 5-year average USDA Omaha quotation price for each class in the Montana Administrative Code.

Section 2. Section 84-202, R.C.M. 1947, is amended to read as follows:

"**84-202. Exemptions from taxation.** (1) (a) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

HeinOnline -- 1977 vol. II 1271 1977

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(4) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(5) [The following agricultural products are exempt from taxation:]

(a) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation.

(b) All nonperishable unprocessed agricultural products except livestock, held in possession of the original producer for less than seven (7) months following harvest.

(c) Livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of 9 months as of the last day of any month *and swine which have not attained the age of 3 months as of January 1.*

(6) Moneys and credits are exempt from taxation.

(7) A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under section 84-7403."

Approved April 18, 1977.

CHAPTER NO. 394

AN ACT TO PROVIDE FOR THE PAYMENT OF INTEREST FOR RECOVERY OF TAXES PAID UNDER PROTEST; AND AMENDING SECTION 84-4502, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-4502, R.C.M. 1947, is amended to read as follows:

"**84-4502. Payment of taxes under protest — action to recover.** (1) In all cases of levy of taxes, licenses or other demands for public revenue which are deemed unlawful by the party whose property is thus taxed, or from whom such tax or license is demanded or enforced, such party may before such tax or license becomes delinquent pay under written protest such tax or license, or any part thereof, deemed unlawful, to the officers designated and authorized to collect the same, specifying the grounds of protest; and thereupon the party so paying, or his legal representatives, may bring an action in any court of competent jurisdiction against the officers to whom said license or tax was paid, or against the county or municipality in whose behalf the same was collected, and the state department of revenue, which shall be served with summons and copy of the complaint, to recover such tax or license, or any portion thereof, paid under protest; provided, that any action instituted to recover any license or tax paid under protest shall be commenced and summons served within sixty (60) days after the date of payment of the same; provided further, that when any such license or tax is payable in installments the first installment, or so much thereof as may be deemed unlawful, may be so paid under written protest and suit commenced and summons served to recover the same within the time herein prescribed, and if any subsequent installment of such license or tax shall become due or payable before the final determination of the suit commenced to recover the first installment, or portion thereof, so paid under protest, then such subsequent installment, or portion thereof deemed unlawful, may also be paid under written protest, and no suit or action need be commenced to recover the same, but the determination of the suit or action commenced to recover the first installment, or portion thereof, paid under protest, shall determine the right of the party paying such subsequent installment to have the same, or any part thereof refunded to him. All such licenses and taxes, when so paid under protest, shall be deposited by the treasurer of the county or municipality to the credit of a special fund to be designated as protest fund, and shall be *invested in interest-bearing deposits in local banks or savings and loan associations and* retained in such protest fund until the final determination of any suit or action to recover the same. *Nothing contained herein prohibits the investment of the moneys in this fund in the state unified investment program.*

(2) If no action is commenced within the time herein specified, or if such action be commenced and finally determined in favor of the county or municipality, or treasurer thereof, the amount of such license or tax shall be taken from such protest fund and deposited to the credit of the fund or funds to which the same property belongs, but if such action is finally determined adversely to such county or municipality, or the treasurer thereof, then the treasurer shall, upon receiving a certified copy of the final judgment in said action, refund the amount of such license or tax, with costs of suit, *and interest at the rate currently paid on short-term interest-bearing time deposits in banks in the county, or 5% a year, whichever is greater, from the date of payment under protest,* to the person in whose favor such judgment is rendered; provided, that if such action was commenced for the purpose of recovering the first installment, or any portion thereof, of any such license or tax, and any subsequent installment thereof, has been paid under protest, as herein provided, then the county

HeinOnline -- 1977 vol. II 1273 1977

treasurer shall, at the time of refunding the amount of such first installment required by such judgment also refund such portion of any subsequent installment as the person holding such judgment is entitled to recover, *together with interest thereon at the rate of 6% a year from the date of payment under protest.*"

Section 2. **Application.** This act applies to any suit filed after July 1, 1977.

Approved April 18, 1977.

CHAPTER NO. 395

AN ACT TO EMPOWER CONSERVATION DISTRICTS TO DEAL WITH SALINE SEEP AND OTHER SOIL AND WATER QUALITY PROBLEMS; AMENDING SECTION 76-108, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 76-108, R.C.M. 1947, is amended to read as follows:

"**76-108. Powers of districts and supervisors.** A. A conservation district organized under the provisions of this act shall constitute a governmental subdivision of this state, and a public body corporate and politic, exercising public powers, and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of this act:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion, floodwater and sediment damages, *water quality as it pertains to saline seep* and to the conservation, development, utilization, and disposal of water and the preventive and control measures and works of improvement needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement; provided, however, that in order to avoid duplication of research activities, no district shall initiate any research program except in co-operation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct soil, vegetation, and water resources conservation projects on lands within the districts upon obtaining the consent of the owner of such lands or the necessary rights or interest in such land;

(3) To carry out preventive and control measures and works of improvement for flood prevention and the conservation, development, utilization, and disposal of water within the district, including, but not limited to, engineering operations, range management, methods of cultivation, the growing of vegetation, changes in use of land, and the measures listed in subsection C of section 76-102, R.C.M. 1947, on lands owned or controlled by this state or any of its agencies with the co-operation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the occupier of such lands or the necessary rights or interests in such lands;

HeinOnline -- 1977 vol. II 1274 1977

(4) To co-operate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to, any agency, governmental or otherwise, or any occupier of lands within the district, in the carrying on of erosion-control and prevention operations, and works of improvement for flood prevention and the conservation, development, utilization and disposal of water within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this act;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein, and all such property shall be exempt from taxation by the state or any political subdivision thereof, to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this act; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this act;

(6) To make available on such terms as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment, as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion, and for flood prevention and the conservation, development, utilization, and disposal of water;

(7) To construct, improve, operate and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this act;

(8) To develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion, and for flood prevention, and conservation, development, utilization, and disposal of water within the district, which plans shall specify in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable, for the effectuation of such plans, including the specification of engineering operations, range management, methods of cultivation, the growing of vegetation, cropping, and range programs, tillage and grazing practices, and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease, or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention project, or combinations thereof, located within its boundaries undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention project, or combination thereof, within its boundaries; to act as agent for the United States, or any of its agencies, or for this state or any of its agen-

HeinOnline -- 1977 vol. II 1275 1977

cies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control, or erosion-prevention projects, or combination thereof, within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, and to use or expend such moneys, services, materials, or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which seal shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make, and from time to time amend and repeal, rules and regulations not consistent with this act, to carry into effect its purposes and powers;

(11) As a condition to the extending of any benefits under this act to, or the performance of work upon, any lands not owned or controlled by this state or any of its agencies, the supervisors may require contributions in money, services, materials, or otherwise to any operations conferring such benefits, and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damages thereon;

(12) To borrow money and incur indebtedness and to issue bonds or other evidence of such indebtedness; also to refund or retire an indebtedness or lien that may exist against the district or property thereof;

(13) To fix and revise as necessary and collect rates, fees, tolls, rents, or other charges for the use of or for services, facilities and materials furnished or provided. Revenues from these sources may be expended in carrying out the purposes and provisions of this act;

(14) To cause taxes to be levied in the same manner provided for in Title 76, chapter 2, R.C.M. 1947, for the purpose of paying any obligation of the district and to accomplish the purposes of this act in the manner herein provided.

(15) To apply for and receive federal revenue sharing funds in order to carry out the purposes and provisions of this chapter;

B. No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder unless the legislature shall specifically so state."

Approved April 18, 1977.

CHAPTER NO. 396

AN ACT TO ESTABLISH THE OFFICE OF COURT ADMINISTRATOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82-510 that reads as follows:

82-510. Court administrator — office created — appointment — terms — compensation. There is established the office of court administrator. The supreme court shall appoint a court administrator. The court administrator shall hold his position at the pleasure of the court.

Section 2. There is a new R.C.M. section numbered 82-511 that reads as follows:

82-511. Practice of law prohibited. Neither the court administrator nor any assistant may practice law in any of the courts of this state while holding his position.

Section 3. There is a new R.C.M. section numbered 82-512 that reads as follows:

82-512. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide such information to the legislature upon request;

(3) recommend to the supreme court improvements in the judiciary; and

(4) perform such other duties as the supreme court may assign.

Section 4. There is a new R.C.M. section numbered 82-513 that reads as follows:

82-513. Cooperation of court officers. All court officers, including clerks of district courts, shall comply with requests made by the court administrator for information and statistical and financial data bearing on the business transacted by the courts.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 18, 1977.

CHAPTER NO. 397

AN ACT REMOVING BARRIERS TO MORE EFFICIENT DELIVERY OF FOREST FIRE PROTECTION SERVICES TO MONTANA'S FOREST AND FARM RESOURCES BY SIMPLIFYING THE FOREST FIRE ASSESSMENT SYSTEM, EXPANDING THE RESPONSIBILITY AND AUTHORITY OF COUNTIES IN PROVIDING PROTECTION FOR FOREST AND FARM RESOURCES, AND CLARIFYING STATUTES RELATING TO FIREWARDENS; AMENDING SECTIONS 28-103, 28-105, 28-106, 28-109, 28-110, 28-111, 28-114, 28-117, 28-118,

HeinOnline -- 1977 vol. II 1277 1977

28-122, 28-129, 28-601, 28-602, 28-603, 81-1411, 81-1412, AND 81-1415, R.C.M. 1947; AND REPEALING SECTIONS 28-125, 28-128, AND 28-604, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 28-103, R.C.M. 1947, is amended to read as follows:

"**28-103. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Forest land" means land which has enough timber, standing or down, slash, or brush, to constitute in the judgment of the *department* a fire menace to life or property; grassland and agricultural areas are included when those areas are intermingled with or contiguous to *and no further than one-half mile from* areas of forest land.

(2) "Lands" for conservation purposes means all forest lands within this state which are officially classified by the *department* as forest lands *under 28-106.*

(3) "Forest fire" means a fire burning uncontrolled on forest lands.

(4) "*Forest* fire protection district" means a definite forest land area, the boundaries of which are fixed, and wherein forest fire protection is provided through the medium of an agency recognized by the board.

(5) "Recognized agency" means an agency organized for the purpose of providing forest fire protection and recognized by the board as giving adequate fire protection to forest lands in accordance with rules adopted by the board.

(6) "Forest fire season" means the period of each year beginning on May *1* and ending on September *30*, inclusive; however, in the event of excessive or great fire danger, this period may be expanded when in the judgment of the department dangerous fire conditions exist. When expanded, the department shall give public notice.

(7) "Forest fire protection" means the work of prevention, detection, and suppression of forest fires *and includes training required to perform those functions.*

(8) "Conservation" means the protection and wise use of forest, forest range, forest water, and forest soil resources in keeping with the common welfare of the people of this state.

(9) "Owner" means the person, firm, association, or corporation having the actual, beneficial ownership of forest land or timber other than an easement, *right-of-way*, or mineral reservation.

(10) "Board" means the board of natural resources and conservation, provided for in section 82A-1509.

(11) "Department" means the department of natural resources and conservation, provided for in Title 82A, chapter 15."

Section 2. Section 28-105, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1278 1977

"**28-105. Powers of board.** The board may:

(1) Create forest fire protection districts. Before a district is created, the board shall hold a hearing in any county in which the proposed district or a part thereof is included and the department shall give notice of the hearing at least 20 days in advance thereof to all owners to be affected by the proposed district. Service of the notice may be made by registered or certified mail or by publication in a newspaper published in the county in which the hearing is to be held *or,* if no newspaper is published in the county, then in a newspaper having a general circulation therein. A forest fire protection district may not be created unless approved in writing by vote of not less than 51% of the owners representing at least 51% of the acreage to be involved in the proposed forest fire protection district.

(2) Adopt and enforce through the department reasonable rules for the purpose of enforcing and accomplishing the provisions and purposes of this chapter; however, these rules may not conflict with the powers of the board of land commissioners."

Section 3. Section 28-106, R.C.M. 1947, is amended to read as follows:

"**28-106. Powers and duties of department.** (1) The department may give technical and practical advice concerning forest, range, water, and soil conservation and the establishment and maintenance of woodlots, windbreaks, *shelterbelts, and forest fire protection.*

(2) The department may provide for forest fire protection of any forest lands through the department or by contract or any other feasible means, in cooperation with any federal, state, or other recognized agency.

(3) The department may classify the forest land areas of the state for which conservation and fire protection measures are reasonably required and change or modify the classification from time to time as in its judgment is proper.

(4) The department shall cooperate with all public and other agencies in the development, protection, and conservation of the forest, range, and water resources in this state.

(5) Nonforest lands and improvements may be protected by the department when requested by the landowner at rates determined by the department.

(6) The department shall assist the department of state lands in the protection, economic development, and use of the state forests and forest land held by the state for the purposes and benefit of the common schools and state institutions."

Section 4. Section 28-109, R.C.M. 1947, is amended to read as follows:

"**28-109. Duty of owner of classified forest land.** An owner of forest land classified as such by the *department* shall protect against the starting or existence and suppress the spread of fire on that land. This protection and suppression shall be in conformity with reasonable rules and standards for adequate fire protection adopted by the board. If the owner does not provide for the protection and suppression, the department may pro-

HeinOnline -- 1977 vol. II 1279 1977

vide it at a cost to the landowner of not more than *16* cents per acre per year and not *less* than *$6 per owner* per year *in each protection district. The* owner of the land shall pay to the county treasurer of the county in which the land is situated the charge for the same approved by the department, in accordance with this chapter. No other charges may be assessed those landowners participating, except in cases of proven negligence on the part of the landowner or his agent."

Section 5. Section 28-110, R.C.M. 1947, is amended to read as follows:

"**28-110. What constitutes compliance.** (1) An owner of forest lands within an organized forest *fire* protection district, while a member of or while participating in a recognized agency for forest protection, *or within areas protected by a county* shall be considered to have fully complied with the requirements of 28-109.

(2) In establishing boundaries of organized forest fire protection districts covering forest lands, the board may for the purpose of administrative convenience designate recognizable landmarks as boundaries."

Section 6. Section 28-111, R.C.M. 1947, is amended to read as follows:

"**28-111. Determination of costs of fire protection — certification — tax levy.** (1) The department shall prepare *an annual operation assessment* plan in which fire protection costs are determined. The department shall request the legislature to appropriate the state's portion *of the cost.* After the appropriation is made by the legislature, the department shall cause an assessment to be made on the owners of classified forest land, as specified in 28-109, sufficient to bring the total amount received to the amount specified in the approved plan.

(2) On or before the second Tuesday in August of each year, *the* department shall certify in writing to the county assessor of each county the names of these owners of forest lands in his county, together with a description of their lands and a statement of the amount found to be due and owing by each of the owners to the department for forest fire protection.

(3) All payments required of owners of forest lands by this chapter are assessments for benefits actually received by those owners in the protection of their lands and are not a tax upon the property of such owners.

(4) Upon receiving the certificate from the department showing the amount due, the county assessor shall extend the amounts upon the county tax rolls covering the lands, and the sums shall become obligations of the owner to be paid and collected in the same manner and at the same time and with like penalties as general state and county taxes upon the same property are collected. All sums collected shall be promptly *deposited* in the federal and private grant clearance fund for distribution in accordance with 28-124."

Section 7. Section 28-114, R.C.M. 1947, is amended to read as follows:

"**28-114. Permit for burning required.** During the forest fire season or an expansion thereof, a person may not ignite or set a forest fire, slash burning fire, land clearing fire, debris burning fire, or an open fire within

HeinOnline -- 1977 vol. II 1280 1977

forest lands without an official written permit to ignite or set the fire from *the recognized protection agency for that protection area.* A permit is not required in order to build, set, or ignite a campfire within and upon a designated improved camping ground or upon a plot of land from which all vegetable and inflammable matter and debris have been removed to a point where it may not become ignited by the campfire or by sparks therefrom."

Section 8. Section 28-117, R.C.M. 1947, is amended to read as follows:

"**28-117. Throwing lighted materials — penalty.** *A* person who *throws or places* any lighted cigarette, cigar, ashes, or other flaming or glowing substance that may start a fire in or near any forest material *is* guilty of a misdemeanor."

Section 9. Section 28-118, R.C.M. 1947, is amended to read as follows:

"**28-118. Spark arresters to be provided.** *No* person *may* use, drive, or operate within any forest lands any internal combustion engine *that* is not equipped with a modern, efficient, and adequate spark arrester and with modern, efficient devices to prevent the escape of sparks, coals, cinders, and other burning material from the exhaust of any such engine."

Section 10. Section 28-122, R.C.M. 1947, is amended to read as follows:

"**28-122. Department of state lands and the county governing body to cooperate.** The department of state lands and county *governing body shall* cooperate with the department to the extent legally permissible in providing means and methods of safeguarding the forest land lying within the state and in preventing fire nuisance thereon. The department of state lands and the county *governing body shall* list forest lands under their jurisdiction with the department for forest protection. The moneys the state and counties become liable for under this section shall be paid from funds provided by law for the protection of the forest lands owned by the state and counties."

Section 11. Section 28-129, R.C.M. 1947, is amended to read as follows:

"**28-129. Owners of forest lands may have hearing before board — conditions.** An owner of forest land is entitled to a hearing before the board, after a request therefor, on any subject pertaining to the activities of the board, the department or any recognized agency as agent of the department affecting the owner's property. A request for a hearing before the board may not have the effect of suspending the operations of the board, the department, or any agent of the department undertaken pursuant to this chapter, but upon the hearing, the board may terminate those operations if found unreasonable. A hearing pertaining to costs charged against the forest land of an owner for protection thereof, as provided in 28-109, must be requested on or before August *15* each year."

Section 12. Section 28-601, R.C.M. 1947, is amended to read as follows:

"**28-601. Authority of county governing body to protect range,**

HeinOnline -- 1977 vol. II 1281 1977

farm, and forest resources. For the purpose of protection and conservation of range, farm, and forest resources, and of the prevention of soil erosion, the county *governing body may* perform the functions provided *in this chapter.*"

Section 13. Section 28-602, R.C.M. 1947, is amended to read as follows:

"**28-602. Functions of the county governing body.** The *county governing body,* with respect to rural fire control, shall carry out the specific authorities and duties hereinafter imposed:

(1) *The governing body shall* provide for the organization of volunteer rural fire control crews.

(2) *The governing body shall* appoint a county rural fire chief and such district rural fire chiefs, subject to the direction and supervision of the county rural fire chief, as they *consider* necessary. The county rural fire chief may be a regular county officer or other person who in the opinion of the board is the best qualified to perform the duties of this office and who *is not entitled to* additional compensation for the duties hereby imposed. All district fire chiefs shall serve without compensation.

(3) *The county governing body shall within the limitations of 28-603 protect the range, farm, and forest lands within the county from fire in cooperation* with federal, state, and other fire protection agencies, including *governing bodies of adjoining counties.*"

Section 14. Section 28-603, R.C.M. 1947, is amended to read as follows:

"**28-603. Powers of county governing body.** (1) *The* county *governing body* may in *its* discretion establish fire seasons annually during which no person *may* ignite or set any forest fire, slash burning fire, land clearing fire, debris burning fire, or any open fire within *the county protection area on* any forest, range, or crop lands, subject to the provisions of this act, without having obtained an official written permit to ignite or set such fire from *the recognized protection agency for that protection area.*

(2) Any person who *ignites* or *sets* any forest fire, slash burning fire, land clearing fire, debris burning fire, or any open fire within any forest, range, or crop land subject to the provisions of this act without first having obtained a written permit to ignite or set such fire *is* guilty of a misdemeanor.

(3) To augment rural crews in case of serious emergency, the *governing body* may provide for the organization and training of voluntary urban fire crews to be used in rural areas.

(4) Any county rural fire chief or district rural fire chief may enter private property either with or without fire control crews for the purpose of suppressing fires and *is* exempt from any damage resulting from such activity.

(5) The *county governing body* is authorized to appropriate *funds* for

HeinOnline -- 1977 vol. II 1282 1977

the purchase, care, and maintenance of *firefighting* equipment or for the payment of wages in *prevention, detection, and* suppression of fires, or if the general fund is budgeted to the full limit, the *county governing body* may at any time fixed by law for levy and assessment of taxes levy a tax at such rate as in their judgment will be necessary to raise such needed sum not to exceed $15,000."

Section 15. There is a new R.C.M. section numbered 28-605 that reads as follows:

28-605. State to be reimbursed for forest fire suppression activites in noncooperating counties. A county that has not entered into a cooperative or other written agreement with the state for forest protection shall reimburse the state for costs incurred by the state in connection with state fire suppression activities resulting from a forest fire emergency in that county.

Section 16. Section 81-1411, R.C.M. 1947, is amended to read as follows:

"**81-1411. Duties of department of natural resources and conservation.** The department of natural resources and conservation shall, under the direction and control of the state board of land commissioners, do all the field work in the selection, location, examination, appraisement, and reappraisement of state timberlands. It shall do all acts required of it by the board, and under the direction of the board it has general charge of the timberlands of the state. It shall, under the supervision of the board, execute all matters pertaining to forestry within the jurisdiction of the state; have charge of all firewardens of the state and direct and aid them in their duties; direct the protection, improvement, and condition of state forests; take such action as is authorized by law to prevent and extinguish forest, brush, and grass fires; enforce the laws pertaining to forest and brushcover lands and prosecute for any violation of those laws. *The department shall establish and maintain forest fire control training programs for state firefighters and other persons requiring training.*"

Section 17. Section 81-1412, R.C.M. 1947, is amended to read as follows:

"**81-1412. Firewardens.** The department of natural resources and conservation shall appoint *firewardens* in such number and localities as it considers *necessary*. Every sheriff, undersheriff, deputy sheriff, state fish and game warden, *the* state fish and game director, *members of the board of natural resources and conservation, the director of the department of natural resources and conservation and employees of the department designated by him, officers of organized forest protection districts, members of the Montana highway patrol, officers of the national park service residing in Montana, and officers of the bureau of Indian affairs are firewardens*, but may not receive any additional compensation by reason of the duties hereby imposed. The supervisors and rangers of the federal forest lands within this state, whenever they formally accept the duties and responsibilities of firewardens, may be appointed firewardens. The firewardens shall promptly report all fires to the department of natural resources and conservation, take immediate and active steps toward their

HeinOnline -- 1977 vol. II 1283 1977

extinguishment, report any violation of forest laws, and assist in apprehending and convicting offenders."

Section 18. Section 81-1415, R.C.M. 1947, is amended to read as follows:

"**81-1415. Duties of department of natural resources to protect state lands.** The department, under such rules as the state board of land commissioners may provide, shall protect the *natural resources* of the state and especially the *natural resources* owned by the state from destruction by fire and, for such purpose, in emergencies, may employ men and incur other expenses when necessary."

Section 19. **Repealer.** Sections 28-125, 28-128, and 28-604, R.C.M. 1947, are repealed.

Approved April 18, 1977.

CHAPTER NO. 398

AN ACT TO PERMIT THE DEPARTMENT OF REVENUE TO PAY ADMINISTRATIVE EXPENSES OF THE LIQUOR DIVISION FROM THE REVOLVING FUND APPROPRIATED BY THE LEGISLATURE; AMENDING SECTION 4-1-406, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4-1-406, R.C.M. 1947, is amended to read as follows:

"**4-1-406. Disposition of money received.** All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the department of revenue. The department is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The department shall *pay* from its account in the revolving fund its administrative *expenses*, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the department *may* ever be or become a debt or claim against the state of Montana but shall be payable by the department solely from funds derived from the operation of state liquor stores. The department shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it collected and also the net proceeds from the operation of state liquor stores."

Approved April 18, 1977.

CHAPTER NO. 399

AN ACT TO CHANGE THE GRACE PERIOD FOR THE REGISTRATION OF MOTOR VEHICLES FROM 10 TO 20 DAYS; TO EXTEND THE TIME ALLOWED FOR A DEALER TO FORWARD REGISTRATION PAPERS; AND TO CHANGE THE FINE FOR FAILURE TO

HeinOnline -- 1977 vol. II 1284 1977

COMPLETE REGISTRATION DURING THE GRACE PERIOD FROM A GRADUATED SCALE TO A FIXED FINE OF $10; AMENDING SECTIONS 53-109, 53-109.1, 53-109.4, AND 53-147, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-109, R.C.M. 1947, is amended to read as follows:

"**53-109. Transfer of title or interest.** *(1)* Upon a transfer of any title or interest of an owner in or to a motor vehicle registered under the provisions of this act as hereinbefore required, the person whose title or interest is to be transferred shall write *his signature* with pen and ink upon the certificate of ownership issued for such vehicle in the appropriate space provided upon the reverse side of such certificate, and such signature shall be acknowledged before a notary public.

(2) Within *20 calendar* days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under 53-107, to the county treasurer, who shall forward the same to the registrar, and no certificate of ownership and certificate of registration *may* be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. Failure to make such application within the *20-day grace period subjects* the transferee to a penalty of *$10. The* penalty *is* to be collected by the county treasurer at the time of registration and *is* in addition to the fees otherwise provided by law.

(3) In the event of a transfer by operation of law of any title or interest of an owner of the legal title or owner in and to a motor vehicle as upon inheritance, devise, or bequest, order in bankruptcy or insolvency, execution sale, repossession upon default in the performance of the terms of a lease or executory sales contract, or otherwise than by voluntary act of the person whose title or interest is so transferred, the executor, administrator, receiver, trustee, sheriff or other representative or successor in interest of the person whose title or interest is so transferred shall forward to the registrar of motor vehicles an application for registration in the form required for an original application for registration, together with a verified or certified statement of the transfer of such title or interest which statement shall set forth the reason for such involuntary transfer, the title or interest so transferred, the name or names of the person or persons to whom such title or interest is to be transferred, the process of procedure effecting such transfer, and such other information as may be requested by the registrar and with such statement shall be furnished such evidence and instruments as may otherwise be required by law to effect a transfer of legal or equitable title to or an interest in chattels as may be required in such cases, and in the event the registrar shall be satisfied that such transfer is regular and that all formalities as required by law have been complied with, he shall cause to be sent to the owner, conditional sales vendors, lessors, mortgagees, and other lienors, as shown by his records notice of such intended transfer and thereafter, but not less than 5 days thereafter, shall register such motor vehicle and shall issue a new certificate of ownership and certificate of

HeinOnline -- 1977 vol. II 1285 1977

registration to the person or persons entitled thereto. The notice herein required shall be deemed complied with by deposit in the post office in Deer Lodge, Montana, such notice postage prepaid, addressed to such person or persons at the respective addresses shown on his records.

(4) When the vehicle title that is involuntarily transferred is not registered in this state the procedure set forth above must be followed in applying for a new certificate of ownership and certificate of registration, but the registrar need not send notice of intended transfer and shall issue a new certificate of ownership and a new certificate of registration to the person entitled thereto.

(5) In the event of the death of an owner of one or more motor vehicles and/or trailer and/or semitrailer and/or trailer-house registered hereunder and not exceeding the value of $4,000, without leaving other property necessitating the procuring of letters of administration or letters testamentary, then the surviving husband or wife, or other heir, unless such property is by will otherwise bequeathed, may secure transfer of the certificate of ownership and the certificate of registration of the deceased, in and to such motor vehicle in the name of the surviving husband or wife or other heir, as above mentioned, upon filing with the registrar an affidavit of such person setting forth the fact of survivorship and the name and address of any other heirs and such other facts as are hereby made necessary to entitle the affiant to a transfer and thereupon the registrar is authorized to make such transfer of the certificate of ownership and certificate of registration, subject to all contracts, leases, mortgages, or other liens as shown by his records.

(6) Nothing in the foregoing subdivision of this section shall prevent any conditional sales vendor, mortgagee, or other lienor from assigning his interest or title in or to a motor vehicle registered under the provisions of this act to any other person without the consent of and without effecting the interest of the holder of the certificate of ownership and certificate of registration. Upon any conditional sales vendor, mortgagee, or other lienor assigning his interest in any motor vehicle registered under this act a copy of such assignment must be filed with the registrar and record thereof made upon his records.

(7) Every person who transfers any motor vehicle to a junk dealer for the purpose of scrapping said vehicle shall so notify the registrar and deliver the certificate of ownership and certificate of registration to the registrar for cancellation."

Section 2. Section 53-109.1, R.C.M. 1947, is amended to read as follows:

"**53-109.1. Used motor vehicles — transfer to and from dealers.** The provisions of 53-109*(2)* shall not apply in the event of the transfer of a motor vehicle to a duly licensed automobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes. In such cases, the dealer shall not be required to make application for a new certificate of ownership or for registration during the period of his ownership of said vehicle, but upon his transfer of ownership thereof to a person other than a licensed motor vehicle dealer, the following acts shall be required of the dealer on or before the times herein set forth:

HeinOnline -- 1977 vol. II 1286 1977

(1) Prior to his delivery of the vehicle to the purchaser, the dealer shall issue and affix to the rear window of said vehicle a sticker in form to be prescribed by the registrar and containing the name and address of the purchaser, date of sale, name and address of the dealer, and a description of the vehicle, including its serial number. There shall be imprinted upon said sticker in bold letters the following statement: "IT IS UNLAWFUL TO PLACE LICENSE PLATES UPON THIS VEHICLE UNTIL REGISTERED AT THE OFFICE OF THE COUNTY TREASURER." One copy of said sticker shall be delivered by the dealer to the county treasurer in the manner prescribed in subsection (2) hereof, and a copy shall be retained by the dealer for his file.

(2) Within *4 working* days following the date of delivery of said vehicle, the dealer shall forward to the county treasurer of the county where the purchaser resides the certificate of ownership and certificate of registration (if the same are then in his possession), with an application for registration executed by the new owner in accordance with the provisions of 53-107, and a copy of the sticker affixed to said vehicle by the dealer, and the registrar, upon receipt of said documents from the county treasurer, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien as provided in said 53-107. Transmission of said documents by the dealer to the county treasurer may be accomplished either by personal delivery or by first class mail, in which event they shall be deemed to have been delivered at the time of mailing.

(3) If the dealer is unable to forward the certificate of ownership and/or certificate of registration within the time set forth in subsection (2) hereof, because the same are lost, are in the possession of third parties, or are in process of reissuance in this state or elsewhere, he shall comply in all other respects with the provisions of subdivision (2) and shall forward the missing document or documents to the county treasurer, either personally or by first class mail, within 3 days after their receipt.

Upon compliance by the dealer with the requirements set forth in this section, title to said motor vehicle shall be deemed to have passed to the purchaser as of the date of the delivery of said vehicle to him by the dealer, and the dealer shall have no further liability or responsibility with respect to the processing of registration."

Section 3. Section 53-109.4, R.C.M. 1947, is amended to read as follows:

"**53-109.4. Grace period — penalty.** Any purchaser of a new or used motor vehicle from a duly licensed motor vehicle dealer shall have the grace period of *20 calendar* days from the date of purchase to make application for registration and to obtain registration plates, and it shall not be a violation of this chapter or any other law for such purchaser to operate such vehicle upon the streets and highways of this state without a certificate *of* registration and registration plates during the *20-day* period; provided that at all times during said period the sticker issued by the dealer at the time of purchase shall remain affixed to said vehicle as pro-

HeinOnline -- 1977 vol. II 1287 1977

vided in section 3 [53-109.1]. Failure to make such application within the time provided herein *subjects* the purchaser to a penalty of *$10. The* penalty *is* to be collected by the county treasurer at the time of registration and *is* in addition to the fees otherwise provided by law."

Section 4. Section 53-147, R.C.M. 1947, is amended to read as follows:

"**53-147. New registration required for transferred vehicle — grace period — penalty — display of proof of purchase.** Except as otherwise provided herein, the new owner of the transferred motor vehicle shall have the grace period of *20 calendar* days from the date of purchase to make application and pay the registration fees and taxes as provided by 53-114, as if the same was being registered for the first time in that registration year. *If* the motor vehicle was not purchased from a duly licensed motor vehicle dealer as provided in this chapter, it shall not be a violation of this chapter or any other law for the purchaser to operate the vehicle upon the streets and highways of this state without a certificate of registration during the *20-day* period; provided, that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase shall be clearly displayed in the rear window of the motor vehicle at all times. Failure to make application within the time provided herein shall subject the purchaser to a penalty of *$10.* The penalty shall be collected by the county treasurer at the time of registration and shall be in addition to the fees otherwise provided by law."

Approved April 18, 1977.

CHAPTER NO. 400

AN ACT TO AMEND SECTION 26-301 BY PROVIDING FOR THE DESTRUCTION OF DOGS ATTACKING OR KILLING HOOVED GAME ANIMALS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-301, R.C.M. 1947, is amended to read as follows:

"**26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto.** (1) It shall be unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot or kill, any game animal, or game bird from any self propelled or drawn vehicle, or on, or from any public highway in the state of Montana, or by the aid or with the use of any set gun, jack-light, or other artificial light, trap, snare, salt lick, nor shall any such set gun, jack-light or other artificial light, trap, snare, salt lick or other device to entrap or entice game animals or game birds be used, made or set, nor may rifles be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission; provided, however, that this does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number ten (10) gauge fired from the shoulder,

HeinOnline -- 1977 vol. II 1288 1977

nor shall any game fish be caught, captured, or taken, or attempted to be caught, captured or taken by the aid or with the use of any gun, or trap, nor shall any such set gun, or trap or other device to entrap game fish be used, made, or set.

(2) (a) No game birds or game or fur-bearing animals shall be killed, taken or shot at from any aircraft, nor shall any aircraft be used for the purpose of concentrating, pursuing, driving, rallying or stirring up any game or migratory birds, game or fur-bearing animals, nor shall any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving or stirring up any upland game birds, or game or fur-bearing animals.

(b) No person in an aircraft in the air shall spot or locate any game, or migratory bird, game or fur-bearing animals and communicate the location or approximate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person or persons then on the ground.

(3) No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence, or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) No person may use a shotgun to hunt, kill or shoot deer except with loads as specified by the commission.

(5) *(a)* No person *may* chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided, however, that livestock owners *and* employees of the commission *or* the federal fish and wildlife service may use dogs in pursuit of stock-killing bears and stock-killing mountain lions. *Other* means of taking stock-killing bears and stock-killing mountain lions *may be used,* except the use of the dead fall. *Traps* used in capturing bear shall be inspected twice each day *with the inspections* 12 hours apart. *A* person may take game birds during the *appropriate* open season with the aid of a dog or dogs, and any person or association organized for the protection of game may run field trials at any time upon obtaining written permission from the director.

(b) Any peace officer, game warden, or other person authorized to enforce the Montana fish and game laws who witnesses any dog attacking or killing hooved game animals may destroy that dog without criminal or civil liability.

(6) The state fish and game commission shall have the power to designate certain waters where set lines may be used to fish for certain species of game or nongame fish, and the commission may designate the number of hooks and lines and the length of line or lines which may be used as set lines.

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission shall declare

HeinOnline -- 1977 vol. II 1289 1977

an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging, the taking of paddlefish with long bow and arrow when the commission shall declare an open season when paddlefish may be taken by long bow and arrow, the taking of walleyed pike, sauger, northern pike and nongame fish with spear or gig when the commission shall declare an open season for taking walleyed pike, sauger, northern pike and nongame fish with spear or gig, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and four (4) feet in width, in such waters as may be designated by the commission.

(8) No person, while hunting game animals or game birds shall use a motor-driven vehicle on any other than an established road or trail, unless he has reduced a big game animal to possession and cannot easily retrieve said big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted such permission, provided that after such retrieval, such motor-driven vehicle is again returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting game animals or game birds, shall drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game animal or game bird with the use or aid of any motor-driven vehicle. No person, while hunting game animals or game birds shall drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the landowner and in possession of the hunter. The restrictions in this subsection on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.

(9) Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

(10) The provisions of this section relating to methods of herding, driving, capturing, taking, locating or concentrating of fish, game animals, game birds or fur-bearing animals do not apply to the department of fish and game, or any employee thereof, while acting within the scope and course of the powers and duties of the department.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law."

Approved April 18, 1977.

HeinOnline -- 1977 vol. II 1290 1977

CHAPTER NO. 401

AN ACT TO CHANGE THE RATE AND METHOD OF COMPUTING THE ELECTRICAL ENERGY PRODUCERS' LICENSE TAX AND TO PROVIDE FOR QUARTERLY REPORTING; AMENDING SECTIONS 84-1601 THROUGH 84-1603 AND 84-1605, R.C.M. 1947; AND REPEALING SECTIONS 84-1606 AND 70-805, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1601, R.C.M. 1947, is amended to read as follows:

"**84-1601. Electrical energy producers' license tax.** *In* addition to the license tax now provided by law, each and every individual, firm, partnership, common-law trust, corporation, association, or other organization now engaged in the generation, manufacture, or production of electricity and electrical energy in the state of Montana, either through water power or by any other means, for barter, sale, or exchange, and hereinafter referred to as the "producer", shall on or before the *30th* day *after* each calendar *quarter, quarterly periods ending March 31, June 30, September 30, and December 31,* render a statement to the department of revenue showing the gross amount *except for actual and necessary plant use required to produce the energy* of electricity and electrical energy *produced, manufactured, or generated* during the preceding calendar *quarter* without any deduction and shall pay a license tax thereon in the sum of $.0002 *per kilowatt hour on all such electricity and electrical energy generated, manufactured, or produced, measured at the place of production and as shown on the statement required* in the manner and within the time hereinafter provided."

Section 2. Section 84-1602, R.C.M. 1947, is amended to read as follows:

"**84-1602. Payment of tax — not to be set out on customers' bills.** *The* license tax shall be remitted with the statement and paid on or before the *30th* day of *the* month *after each calendar quarter.* No bill, statement, or account rendered or given any customer by any organization affected by the provisions of this act shall set out or contain, as a separate item, any amount on account or by reason of the license tax imposed by this act."

Section 3. Section 84-1603, R.C.M. 1947, is amended to read as follows:

"**84-1603. Disposition of revenue — interest on delinquency.** The department of revenue shall receipt therefor and promptly turn the same over to the state treasurer. Taxes not met on the due date shall become delinquent, *and a penalty of 10% plus interest at the rate of 1% per month or fraction of a month computed on the total of tax and penalty shall be charged.*"

Section 4. Section 84-1605, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1291 1977

"**84-1605. Inspection of books of producer.** The books and records of such producer shall be subject to inspection by the department of revenue, its agents or employees, during reasonable hours."

Section 5. There is a new R.C.M. section numbered 84-1610 that reads as follows:

84-1610. Procedure to compute tax in absence of statement. If any person fails, neglects, or refuses to file any statement required by 84-1601 within the time therein required, the department of revenue shall, after such time has expired, proceed to inform itself, as it best may, regarding the number of KWH produced by such person in this state during such quarter and compute the amount of taxes due to the state from such person for such quarter and add the penalty and interest as required by 84-1603. The department shall mail to the person required to file a quarterly report and pay such tax a letter setting forth the amount of tax, penalty, and interest due, and the letter shall further contain a statement that if payment is not made within such time a lien may be filed. Upon receipt of the letter, the person shall remit to the department the full amount of tax, penalty, and interest within 15 days. The 10% penalty may be waived by the department if reasonable cause for failure and neglect to file the statement required by 84-1609 is provided to the department.

Section 6. There is a new R.C.M. section numbered 84-1611 that reads as follows:

84-1611. Procedure for collection of tax. All tax, penalty, and interest due from any person under this act is a lien upon any and all real property of such person upon the filing by the department of revenue of the duplicate tax assessment statement in the office of the county clerk in the county where such real property is situated. The lien has precedence over any other claim, lien, or demand thereafter filed and recorded and may be enforced in the name of the state of Montana in the same manner as judgment liens are enforced by law.

Section 7. **Repealer.** Sections 84-1606 and 70-805, R.C.M. 1947, are repealed.

Approved April 18, 1977.

CHAPTER NO. 402

AN ACT TO EXTEND THE GRACE PERIOD FOR OBTAINING A TAX-PAID DECAL FOR A SNOWMOBILE FROM 10 TO 20 DAYS; AMENDING SECTIONS 53-1014 AND 53-1026, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 53-1013.1 that reads as follows:

53-1013.1. Registration of snowmobiles bought from dealers —

HeinOnline -- 1977 vol. II 1292 1977

grace period. (1) A purchaser of a new or used snowmobile from a licensed snowmobile dealer has a grace period of 20 calendar days from the date of purchase to make application for a certificate of ownership and a certificate of registration and to obtain a registration decal. It is not a violation of this chapter or any other law for the purchaser to operate such a snowmobile without a certificate of registration and a registration decal during the 20-day period. During this period the sticker, provided for in subsection (2), shall remain affixed to the snowmobile.

(2) Prior to the delivery of the snowmobile to the purchaser, the dealer shall issue and affix to the snowmobile a sticker (in a form to be prescribed by the registrar of motor vehicles). The sticker shall contain the name and address of the purchaser, the date of sale, the name and address of the dealer, and a description of the snowmobile, including its serial number. The dealer shall keep a copy of the sticker for his records and shall send a copy of the sticker to the registrar of motor vehicles.

Section 2. Section 53-1014, R.C.M. 1947, is amended to read as follows:

"**53-1014. Transfer of title or interest.** (1) Upon a transfer of any title or interest of an owner in or to a snowmobile registered under the provisions of this act, the person whose title or interest is to be transferred shall write *his signature* with pen and ink upon the certificate of ownership issued for such vehicle in the appropriate space provided upon the reverse side of such certificate, and such signature shall be acknowledged before a notary public.

(2) Within *20 calendar* days thereafter, the transferee shall forward both the certificate of ownership so endorsed and the certificate of registration, together with the information required under this act, to the registrar, who shall file the same upon receipt thereof, and no certificate of ownership and certificate of registration *may* be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. The registrar of motor vehicles shall collect a fee of $2 for each application for transfer of ownership.

(3) The provisions of *subsection* (2) of this section, requiring a transferee to forward the certificate of ownership after endorsement and the certificate of registration to the registrar *do* not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes, but every such dealer shall upon transferring such interest deliver such certificate of ownership and certificate of registration with an application for registration executed by the new owner in accordance with the provisions of this act, and the registrar upon receipt of said certificate of ownership, certificate of registration, and application for registration, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership and certificate of registration together with a statement of any conditional sales contract, mortgage, or other lien."

Section 3. Section 53-1026, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1293 1977

"**53-1026. Application to be made annually — grace period — proof of purchase.** (1) Application must be made to the county treasurer for the issuance of tax-paid decals annually. All tax-paid decals expire on June 30 of each year.

(2) An owner of a newly purchased snowmobile shall have a grace period of *20 calendar* days from the date of purchase to make application for a current tax-paid decal; provided, however, that at all times during that period a bill of sale or other proof of purchase reciting the date of purchase shall be carried by the operator or with the snowmobile at all times. An owner or operator of such a snowmobile being operated after the *20-day* grace period without a current tax-paid decal displayed on the snowmobile shall be subject to the penalties of 53-1027."

Approved April 18, 1977.

CHAPTER NO. 403

AN ACT TO BE CALLED THE MONTANA DRUG PRODUCT SELECTION ACT, ALLOWING FOR PRODUCT SELECTION OF CERTAIN PRESCRIBED DRUGS; AMENDING SECTIONS 27-703 AND 66-1523, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 66-1528 that reads as follows:

66-1528. Short title. This act may be cited as the "Montana Drug Product Selection Act".

Section 2. There is a new R.C.M. section numbered 66-1529 that reads as follows:

66-1529. Definitions. As used in 66-1528 through 66-1536 the following definitions apply:

(1) "Bioavailability" means the extent and rate of absorption from a dosage form as reflected by the time-concentration curve of the administered drug in the systemic circulation.

(2) "Bioequivalent" means a chemical equivalent which, when administered to the same individual in the same dosage regimen, will result in comparable bioavailability.

(3) "Brand name" means the proprietary or the registered trademark name given to a drug product by its manufacturer, labeler, or distributor and placed upon the drug, its container, label, or wrapping at the time of packaging.

(4) "Chemical equivalent" means drug products that contain the same amounts of the same therapeutically active ingredients in the same dosage forms and that meet present compendium standards.

HeinOnline -- 1977 vol. II 1294 1977

(5) "Drug product" means a dosage form containing one or more active therapeutic ingredients along with other substances included during the manufacturing process.

(6) Person means an individual, firm, partnership, association, corporation, or any other entity, whether organized for profit or not.

(7) "Generic name" means the chemical or established name of a drug product or drug ingredients published in the latest edition of the official United States Pharmacopoeia or official Homeopathic Pharmacopoeia of the United States.

(8) "Present compendium standard" means the official standard for drug excipients and drug products listed in the latest revision of the United States Pharmacopoeia and the National Formulary.

(9) "Prescriber" means a practitioner licensed under the professional laws of the state to administer medicine and drugs.

(10) "Product selection" means to dispense without the prescriber's express authorization a different drug product in place of the drug product prescribed.

(11) "Therapeutically equivalent" means those chemical equivalents which, when administered in the same dosage regimen, will provide essentially the same therapeutic effect as measured by the control of a symptom or a disease and/or toxicity.

Section 3. There is a new R.C.M. section numbered 66-1530 that reads as follows:

66-1530. Product selection permitted. (1) Except as limited by subsection (2) of this section and unless instructed otherwise by the purchaser, the pharmacist who receives a written or oral prescription for a specific drug product by brand or proprietary name may select a less expensive drug product with the same generic name, the same strength, quantity, dose, and dosage form as the prescribed drug which is, in the pharmacist's professional opinion, therapeutically equivalent, bioequivalent, and bioavailable.

(2) If, in the professional opinion of the prescriber, it is medically necessary for his patient that an equivalent drug product not be selected, the prescriber may so indicate by certifying that in his professional judgment the specific brand name drug product is medically necessary for that particular patient. In the case of a prescription transmitted orally, the prescriber must expressly indicate to the pharmacist that the brand name drug product prescribed is medically necessary.

Section 4. There is a new R.C.M. section numbered 66-1531 that reads as follows:

66-1531. Notice to purchaser. (1) A pharmacist who selects a drug product as provided in 66-1530 shall notify the person presenting the prescription, that he may refuse the product selection as provided in 66-1530.

(2) Each pharmacy shall display in a prominent place that is in clear

HeinOnline -- 1977 vol. II 1295 1977

and unobstructed public view, at or near the place where prescriptions are dispensed, a sign stating, "This pharmacy may be able to select a less expensive drug product which is equivalent to the one prescribed by your physician unless you or your physician request otherwise." The printing on the sign shall be in block letters not less than 1 inch in height.

Section 5. There is a new R.C.M. section numbered 66-1532 that reads as follows:

66-1532. Savings passed on. (1) A pharmacist selecting a less expensive drug product must pass on to the purchaser the full amount of the savings realized by the product selection. In no event may the pharmacist charge a different professional fee for dispensing a different drug product than the drug product originally prescribed.

(2) If the prescriber prescribes a drug product by its generic name, the pharmacist must, consistent with reasonable judgment, dispense the lowest retail priced, therapeutically equivalent brand which is in stock.

Section 6. There is a new R.C.M. section numbered 66-1533 that reads as follows:

66-1533. Product selection not practice of medicine. The selection of a drug product by a registered pharmacist under the provisions of 66-1528 through 66-1536 does not constitute the practice of medicine.

Section 7. There is a new R.C.M. section numbered 66-1534 that reads as follows:

66-1534. When product selection evidence of negligence. (1) A pharmacist making a product selection under the provisions of 66-1528 through 66-1536 assumes no greater responsibility for selecting the dispensed drug product than he would incur in filling a prescription for a drug product prescribed by a generic name.

(2) When a pharmacist selects a drug product the prescriber may not be held liable in an action for loss, damage, injury, or death to a person caused by the use of the selected drug product, except that if the original drug product was incorrectly prescribed, the prescriber is not relieved of liability.

Section 8. There is a new R.C.M. section numbered 66-1535 that reads as follows:

66-1535. Rule making authorized. The board of pharmacists may adopt, amend, or repeal rules necessary for the implementation, continuation, and enforcement of 66-1528 through 66-1536 in accordance with the Montana Administrative Procedure Act.

Section 9. Section 27-703, R.C.M. 1947, is amended to read as follows:

"**27-703. Prohibited acts enumerated.** The following acts and the causing thereof within the state of Montana are hereby prohibited:

(1) The manufacture, sale or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic.

HeinOnline -- 1977 vol. II 1296 1977

(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise.

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of 27-712 or 27-717.

(5) The dissemination of any false advertisement.

(6) The refusal to permit entry or inspection or to permit the taking of a sample, as authorized by 27-722.

(7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by and containing the name and address of the person residing in the state of Montana from whom he received in good faith the food, drug, device, or cosmetic.

(8) The removal or disposal of a detained or embargoed article in violation of 27-706.

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being adulterated or misbranded.

(10) Forging, counterfeiting, simulating, or falsely representing or, without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this act or of the *federal act.*

(11) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under 27-717 or that such drug complies with the provisions of such section.

(12) In the case of a prescription drug distributed or offered for sale in this state, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal or to transmit to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the *federal act.* Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this act.

(13) (Counterfeiting trade-marks).

(a) Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing; or

(b) Selling, dispensing, disposing of, or causing to be sold, dispensed, or disposed of or concealing or keeping in possession, control, or custody,

HeinOnline -- 1977 vol. II 1297 1977

with intent to sell, dispense, or dispose of any drug, device, or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection *(a)* hereof; or

(c) Making, selling, disposing of, or causing to be made, sold, or disposed of or keeping in possession, control, or custody or concealing, with intent to defraud, any punch, die, plate, or other thing designed to print, imprint, or reproduce that trade name or other identifying mark or imprint of another or any likeness of any of the foregoing upon any drug, device, or container thereof.

(14) The using by any person to his own advantage or revealing, other than to the state board, officers or employees of the department, or to the courts when relevant in any judicial proceeding under this act, any information acquired under authority of this act concerning any method or process which as a trade secret is entitled to protection.

(15) The distribution in commerce of a consumer commodity, as defined in this act, if such commodity is contained in a package or if there is affixed to that commodity a label which does not conform to the provisions of this act and of regulations promulgated under authority of this act. *This* prohibition *does* not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:

(a) are engaged in the packaging or labeling of such commodities; or

(b) prescribe or specify by any means the manner in which such commodities are packaged or labeled.

(16) The labeling or packaging of a food, drug, or cosmetic which fails to conform with the requirements of this act.

(17) It is unlawful for any person to sell or offer for sale any product which is in semblance of honey and which is labeled, advertised, or otherwise represented to be honey, if it is not honey. Any product sold in semblance of honey which is a blend or mixture of honey and other ingredients must be labeled in such a way that the name of the main ingredient added to the honey will be printed so that it will be as prominent and conspicuous as the word honey. The word "imitation" *may* not be used in the name of a product which is in semblance of honey whether or not it contains any honey. The label for a product which is not in semblance of honey and which contains honey may include the word "honey" in the name of the product, and the relative position of the word "honey" in the product name and in the list of ingredients, when required, shall be determined by its prominence as an ingredient in the product."

Section 10. Section 66-1523, R.C.M. 1947, is amended to read as follows:

"**66-1523. Wrongful labeling.** (1) It *is* unlawful for any person who prepares prescriptions, drugs, medicines, chemicals, or poisons *to purposefully or* negligently, omit to label the package or receptacle *or* label it falsely.

HeinOnline -- 1977 vol. II 1298 1977

(2) No person may substitute a drug different from the one ordered or deviate in any manner from the requirements of an order or prescription, except as provided in the Montana Drug Product Selection Act.

(3) On prescription drugs, the label shall contain the name and strength of the drug, unless the prescriber otherwise specifies."

Section 11. There is a new R.C.M. section numbered 66-1536 that reads as follows:

66-1536. Penalties. (1) In addition to all other penalties provided by law, a person who violates the provisions of 66-1530, 66-1531, or 66-1532 or any rule promulgated as provided in 66-1535 shall be fined no more than $250 for each violation.

(2) The penalty imposed under 66-1528 through 66-1536 may be remitted or mitigated upon such terms and conditions as the board of pharmacists considers proper and consistent with the public health and safety.

(3) A civil penalty imposed under 66-1528 through 66-1536 becomes due and payable when the person incurring the penalty receives a notice in writing from the board of pharmacists. The notice shall be sent by registered or certified mail and must include:

(a) reference to the particular sections of the statute or rule;

(b) a short and plain statement of the matters asserted as charged;

(c) a statement of the amount of the penalty or penalties imposed; and

(d) a statement of the person's right to request a hearing.

(4) The person to whom the notice is addressed has 20 days from the date of the notice in which to make written application for a hearing before the board of pharmacists.

Section 12. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 18, 1977.

CHAPTER NO. 404

AN ACT TO PROVIDE FOR AN EQUITABLE METHOD FOR ASSESSMENTS LEVIED AGAINST CORNER LOT PROPERTY IN A SPECIAL IMPROVEMENT DISTRICT.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-2289 that reads as follows:

11-2289. Corner lots. For the purposes of special assessments levied against property as provided in this chapter, when assessments for improvements on both sides of a corner lot are determined in proportion to the lineal footage, the frontage of a corner lot in a platted block is the average of the two abutting sides.

Section 2. There is a new R.C.M. section numbered 11-2290 that reads as follows:

11-2290. Allocation of costs of nonfrontage sides. The governing body shall allocate to all lots in the special improvement district a proportionate share of the costs according to the lineal feet assigned to each lot.

Approved April 18, 1977.

CHAPTER NO. 405

AN ACT TO INCORPORATE THE FEDERAL CHANGES OF SUBCHAPTER S CORPORATIONS AND CORPORATION LOSS CARRYOVERS CONTAINED IN THE TAX REFORM ACT OF 1976; AMENDING SECTIONS 84-1501.1, 84-1501.2, AND 84-1502, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1501.1, R.C.M. 1947, is amended to read as follows:

"**84-1501.1. Definitions.** (a) Small business corporation. For purposes of this act, the term "small business corporation" means a corporation doing business in Montana, and which does not—

(1) have more than ten (10) shareholders;

(2) have as a shareholder a person (other than an estate *and other than a trust described in subsection (e)* who is not an individual;

(3) have a nonresident alien as a shareholder; and

(4) have more than one class of stock.

(b) Electing small business corporation. For purposes of this act, the term "electing small business corporation" means, with respect to any taxable year, a small business corporation which has made an election under this act, in effect for such taxable year.

(c) Stock owned by husband and wife. For purposes of subsection (a)(1), stock shall be treated as owned by one shareholder when it:

(1) is community property of a husband and wife (or the income from which is community income) under the applicable community property law of a state;

(2) is held by a husband and wife as joint tenants, tenants by the entirety, or tenants in common;

HeinOnline -- 1977 vol. II 1300 1977

(3) was, on the date of death of a spouse, stock described in subsection (c)(1) or (c)(2) and is, by reason of such death, held by the estate of the deceased spouse and the surviving spouse or by the estates of both spouses (by reason of their deaths on the same date), in the same proportion as held by the spouses before such death; or

(4) was, on the date of the death of a surviving spouse, stock described in subsection (c)(3) and is, by reason of such death, held by the estates of both spouses in the same proportion as held by the spouses before their deaths.

(d) Special shareholder rules.

(1) A small business corporation which has been an electing small business corporation for a period of 5 consecutive taxable years may not have more than 15 shareholders.

(2) If, during the 5-year period set forth in subsection (d)(1), the number of shareholders of an electing small business corporation would increase to an amount in excess of 10 (but not in excess of 15) solely by reason of additional shareholders who acquired their stock through inheritance, the corporation may have a number of additional shareholders equal to the number by which the inheriting shareholders cause the total number of shareholders of such corporation to exceed 10.

(e) Certain trusts permitted as shareholders. For purposes of subsection (a), the following trusts may be shareholders:

(1) a trust all of which is treated as owned by the grantor under sections 671 through 678 of the Internal Revenue Code;

(2) a trust created primarily to exercise the voting power of stock transferred to it;

(3) any trust with respect to stock transferred to it pursuant to the terms of a will, but only for the 60-day period beginning on the day on which such stock is transferred to it. In the case of a trust described in subsection (e)(2), each beneficiary of the trust shall, for purposes of subsection (a)(1), be treated as a shareholder."

Section 2. Section 84-1501.2, R.C.M. 1947, is amended to read as follows:

"**84-1501.2. Election by small business corporation.** (a) Eligibility. Except as provided in subsection (f), any small business corporation may elect, in accordance with the provisions of this section, not to be subject to the taxes imposed by this chapter. Such election shall be valid only if all persons who are shareholders in such corporation—

(1) on the first day of the first taxable year for which such election is effective, if such election is made on or before such first day, or

(2) on the day on which the election is made, if the election is made after such first day, consent to such election.

(b) Effect. If a small business corporation makes an election under subsection (a), then—

(1) with respect to the taxable years of the corporation for which such election is in effect, such corporation shall not be subject to the taxes imposed by this chapter and, with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such corporation, and

(2) with respect to the taxable years of a shareholder of such corporation in which or with which the taxable years of the corporation for which such election is in effect end, the provisions of this act shall apply to such shareholder, and with respect to such taxable years and all succeeding taxable years, the provisions of this act shall apply to such shareholder.

(c) Where and how made.

(1) In general. An election under subsection (a) may be made by a small business corporation for any taxable year at any time during the first month of such taxable year, or at any time during the month preceding such first month. Such election shall be made in such manner as the department of revenue shall prescribe by regulations.

(2) Taxable years beginning before date of enactment. An election may be made under subsection (a) by a small business corporation for its first taxable year which begins after December 31, 1958, and on or before the date of the enactment of this subchapter, and ends after such date at any time—

(A) within the 90-day period beginning on the day after the date of the enactment of this subchapter, or

(B) if its taxable year ends within such 90-day period, before the close of such taxable year.

An election may be made pursuant to this paragraph only if the small business corporation has been a small business corporation (as defined in this act) on each day after the date of the enactment of this subchapter and before the day of such election.

(d) Years for which effective. An election under subsection (a) shall be effective for the taxable year of the corporation for which it is made and for all succeeding taxable years of the corporation, unless it is terminated, with respect to any such taxable year, under subsection (e).

(e) Termination.

(1) New shareholders. An election under subsection (a) made by a small business corporation shall terminate if any person who was not a shareholder in such corporation—

(A) on the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) on the day on which the election is made, if such election is made after such first day, becomes a shareholder in such corporation and *affirmatively refuses (in such manner as the department of revenue shall by rules prescribe) to consent to such election on or before the 60th day on which he acquires the stock.*

HeinOnline -- 1977 vol. II 1302 1977

(2) If the person acquiring the stock is the estate of a decedent, the period under subsection (e)(1) for affirmatively refusing to consent to the election shall expire on the 60th day after whichever of the following is the earlier:

(A) the day on which the executor or administrator of the estate qualifies; or

(B) the last day of the taxable year of the corporation in which the decedent died.

(3) Any termination of an election under subsection (e)(1) by reason of the affirmative refusal of any person to consent to such election shall be effective for the taxable year of the corporation in which such person becomes a shareholder in the corporation and for all succeeding taxable years of the corporation.

(4) Revocation. An election under subsection (a) made by a small business corporation may be revoked by it for any taxable year of the corporation after the first taxable year for which the election is effective. An election may be revoked only if all persons who are shareholders in the corporation on the day on which the revocation is made consent to the revocation. A revocation under this paragraph shall be effective—

(A) for the taxable year in which made, if made before the close of the first month of such taxable year.

(B) for the taxable year following the taxable year in which made, if made after the close of such first month, and for all succeeding taxable years of the corporation. Such revocation shall be made in such manner as the state department of revenue shall prescribe by regulations.

(5) Ceases to be small business corporation. An election under subsection (a) made by a small business corporation shall terminate if at any time—

(A) after the first day of the first taxable year of the corporation for which the election is effective, if such election is made on or before such first day, or

(B) after the day on which the election is made, if such election is made after such first day, the corporation ceases to be a small business corporation (as defined in this act). Such termination shall be effective for the taxable year of the corporation in which the corporation ceases to be a small business corporation and for all succeeding taxable years of the corporation.

(f) Election after termination. If a small business corporation has made an election under subsection (a) and if such election has been terminated or revoked under subsection (e), such corporation (and any successor corporation) shall not be eligible to make an election under subsection (a) for any taxable year prior to its fifth taxable year which begins after the first taxable year for which such termination or revocation is effective, unless the state department of revenue consents to such election.

(g) This election shall not be effective unless the corporate net income

or loss of such electing corporation shall have been included in the stockholders' adjusted gross income as such is defined in section 84-4905.

(h) Every electing corporation shall be required to pay the minimum fee of ten dollars ($10.00) required by section 84-1501."

Section 3. Section 84-1502, R.C.M. 1947, is amended to read as follows:

"**84-1502. Deductions allowed in computing income.** In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

2. (A) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the internal revenue code in effect with respect to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(B) (a) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 84-1502, over the gross income, with the modifications specified in pargraph (b) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five taxable periods following the taxable period of such loss. *A net operating loss for any taxable period ending after December 31, 1975, in addition to being a net operating loss carryback to each of the three preceding taxable periods, shall be a net operating loss carryover to each of the seven*

HeinOnline -- 1977 vol. II 1304 1977

taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in paragraph (b)(ii) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(b) The modifications referred to in paragraph (a) of this subsection shall be as follows:

(i) No net operating loss deduction shall be allowed.

(ii) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(c) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(d) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger.

In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(e) Notwithstanding the provisions of section 84-1508.1(c), R.C.M., 1947, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(f) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall be allowed only with respect to taxable periods beginning on or after January 1, 1971.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, such reasonable allowance to be determined according to the provisions of the internal revenue code in effect for the taxable year. All elections made under the internal revenue code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

4. The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this act.

HeinOnline -- 1977 vol. II 1305 1977

5. Interest income from obligations of the state of Montana, or any political subdivision or municipality of the state of Montana.

6. Taxes paid within the year except the following:

(a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(d) Taxes imposed by any other state or country upon or measured by net income or profits.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state."

Section 4. **Application.** The amendments made in sections 1 and 2 apply to taxable years beginning after December 31, 1976. The amendment made in section 3 applies to taxable years ending after December 31, 1975.

Approved April 18, 1977.

CHAPTER NO. 406

AN ACT TO PROVIDE FOR MINIMUM PAYMENTS TO POLICE OFFICERS, SPOUSES, AND MINOR CHILDREN WHO WERE RECEIVING PAYMENTS FROM POLICE RESERVE FUNDS PRIOR TO JULY 1, 1975, AND TO THE SPOUSES AND MINOR CHILDREN OF SUCH POLICE OFFICERS; TO PROVIDE FOR THE MEANS OF MAKING THE ADDITIONAL PAYMENTS REQUIRED TO MEET THE MINIMUM; AMENDING SECTION 11-1849, R.C.M. 1947; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1849, R.C.M. 1947, is amended to read as follows:

"**11-1849. Application to prior retirees and their beneficiaries.** Except where specific additional benefits are given under this act *and future acts of the legislature* to police officers, their spouses or minor children, who are, *as of July 1, 1975,* receiving payments from the police reserve fund of any city, and to that extent only, this act does not affect *such* police officers, spouses, or minor children, and, as to them, their rights and obligations shall be determined as if this act had not been passed."

Section 2. There is a new R.C.M. section numbered 11-1846.1 that reads as follows:

11-1846.1. Supplement to prior pensions. (1) The payment for each

fiscal year, commencing with the fiscal year beginning July 1, 1977, to the police officers, spouses, or minor children described in subsections (2)(a) through (2)(c) may be not less than one-half of the salary paid in that fiscal year in the appropriate city or town to newly confirmed police officers.

(2) On or before April 1 of each year, the board of trustees or department of administration, as the case may be, shall make a report to the state auditor including the following information:

(a) the names of all police officers who are receiving payments from the police reserve fund of the city or town as of the date of the report and were receiving such payments prior to July 1, 1975;

(b) the names of all spouses or minor children who are receiving payments from the police reserve fund because of the death of a police officer who was receiving such payments prior to July 1, 1975;

(c) the names of all spouses or minor children who are receiving payments from the police reserve fund and who were receiving such payments prior to July 1, 1975, or, in the case of minor children, whose parent, the spouse of a police officer, was receiving such payments prior to July 1, 1975;

(d) for the purpose of determining the base figure for the computations set forth in subsection (4), the following information relating to the base fiscal year commencing July 1, 1976:

(i) the amount of the payments made in the base fiscal year to each police officer described in subsection (2)(a);

(ii) the amount of the payments made in the base fiscal year to each spouse or minor child (or children) described in subsection (2)(b) or (2)(c);

(iii) upon the death after the effective date of this act of any police officer on the reserve list who was receiving payments from the police reserve fund prior to July 1, 1975, and who is survived by a spouse or minor children entitled to receive payments therefrom, the amount which would have been paid to an eligible spouse of such police officer had that spouse been receiving payments in the base fiscal year.

(3) Each fiscal year, commencing with the fiscal year beginning July 1, 1977, immediately after the adoption by a city or town having a police reserve fund of its budget for that fiscal year, each such city or town shall report to the state auditor the salary for that fiscal year of a newly confirmed police officer of that city or town.

(4) The state auditor shall, upon receipt of the reports referred to in subsections (2) and (3), compute the difference between each amount reported under subsections (1)(d)(i) through (1)(d)(iii) and one-half the salary for the current fiscal year of a newly confirmed police officer of the appropriate city or town. The difference shall be paid by the state auditor out of the premium tax collected on insurance, as provided in 11-1835, to the treasurer of the appropriate city or town at the same time as and in addition to the payment to be made by the state auditor under 11-1834.

HeinOnline -- 1977 vol. II 1307 1977

(5) The treasurer of each city or town receiving funds under subsection (4) shall immediately deposit them with the department of administration or to the credit of the city or town's police reserve fund, as the case may be. The department or board of trustees of the fund, as the case may be, shall use the funds to supplement the monthly payments to persons described in subsections (2)(a) through (2)(c) so that the requirements of subsection (1) are met.

(6) If more than one minor child is entitled to supplementary payments under this section by virtue of the death of a common parent police officer, the minimum payment to such minor children under this section shall be determined as if there were one such minor child and the supplementary payment shall be made to the minor children collectively.

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved April 18, 1977.

CHAPTER NO. 407

AN ACT CLARIFYING THE POWERS OF THE ATTORNEY GENERAL AND COUNTY ATTORNEYS UNDER THE MONTANA UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT; AMENDING SECTION 85-416, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 85-416, R.C.M. 1947, is amended to read as follows:

"**85-416. Assistance and actions by county attorney — reports — action by attorney general on request.** It is the duty of the county attorney to lend to the department such assistance as the department may request in the commencement and prosecution of actions pursuant to this act. *The* county attorney *or the attorney general, on request of the department or a county attorney,* may *initiate all procedures* and prosecute actions in the same manner as provided for the department. If an action is prosecuted by the county attorney alone *or the attorney general on request of the county attorney, the person prosecuting* shall notify the department as to the nature of the action and the parties to the action within thirty (30) days of the filing of the action. The county attorney *or attorney general* shall make a report thereon to the department within thirty (30) days of the final disposition of the matter."

Section 2. **Effective date.** This act shall be effective upon passage and approval.

Approved April 18, 1977.

HeinOnline -- 1977 vol. II 1308 1977

CHAPTER NO. 408

AN ACT, WHICH SHALL BE KNOWN AS THE "MONTANA RANGELAND RESOURCES ACT", TO BE ADMINISTERED BY THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION; ESTABLISHING THE MONTANA RANGELAND RESOURCES COMMITTEE TO PROMOTE THE COORDINATION OF ACTIVITIES INTENDED TO MAINTAIN AND ENHANCE THE RANGELAND RESOURCES OF THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 76-301 that reads as follows:

76-301. Short title. This act shall be known as the "Montana Rangeland Resources Act".

Section 2. There is a new R.C.M. section numbered 76-302 that reads as follows:

76-302. Purpose. The purpose of this act is to establish a program of rangeland management whereby:

(1) the importance of Montana's rangeland with respect to livestock, forage, wildlife habitat, high-quality water production, pollution control, erosion control, recreation, and the natural beauty of the state is recognized;

(2) cooperation and coordination of range management activities between persons and organizations charged with or having the management of rangeland, whether private or public, can be promoted and developed; and

(3) those who are doing exceptional work in range management can receive appropriate recognition.

Section 3. There is a new R.C.M. section numbered 76-303 that reads as follows:

76-303. Definitions. As used in this act, the following definitions apply:

(1) "Rangeland" means land on which the native vegetation (climax or natural potential) is predominantly grasses, grasslike plants, forbs, or shrubs suitable for grazing or browsing use. The term includes lands revegetated naturally or artifically to provide a forage cover that is managed like native vegetation. Rangelands include natural grasslands, savannahs, shrublands, most deserts, tundra, alpine communities, coastal marshes, and wet meadows.

(2) "Grazeable woodlands" means forest land on which the understory includes, as an integral part of the forest plant community, plants that can be grazed without significantly impairing other forest values.

(3) "Range management" means a distinct discipline founded on ecological principles and dealing with the husbandry of rangelands and range resources.

HeinOnline -- 1977 vol. II 1309 1977

(4) "Montana rangeland resource program" means the rangeland resource program administered by the conservation districts division of the department of natural resources and conservation in concert with the Montana conservation districts law and the Grass Conservation Act to maintain and enhance the rangeland resources of the state.

(5) "Department" means the department of natural resources and conservation.

(6) "Committee" means the Montana rangeland resources committee selected as provided in 76-306.

(7) "Users of rangeland" means all persons, including but not limited to ranchers, farmers, sportsmen, recreationists, and others appreciative of the functional, productive, aesthetic, and recreational uses of rangelands.

Section 4. There is a new R.C.M. section numbered 76-304 that reads as follows:

76-304. State coordinator. (1) The department shall maintain and staff the office of state coordinator for the rangeland resources act.

(2) The state coordinator shall:

(a) serve as an advisor, counselor, and coordinator for and between persons and agencies involved in range management;

(b) strive to create understanding and compatibility between the many users of rangeland, including sportsmen, recreationists, ranchers, and others;

(c) promote and coordinate the adoption and implementation of sound range management plans to minimize conflicts between governmental agencies and private landowners;

(d) participate in zoning and planning studies to insure that native ranges are adequately represented at sessions for development of zoning and planning regulations;

(e) coordinate range management research to help prevent duplication and overlap of effort in this area.

Section 5. There is a new R.C.M. section numbered 76-305 that reads as follows:

76-305. Committee composition. The governor may select a committee in accordance with 76-306 which is composed as follows:

(1) a chairman who is a rancher;

(2) a vice-chairman who is a rancher;

(3) a rancher from the eastern area of the state;

(4) a rancher from the northern area of the state;

(5) a rancher from the area of the state west of the continental divide;

HeinOnline -- 1977 vol. II 1310 1977

(6) a rancher from the southern area of the state;

(7) a representative from each of the following agencies:

(a) Soil conservation service;

(b) United States forest service;

(c) Montana state university;

(d) Farmers home administration;

(e) Montana stockgrowers association;

(f) Office of economic development division;

(g) School of forestry of the university of Montana;

(h) Department of fish and game;

(i) Bureau of land management;

(j) Montana woolgrowers association;

(k) Department of natural resources and conservation;

(l) Bureau of Indian affairs;

(m) Montana cattlemen's association;

(n) Department of state lands;

(o) Society for range management;

(p) United States fish and wildlife service;

(q) United States agricultural and stabilization service.

Section 6. There is a new R.C.M. section numbered 76-306 that reads as follows:

76-306. Committee — appointment — tenure. (1) The governor shall select the members described in 76-305, subsections (1) through (6) from a list submitted by the executive committee of the association of conservation districts and the board of directors of the Montana association of state grazing districts.

(2) The governor shall select the members described in 76-305, subsection (7) from a list submitted by their respective agencies and/or organizations.

(3) The committee members shall serve without compensation.

(4) All persons appointed to the committee shall serve at the pleasure of the governor.

Section 7. There is a new R.C.M. section numbered 76-307 that reads as follows:

76-307. Duties of committee. The committee shall:

(1) review and recommend annual and long-range work programs;

HeinOnline -- 1977 vol. II 1311 1977

(2) suggest priorities of work;

(3) provide advice and counsel to the coordinator for carrying out the rangeland resource program.

Approved April 18, 1977.

CHAPTER NO. 409

AN ACT TO PROVIDE FOR THE DETERMINATION OF INHERITANCE TAX AND TERMINATION OF INTEREST IN LIFE ESTATES, JOINT TENANCIES, AND OTHER INTERESTS; REPEALING SECTIONS 91-4321.1, 91-4469, AND 91A-3-1205, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 91-4470 that reads as follows:

91-4470. Determination of inheritance tax — no personal representative. (1) For the purposes of this section, a decedent is one who dies leaving no property which requires the appointment of a personal representative and:

(a) was the owner of a life estate which terminated at his death;

(b) was the owner of property with another or others as a joint tenant with right of survivorship and not as a tenant in common; or

(c) was the owner of any other interest in property requiring the determination of inheritance tax because of his death.

(2) Upon the death of a decedent, a remainderman, surviving joint tenant, or other interested party shall file with the department of revenue:

(a) a copy of the death certificate;

(b) a verified application in a form prescribed by the department containing such information as the department considers necessary; and

(c) evidence of the instruments which created the life estate, joint tenancy, or other interest requiring determination of inheritance tax, if required by the department.

(3) Upon receipt of the application the department shall:

(a) stamp the filing date upon the application;

(b) issue a certificate showing the inheritance tax due, if any;

(c) affix the certificate to a certified copy of the application and return the same to the applicant or his attorney; and

(d) affix a copy of the certificate to the original application and keep it on file with the department.

HeinOnline -- 1977 vol. II 1312 1977

(4) The applicant shall pay the inheritance tax determined to the county treasurer for transmittal to the state treasurer. The county treasurer shall issue a receipt for the payment of the tax.

(5) If disputes arise as to tax computation, they shall be resolved as provided under the laws applicable to the determination of inheritance taxes in estates.

Section 2. There is a new R.C.M. section numbered 91-4471 that reads as follows:

91-4471. Termination of interest in property. (1) If an interest in real property is involved under 91-4470 the applicant shall file with the clerk and recorder of each county in which the real property or any part thereof is located:

(a) a certified copy of the application referred to in subsection (2)(b) of 91-4470;

(b) the certificate from the department of revenue determining inheritance tax, if any;

(c) the receipt from the county treasurer showing the inheritance tax has been paid.

(2) The interest of the decedent in property held in joint tenancy terminates upon his death.

(3) The filing of the documents under subsection (1) constitutes release of any lien for inheritance taxes.

Section 3. There is a new R.C.M. section numbered 91-4472 that reads as follows:

91-4472. Determination of inheritance tax on transfer of certain interests in estate with personal representative. (1) If a decedent dies leaving property which requires the appointment of a personal representative and was also an owner of property as described in subsection (1)(a), (1)(b), or (1)(c) of 91-4470 the remainderman, surviving joint tenant, personal representative, or other interested party may have the inheritance tax determined and the joint tenancy terminated or ownership transferred as provided in 91-4470 and 91-4471 by filing with the department:

(a) the information listed in 91-4470(2) except (2)(f); and

(b) the name of the county of administration or probate and the court file number.

Section 4. There is a new R.C.M. section numbered 91-4473 that reads as follows:

91-4473. Attorney's fee. If a decedent as defined in 91-4470 leaves a surviving spouse, the surviving spouse is not required to hire an attorney to transfer title to the property involved. If an attorney is hired by the surviving spouse, the attorney's fee for services required in terminating a joint tenancy or transferring other types of ownership listed in 91-4470 may not exceed 2% of the value of the interest passing to the spouse.

HeinOnline -- 1977 vol. II 1313 1977

Section 5. **Repealer.** Sections 91-4321.1, 91-4469, and 91A-3-1205, R.C.M. 1947, are repealed.

Approved April 18, 1977.

CHAPTER NO. 410

AN ACT PROVIDING FOR THE DISPOSITION OF FORMER STATE INSTITUTIONS NO LONGER USED FOR INSTITUTIONAL PURPOSES; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 81-907.1 that reads as follows:

81-907.1. Disposition of former institutions. Notwithstanding any other section in this chapter, any lands, including buildings, formerly used as or by a state institution which are no longer used for institutional purposes may be disposed of in whole or in part on such terms and in such manner as the board, after consultation with the appropriate legislative committee, may determine to be in the state's best interest, subject to the state enabling act and constitutional restrictions. Disposal of such property shall not be finally concluded until 60 days public notice of the terms of the proposed disposal shall have been given.

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved April 18, 1977.

CHAPTER NO. 411

AN ACT RELATING TO THE CARRYING OF CONCEALED WEAPONS; AMENDING SECTION 94-8-210; AND REPEALING SECTION 94-8-211, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-8-210, R.C.M. 1947, is amended to read as follows:

"**94-8-210. Carrying certain concealed weapons.** *(1)* Every person who carries or bears concealed upon his person a dirk, dagger, pistol, revolver, slingshot, swordcane, billy, knuckles made of any metal or hard substance, knife having a blade four inches long or longer, razor, not including a safety razor, or other deadly weapon, shall be punished by a fine not exceeding five hundred dollars or by imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment.

HeinOnline -- 1977 vol. II 1314 1977

(2) A person who has previously been convicted of an offense, committed on a different occasion than the offense under this section, in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed and who carries or bears concealed upon his person any of the weapons described in subsection (1) shall be punished by a fine not exceeding $1,000 or imprisoned in the state prison for a period not exceeding 5 years, or both."

Section 2. **Repealer.** Section 94-8-211, R.C.M. 1947, is repealed.

Approved April 18, 1977.

CHAPTER NO. 412

AN ACT TO ALLOW AN INVESTMENT CREDIT AGAINST INDIVIDUAL INCOME TAX AND CORPORATION LICENSE TAX; PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-4960 that reads as follows:

84-4960. Purpose and definition. (1) The purpose of 84-4960 and 84-4961 is to allow individuals and small businesses that meet the definition established in this section to take one-fifth investment credit allowed against federal taxes and thus to stimulate capital investment by the small business sector.

(2) For the purposes of 84-4960 and 84-4961, "small business" means a business that is eligible to elect to be taxed under the provisions of 84-1501.2, whether or not such election is made.

Section 2. There is a new R.C.M. section numbered 84-4961 that reads as follows:

89-4961. Investment credit. There is allowed, as a credit against the taxes imposed by 84-4902 , 84-4902.1, and 84-1501 a percentage of the investment in certain depreciable property equal to one-fifth the percentage of investment in such property allowed under section 38 of the Internal Revenue Code of 1954, as amended, or as section 38 may be renumbered or amended.

Section 3. **Application date.** This act applies to all taxable years beginning after December 31, 1976. A credit may not be carried back to any taxable year commencing in 1976 or earlier.

Approved April 18, 1977.

NOTE: 89-4961 should be 84-4961.

CHAPTER NO. 413

AN ACT CLARIFYING THE TAX-EXEMPT STATUS OF THE PROP-

HeinOnline -- 1977 vol. II 1315 1977

ERTY OF ANY NONPROFIT CEMETERY ASSOCIATION INCORPORATED AND OPERATED PURSUANT TO TITLE 9, CHAPTER 1, REVISED CODES OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-202, R.C.M. 1947, is amended to read as follows:

"**84-202. Exemptions from taxation.** (1) (a) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals, *and all property, both real and personal, without limitation as to amount except that real property owned shall not exceed 640 acres, owned and held by any association or corporation organized under Title 9, Cemeteries, provided such cemeteries and any land claimed to be exempt are not maintained and operated for private or corporate profit,* and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

HeinOnline -- 1977 vol. II 1316 1977

(4) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(5) [The following agricultural products are exempt from taxation:]

(a) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation.

(b) All nonperishable unprocessed agricultural products except livestock, held in possession of the original producer for less than seven (7) months following harvest.

(c) Livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of nine (9) months as of the last day of any month.

(6) Moneys and credits are exempt from taxation.

(7) A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under section 84-7403."

Approved April 18, 1977.

CHAPTER NO. 414

AN ACT TO AMEND CERTAIN PROVISIONS OF THE UNIFORM ALCOHOLISM INTOXICATION ACT; INCREASING THE TAX ON ALCOHOLIC BEVERAGES TO CREATE FUNDING FOR AUTHORIZED PROGRAMS; ESTABLISHING CERTAIN REQUIREMENTS FOR PROGRAMS RECEIVING STATE FUNDING SUPPORT; AMENDING SECTIONS 4-1-401, 4-1-404, 80-2709, 80-2710, 80-2712, 80-2714, 80-2716, and 80-2717, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-2709, R.C.M. 1947, is amended to read as follows:

"**80-2709. Definitions.** For purposes of this *chapter*:

HeinOnline -- 1977 vol. II 1317 1977

(1) "alcoholic" means a person who habitually lacks self-control as to the use of alcoholic beverages, or uses alcoholic beverages to the extent that his health is substantially impaired or endangered or his social or economic function is substantially disrupted;

(2) "approved private treatment facility" means a private agency meeting the standards prescribed in section *80-2713*(1) and approved under section *80-2713*;

(3) "approved public treatment facility" means a treatment agency operating under the direction and control of the department or providing treatment under this *chapter* through a contract with the department and approved under section *80-2713*;

(4) "department" means the department of institutions provided for in section 82A-801, R.C.M. 1947;

(5) "incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or has his judgment otherwise so impaired that he is incapable of realizing and making a rational decision with respect to his need for treatment;

(6) "incompetent person" means a person who has been adjudged incompetent by the district court;

(7) "intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol;

(8) "treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics, intoxicated persons, *and family members;*

(9) "family member", is the spouse, mother, father, child, or member of the household of an alcoholic whose life has been affected by the actions of the alcoholic and may require treatment;

(10) "prevention" has meaning on four levels; these are:

(a) education to provide information to the school children and general public relating to alcohol dependence and alcoholism, treatment, and rehabilitative services and to reduce the consequences of life experiences acquired by contact with an alcoholic;

(b) early detection and recovery from the illness before lasting emotional or physical damage, or both, have occurred;

(c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full disability has been reached;

(d) the provision of facility requirements to meet division program standards and improve public accessibility for services."

Section 2. Section 80-2710, R.C.M. 1947, is amended to read as follows:

"80-2710. Powers of department. The department may:

HeinOnline -- 1977 vol. II 1318 1977

(1) plan, establish, and maintain treatment programs as necessary or desirable;

(2) coordinate its activities and cooperate with alcoholism programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this and other states for the treatment of alcoholics and intoxicated persons and for the common advancement of alcoholism programs;

(3) do other acts and things necessary or convenient to execute the authority expressly granted to it; and

(4) provide treatment facilities for alcoholics, intoxicated persons, *and family members.*"

Section 3. Section 80-2712, R.C.M. 1947, is amended to read as follows:

"**80-2712. Comprehensive program for treatment.** (1) The department shall establish a comprehensive and coordinated program for the treatment of alcoholics, intoxicated persons, *and family members.*

(2) The program shall include:

(a) emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital;

(b) inpatient treatment;

(c) intermediate treatment; and

(d) outpatient and followup treatment.

(3) The department shall provide for adequate and appropriate treatment for alcoholics and intoxicated persons admitted under sections *80-2715 through 80-2718.* Treatment may not be provided at a correctional institution except for inmates.

(4) All appropriate public and private resources shall be coordinated with and utilized in the program if possible.

(5) The department shall prepare, publish, and distribute annually a list of all approved public and private treatment facilities."

Section 4. Section 80-2714, R.C.M. 1947, is amended to read as follows:

"**80-2714. Acceptance for treatment — rules.** The department shall adopt rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics, intoxicated persons, *and family members.* In adopting the rules the department shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient

HeinOnline -- 1977 vol. II 1319 1977

or intermediate treatment, unless he is found to require inpatient treatment.

(3) A person shall not be denied treatment solely because he has withdrawn from treatment against medical advice on a prior occasion or because he has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each *person.*

(5) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment."

Section 5. Section 80-2716, R.C.M. 1947, is amended to read as follows:

"**80-2716. Treatment and services for intoxicated persons and persons incapacitated by alcohol.** (1) An intoxicated person may come voluntarily to an approved public treatment facility for emergency treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he consents to the proffered help, may be assisted to his home, an approved public treatment facility, an approved private treatment facility, or other health facility by the police.

(2) A person who appears to be incapacitated by alcohol shall be taken into protective custody by the police and forthwith brought to an approved public treatment facility for emergency treatment. If no approved public treatment facility is readily available he shall be taken to an emergency medical service customarily used for incapacitated persons. The police, in detaining the person and in taking him to an approved public treatment facility, is taking him into protective custody and shall make every reasonable effort to protect his health and safety. In taking the person into protective custody, the detaining officer may take reasonable steps to protect himself. No entry or other record may be made to indicate that the person taken into custody under this section has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved public treatment facility shall be examined by a licensed physician as soon as possible. He may then be admitted as a patient or referred to another health facility. The referring approved public treatment facility shall arrange for his transportation.

(4) A person who by medical examination is found to be incapacitated by alcohol at the time of his admission or to have become incapacitated at any time after his admission, may not be detained at the facility (1) once he is no longer incapacitated by alcohol, or (2) if he remains incapacitated by alcohol for more than forty-eight (48) hours after admission as a patient, unless he is committed under section *80-2717.* A person may consent to remain in the facility as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved public treatment facility and is not referred to another health facility, may be taken to his home. If he has no home, the approved public treatment facility shall assist him in obtaining shelter.

HeinOnline -- 1977 vol. II 1320 1977

(6) If a patient is admitted to an approved public treatment facility, his family or next of kin shall be notified as promptly as possible. If an adult patient who is not incapacitated requests that there be no notification, his request shall be respected."

Section 6. Section 80-2717, R.C.M. 1947, is amended to read as follows:

"**80-2717. Emergency commitment.** (1) An intoxicated person who (a) has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed, or (b) is incapacitated by alcohol, may be committed to an approved public treatment facility for emergency treatment. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.

(2) The certifying physician, spouse, guardian, or relative of the person to be committed, or any other responsible person, may make a written application for commitment under this section, directed to the administrator of the approved public treatment facility. The application shall state facts to support the need for emergency treatment and be accompanied by a physician's certificate stating that he has examined the person sought to be committed within two (2) days before the certificate's date and facts supporting the need for emergency treatment. A physician employed by the admitting facility or the department is not eligible to be the certifying physician.

(3) Upon approval of the application by the administrator of the approved public treatment facility, the person shall be brought to the facility by a peace officer, health officer, the applicant for commitment, the patient's spouse, the patient's guardian, or any other interested person. The person shall be retained at the facility to which he was admitted, or transferred to another appropriate public or private treatment facility, until discharged under subsection (5).

(4) The administrator of an approved public treatment facility shall refuse an application if in his opinion the application and certificate fail to sustain the grounds for commitment.

(5) When on the advice of the medical staff the administrator determines that the grounds for commitment no longer exist, he shall discharge a person committed under this section. No person committed under this section may be detained in any treatment facility for more than five (5) days. If a petition for involuntary commitment under section *80-2718* has been filed within the five (5) days and the administrator in charge of an approved public treatment facility finds that grounds for emergency commitment still exist, he may detain the person until the petition has been heard and determined, but no longer than ten (10) days after filing the petition.

(6) A copy of the written application for commitment and of the physician's certificate, and a written explanation of the person's right to counsel, shall be given to the person within twenty-four (24) hours after commitment by the department, who shall provide a reasonable opportunity for the person to consult counsel."

HeinOnline -- 1977 vol. II 1321 1977

Section 7. There is a new R.C.M. section numbered 80-2725 that reads as follows:

80-2725. State-approved alcoholism programs utilizing funding generated by taxation on alcoholic beverages. (1) Revenue generated by 4-1-401 and 4-1-404 for the treatment, rehabilitation, and prevention of alcoholism may be distributed in either of the following manners:

(a) as payment of fees for alcoholism services provided by state-approved alcoholism programs, certified alcoholism counselors, licensed physicians, and licensed hospitals; and

(b) as grants to persons operating state-approved alcoholism programs.

(2) No person operating a state-approved alcoholism program may be required to provide matching funds as a condition of receiving a grant under subsection (1) of this section.

(3) In addition to funding received under this section, a person operating a state-approved alcoholism program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or prevention of alcoholism.

(4) No person receiving funding under this section to support operation of a state-approved alcoholism program may refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because of that person's inability to pay for those services.

(5) A grant made under this section is subject to the following conditions:

(a) The grant application must contain an estimate of all program income including income from earned fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant support is sought.

(b) Whenever, during the period of grant support, program income exceeds the amount estimated in the grant application, the amount of the excess shall be reported to the grantor.

(c) The excess shall be used by the grantee under the terms of the grant in accordance with one or a combination of the following options:

(i) use for any purpose that furthers the objectives of the legislation under which the grant was made; or

(ii) deduct from total project costs to determine the net costs on which the grantor's share of the costs is based.

(6) Revenue generated by 4-1-401 and 4-1-404 for the treatment, rehabilitation, and prevention of alcoholism which has not been encumbered for those purposes by the counties of Montana or the division shall be returned to the state's general fund within 30 days after the close of each fiscal year.

Section 8. Section 4-1-401, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1322 1977

"**4-1-401. License tax on liquor — amount — distribution of proceeds.** The department of revenue is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of *10%* of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the department of revenue. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by the department. Said *10%* license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department of revenue shall retain the amount of such *10%* license tax so received in a separate account. *Two-thirds* of these revenues shall be distributed to the counties according to the amount of liquor purchased in each county. *One-third* of these revenues shall be *retained by the state.* Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section 4-1-402, R.C.M. 1947. The department of revenue shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain *50%* of said license tax, and shall, within 30 days after receipt thereof, apportion the remaining *50%* thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county.

Of the 50% of the tax retained by the county, the county treasurer shall deposit six-sevenths of this amount in a fund within the county for the treatment, rehabilitation, and prevention of alcoholism as approved by the state of Montana. The remaining one-seventh of the funds shall be retained in the county treasury for use by that county.

The one-third of the license tax on liquor retained by the state shall be deposited with the state treasurer to the credit of the department of institutions each quarter for the treatment, rehabilitation and prevention of alcoholism as approved by the state."

Section 9. Section 4-1-404, R.C.M. 1947, is amended to read as follows:

"**4-1-404. Tax on imported beer — computation in case of barrels of capacity other than thirty-one gallons.** A tax of three dollars ($3) per barrel of thirty-one (31) gallons, is hereby levied and imposed on each and every barrel of beer manufactured out of this state and sold herein by any wholesaler, which said tax shall be due at the end of each month from said wholesaler, upon any such beer so sold by him during that month. As to any beer imported and sold in containers other than barrels, or in barrels of more or less capacity than thirty-one (31) gallons, the quantity content shall be ascertained and computed by the department of revenue in determining the amount of tax due, as herein provided for. An additional tax of *$1.00* per barrel is levied and imposed as provided

HeinOnline -- 1977 vol. II 1323 1977

by this section, and such additional tax is also to be levied and imposed at the same rate upon beer manufactured within the state. The additional tax of *$1.00* is to be deposited, notwithstanding sections 4-1-407 and 4-1-408, or any other provision, *with the state treasurer to the credit of the department of institutions each quarter for the treatment, rehabilitation, and prevention of alcoholism as approved by the state.*"

Approved April 18, 1977.

CHAPTER NO. 415

AN ACT ESTABLISHING A "MONTANA STATE GOLDEN YEARS PASS" WHICH ALLOWS SENIOR CITIZENS TO ENTER STATE PARKS AND RECREATIONAL AREAS FOR A NOMINAL ADMINISTRATIVE FEE; AMENDING SECTION 62-305, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 62-305, R.C.M. 1947, is amended to read as follows:

"**62-305. Disposal of fees and charges.** *(1)* The commission shall have power to levy and collect reasonable fees or other charges for the use of such privileges and conveniences as may be provided, and to grant such concessions as it may deem advisable, *except as provided in subsection (2).* All moneys derived from the activities of the commission shall be deposited in the state treasury in the earmarked revenue fund to the credit of the commission.

(2) Any Montana resident as defined in 26-202.3 who is 65 years of age or older may purchase a "Montana state golden years pass" for $1 which, when attached to his or her vehicle, allows the passengers of that vehicle to camp free in Montana state parks, recreation areas, and fishing access sites. This pass is valid for the lifetime of the individual."

Approved April 18, 1977.

CHAPTER NO. 416

AN ACT TO AMEND SECTIONS 89-867, 89-875, 89-877, 89-880, 89-884, 89-885, 89-890, 89-892, 89-8-100, AND 89-8-107, R.C.M. 1947, OF THE MONTANA WATER USE ACT TO CLARIFY DEFINITIONS; TO REDUCE THE COST OF SERVING COPIES OF PRELIMINARY DECREES; TO CLARIFY THE FINDINGS TO BE MADE BY THE COURT IN THE FINAL DECREE; TO PROVIDE FOR THE PRIORITY DATE OF CERTAIN REFILED APPLICATIONS; TO TERMINATE CERTAIN UNCORRECTED APPLICATIONS; TO CLARIFY THE REFILING OF NOTICES OF COMPLETION OF SMALL WELLS; TO PROVIDE FOR THE EXTENSION OF TIME TO ACT UPON APPLICATIONS IN EXTRAORDINARY CASES; TO PROVIDE THAT AN APPLICANT FOR AN APPROPRIATION OF 10,000 ACRE-FEET A

HeinOnline -- 1977 vol. II 1324 1977

YEAR OR MORE MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE RIGHTS OF A PRIOR APPROPRIATOR WILL NOT BE ADVERSELY AFFECTED; TO CLARIFY THE PERIODIC REVIEW BY THE BOARD OF RESERVATIONS OF WATER; TO PROVIDE THAT THE DEPARTMENT MAY APPROVE CHANGES IN APPROPRIATION RIGHTS WITH CONDITIONS TO PROTECT OTHER APPROPRIATORS; TO ELIMINATE THE RIGHT TO APPEAL A FINAL DECISION OF THE DEPARTMENT TO THE BOARD; TO ALLOW THE UNITED STATES TO APPLY FOR RESERVATIONS OF WATER; TO PROVIDE THAT ATTORNEY FEES SHALL BE AWARDED TO THE PREVAILING PARTY IN ANY COURT LITIGATION ON AN APPLICATION FOR A PERMIT; AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-867, R.C.M. 1947, is amended to read as follows:

"**89-867. Definitions.** Unless the context requires otherwise, in this chapter:

(1) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water *and diffuse surface water.*

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including, but not limited to, agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses; provided, however, that a use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter.

(3) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water, or in the case of a public agency to reserve water in accordance with section 89-890.

(4) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(5) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water, and which is not a part of that surface water.

(6) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought or through which it flows under natural pressures or is artificially withdrawn.

(7) "Permit" means the permit to appropriate issued by the department under sections 89-880 through 89-887.

(8) "Certificate" means the certificate of water right issued by the department under sections 89-879, 89-880(5), and 89-888.

(9) "Declaration" means the declaration of an existing right filed with the department under section 89-872.

HeinOnline -- 1977 vol. II 1325 1977

(10) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility, or the application of water to anything but a beneficial use.

(11) *"Political subdivision"* means any county, incorporated city or town, public corporation or district created pursuant to state law, or other public body of the state empowered to appropriate water, but not a private corporation, association, or group.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, the United States or any agency thereof, *or any other entity.*

(13) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(14) "Board" means the board of natural resources and conservation provided for in section 82A-1509.

(15) "Act" means the Montana Water Use Act and any subsequent amendments or additions thereto."

Section 2. Section 89-875, R.C.M. 1947, is amended to read as follows:

"**89-875. Preliminary decree.** (1) Within a reasonable time after the department files with the district court the material required by section 89-874, the court shall issue a preliminary decree. The preliminary decree shall be based on the data submitted by the department and on any additional data obtained by the court.

(2) The preliminary decree shall contain the information, and make the determinations, findings, and conclusions, required for the final decree under section 89-877.

(3) The district court shall send a copy of the preliminary decree to the department, and *the department shall serve by mail or by personal service a copy of the preliminary decree* to each person named in the material submitted under section 89-874 or named in the preliminary decree. *The department shall file proof of service with the district court.*

(4) A person named in the material or in the preliminary decree may inspect the data upon which the decree is based at any time, and he may purchase copies of any of the data."

Section 3. Section 89-877, R.C.M. 1947, is amended to read as follows:

"**89-877. Final decree.** (1) The court shall, on the basis of the preliminary decree and on the basis of any hearing that may have been held, enter a final decree affirming or modifying the preliminary decree. If no request for a hearing is filed within the time allowed, the preliminary decree automatically becomes final, and the court shall enter it as the final decree.

(2) The final decree shall establish the existing rights and priorities, of the persons named in the petition, for the source or area under consideration.

(3) The final decree shall state the findings of fact, along with any

HeinOnline -- 1977 vol. II 1326 1977

conclusions of law, upon which the existing rights and priorities of each person named in the decree are based.

(4) For each person who is found to have an existing right, the final decree shall state:

(a) the name and post-office address of the owner of the right;

(b) the amount of water, *rate and volume,* included in the right;

(c) the date of priority of the right;

(d) the purpose for which the water included in the right is used;

(e) the place of use and a description of the land to which the right is appurtenant;

(f) the source of the water included in the right;

(g) the place and means of diversion;

(h) the approximate time during which the water is used each year;

(i) any other information necessary to fully define the nature and extent of the right.

(5) The final decree in each existing right determination is final and conclusive as to all existing rights in the source or area under consideration. After the final decree there shall be no existing rights to water in the area or source under consideration except as stated in the decree."

Section 4. Section 89-880, R.C.M. 1947, is amended to read as follows:

"**89-880. Right to appropriate — application for permit.** (1) After July 1, 1973, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(2) Except as otherwise provided in subsection (5) of this section, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow. *If an application is not corrected and completed within 30 days or within a further time as the department allows, up to 18 months, the priority date of the application shall be the date of refiling the application with the corrections with the department. An application not corrected within 18 months shall be terminated.*

(3) The department may cease action upon an application for a permit

HeinOnline -- 1977 vol. II 1327 1977

and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right, to an appropriation obtained under a provisional permit, by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

(5) Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than 100 gallons a minute. Within 60 days of completion of the well *and appropriation of the groundwater for beneficial use,* the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(6) A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act. The date of appropriation shall be the date of filing the notice of completion or the application for a permit.

(7) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 89-869 of this act."

Section 5. Section 89-884, R.C.M. 1947, is amended to read as follows:

"**89-884. Action on application.** (1) The department shall grant, deny, or condition an application for a permit in whole or in part within one hundred twenty (120) days after the last date of publication of the notice of application if no hearing is held, and within one hundred eighty (180) days if a hearing is held; however, in either case the time may be extended upon agreement of the applicant, or, *in those cases where an environmental impact statement must be prepared or* in *other* extraordinary cases, *not more than 60 days* upon order of the department. If the department orders the time extended it shall serve a notice of the exten-

HeinOnline -- 1977 vol. II 1328 1977

sion and the reasons therefor by certified mail upon the applicant and each person who has filed an objection as provided by section 89-882.

(2) However, an application may not be approved in a modified form or upon terms, conditions, or limitations specified by the department, nor denied, unless the applicant is first granted an opportunity to be heard. If no objection is filed against the application, but the department is of the opinion that the application should be approved in a modified form or upon terms, conditions or limitations specified by it, or that the application should be denied, the department shall prepare a statement of its opinion and the reasons therefor. The department shall serve a statement of its opinion by certified mail upon the applicant, together with a notice that the applicant may obtain a hearing by filing a request therefor within thirty (30) days after the notice is mailed. The notice shall further state that the application will be modified in a specified manner, or denied, unless a hearing is requested."

Section 6. Section 89-885, R.C.M. 1947, is amended to read as follows:

"**89-885. Criteria for issuance of permit.** The department shall issue a permit if:

(1) there are unappropriated waters in the source of supply;

(2) the rights of a prior appropriator will not be adversely affected;

(3) the proposed means of diversion or construction are adequate;

(4) the proposed use of water is a beneficial use;

(5) the proposed use will not interfere unreasonably with other planned uses or developments for which a permit has been issued or for which water has been reserved;

(6) an applicant for an appropriation of *10,000 acre-feet a year or more or* 15 cubic feet per second or more proves by clear and convincing evidence that the rights of a prior appropriator will not be adversely affected."

Section 7. Section 89-890, R.C.M. 1947, is amended to read as follows:

"**89-890. Reservation of waters.** (1) The state or any political subdivision or agency thereof, or the United States or any agency thereof, may apply to the board to reserve waters for existing or future beneficial uses, or to maintain a minimum flow, level, or quality of water throughout the year or at such periods or for such length of time as the board designates.

(2) Upon receiving an application, the department shall proceed in accordance with sections 89-881 through 89-883. After the hearing provided in section 89-883, the board shall decide whether to reserve the water for the applicant. The department's costs of giving notice, holding the hearing, conducting investigations, and making records, incurred in acting upon the application to reserve water, except the cost of salaries of the department's personnel, shall be paid by the applicant.

(3) The board may not adopt an order reserving water unless the applicant establishes to the satisfaction of the board:

HeinOnline -- 1977 vol. II 1329 1977

(a) the purpose of the reservation;

(b) the need for the reservation;

(c) the amount of water necessary for the purpose of the reservation;

(d) that the reservation is in the public interest. If the purpose of the reservation requires construction of a storage or diversion facility, the applicant shall establish to the satisfaction of the board that there will be progress toward completion of the facility and accomplishment of the purpose with reasonable diligence in accordance with an established plan.

(4) After the adoption of an order reserving waters, the department may reject an application and refuse a permit for the appropriation of reserved waters, or may, with the approval of the board, issue the permit subject to such terms and conditions it considers necessary for the protection of the objectives of the reservation.

(5) A reservation under this section shall date from the date the order reserving the water is adopted by the board, and shall not adversely affect any rights in existence at that time.

(6) The board shall, periodically but *at least once* every 10 years, review existing reservations to ensure that the objectives of the reservation are being met. Where the objectives of the reservation are not being met, the board may extend, revoke or modify the reservation."

Section 8. Section 89-892, R.C.M. 1947, is amended to read as follows:

"**89-892. Changes in appropriation rights.** (1) An appropriator may not change the place of diversion, place of use, purpose of use or place of storage except as permitted under this section and approved by the department.

(2) The department shall approve the proposed change if it determines that the proposed change will not adversely affect the rights of other persons. If the department determines that the proposed change might adversely affect the rights of other persons, notice of the proposed change shall be given in accordance with section 89-881. If the department determines that an objection filed by a person whose rights may be affected states a valid objection to the proposed change, the department shall hold a hearing thereon prior to its approval or denial of the proposed change. Objections shall meet the requirements of section 89-882(2), and hearings shall be held in accordance with section 89-883.

(3) An appropriator of more than fifteen (15) cubic feet per second may not change the purpose of use of an appropriation right from an agricultural use to an industrial use.

(4) The department may approve a change subject to such terms, conditions, restrictions, and limitations it considers necessary to protect the rights of other appropriators, including limitations on the time for completion of the change.

(5) If a change is not completed as approved by the department or if the terms, conditions, restrictions, and limitations of the change approval

HeinOnline -- 1977 vol. II 1330 1977

are not complied with, the department may, after notice and opportunity for hearing, require the appropriator to show cause why the change approval should not be modified or revoked. If the appropriator fails to show sufficient cause, the department may modify or revoke the change approval."

Section 9. Section 89-8-100, R.C.M. 1947, is amended to read as follows:

"**89-8-100. Administrative proceedings.** The Montana Administrative Procedure Act (Title 82, chapter 42, R.C.M. 1947) governs administrative proceedings conducted under this act, except that the common law and statutory rules of evidence shall apply only upon stipulation of all parties to a proceeding."

Section 10. Section 89-8-107, R.C.M. 1947, is amended to read as follows:

"**89-8-107. Reservations.** The department may apply for reservations and shall, as rapidly as possible, assist other appropriate state agencies and political subdivisions in applying for reservations within the basin. The United States or any agency thereof may apply for reservation of water in the basin under section 89-890, R.C.M. 1947, *for beneficial use of that water in the State of Montana.* Particular emphasis shall be given to applications to reserve water for agricultural, municipal, and minimum flow purposes for the protection of existing rights and aquatic life."

Section 11. There is a new R.C.M. section numbered 89-8-100.1 that reads as follows:

89-8-100.1. Recovery of attorney fees by prevailing party. If a final decision of the department on an application for a permit is appealed to district court, the district court shall award the prevailing party reasonable attorney fees.

Section 12. **Effective date.** This act is effective upon its passage and approval.

Approved April 18, 1977.

CHAPTER NO. 417

AN ACT TO MAKE THE DEPARTMENT HEAD OF THE DEPARTMENT OF FISH AND GAME A DIRECTOR APPOINTED BY THE GOVERNOR IN ACCORDANCE WITH SECTION 82A-106, R.C.M. 1947; TO REMOVE CERTAIN QUALIFICATIONS FOR THE DIRECTOR OF THE DEPARTMENT OF FISH AND GAME; TO REALLOCATE CERTAIN FUNCTIONS OF THE STATE FISH AND GAME COMMISSION TO THE DEPARTMENT OF FISH AND GAME; TO STATE THE POWERS OF THE STATE FISH AND GAME COMMISSION; TO PROVIDE A GRIEVANCE PROCEDURE FOR EMPLOYEES OF THE DEPARTMENT OF FISH AND GAME; AND TO CHANGE THE NAME OF THE STATE FISH AND GAME COMMISSION; AMENDING SECTIONS 26-101.1, 26-104, 26-104.4

HeinOnline -- 1977 vol. II 1331 1977

THROUGH 26-104.7, 26-107 THROUGH 26-110, 26-110.3, 26-114, 26-118, 26-119, 26-121, 26-123, 26-126 THROUGH 26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1, 26-202.4 THROUGH 26-202.8, 26-204, 26-210, 26-212, 26-212.1, 26-215, 26-220, 26-222, 26-225, 26-226, 26-228, 26-230, 26-233, 26-301, 26-301.1, 26-302, 26-303.5, 26-306, 26-307, 26-307.1, 26-319, 26-320, 26-324, 26-331, 26-332, 26-334, 26-335, 26-344, 26-402, 26-501, 26-501.1, 26-510, 26-813, 26-814, 26-909, 26-911 THROUGH 26-915, 26-918 THROUGH 26-920, 26-1120, 26-1121, 26-1123, 26-1124, 26-1201, 26-1206 THROUGH 26-1208, 26-1210, 26-1402, 26-1403, 26-1502 THROUGH 26-1505, 26-1508, 26-1509, 26-1601 THROUGH 26-1603, 26-1605, 26-1607 THROUGH 26-1610, 26-1612 THROUGH 26-1614, 26-1701, 26-1702, 26-1704, 26-1802, 26-1804 THROUGH 26-1808, 46-1903, 53-1012, 53-1020, 53-1022, 53-1025, 53-1028, 62-301, 62-304 THROUGH 62-306, 62-308, 62-310, 62-311, 62-314, 62-401 THROUGH 62-403, 68-1402, 69-3502, 69-3505, 69-3517, 69-3518, 75-5205, 82A-2001, 82A-2004, 89-3405, 89-3407, AND 89-3449, R.C.M. 1947; REPEALING SECTIONS 26-106, 26-124, AND 82A-2003, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-2001, R.C.M. 1947, is amended to read as follows:

"**82A-2001. Department of fish and game — creation — head.** There is created a department of fish and game. The department head is the *director of fish and game appointed by the governor in accordance with 82A-106. The director is the secretary of the commission.*"

Section 2. Section 82A-2004, R.C.M. 1947, is amended to read as follows:

"**82A-2004. Fish and game commission — composition — qualifications — designation.** (1) There is a fish and game commission.

(2) The commission consists of five members. At least one member shall be experienced in the breeding and management of domestic livestock. The governor shall appoint one member from each of the following districts:

(a) District No. 1, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, Powell, Ravalli, Granite, and Lewis and Clark counties;

(b) District No. 2, consisting of Deer Lodge, Silver Bow, Beaverhead, Madison, Jefferson, Broadwater, Gallatin, Park, and Sweetgrass counties;

(c) District No. 3, consisting of Glacier, Toole, Liberty, Hill, Pondera, Teton, Chouteau, Cascade, Judith Basin, Fergus, Blaine, Meagher, and Wheatland counties;

(d) District No. 4, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Petroleum, Garfield, McCone, Richland, Dawson, and Wibaux counties;

HeinOnline -- 1977 vol. II 1332 1977

(e) District No. 5, consisting of Golden Valley, Musselshell, Stillwater, Carbon, Yellowstone, Big Horn, Treasure, Rosebud, Custer, Powder River, Carter, Fallon, and Prairie counties.

(3) Appointments shall be made without regard to political affiliation and shall be made solely for the welfare of the fish, game, and wildlife of this state. A person may not be appointed to the commission unless he is informed or interested and experienced in the subject of wildlife, fish and game, and the requirements for the conservation and protection of fish, game, and game birds and animals.

(4) A vacancy occurring on the commission shall be filled by the governor in the same manner and from the district in which the vacancy occurs.

(5) The fish and game commission is designated as a quasi-judicial board for purposes of 82A-112."

Section 3. Section 26-101.1, R.C.M. 1947, is amended to read as follows:

"**26-101.1. Definitions.** Unless the context requires otherwise, in Title 26 *the following definitions apply*:

(1) "Department" means the department of fish and game provided for in Title 82A, chapter 20.

(2) "Director" means the director of fish and game provided for in section *82A-2001*.

(3) "Warden" means a state fish and game warden.

(4) "Commission" means the fish and game commission provided for in section 82A-2004."

Section 4. Section 26-104.6, R.C.M. 1947, is amended to read as follows:

"**26-104.6. Acquisition and sale of lands or waters by department.** (1) The *department, with the consent of the commission,* may acquire by purchase, condemnation, lease, agreement, gift, or devise, and may acquire easements upon lands or waters for the purposes listed in this subsection. The *department* may develop, operate, and maintain acquired lands or waters:

(a) *for* fish hatcheries, nursery ponds, or game farms;

(b) *as* lands or water suitable for game, bird, fish, or fur-bearing animal restoration, propagation, or protection;

(c) *for* public hunting, fishing, or trapping areas;

(d) *to* capture, propagate, transport, buy, sell, or exchange any game, bird, fish, fish eggs, or fur-bearing animals needed for propagation or stocking purposes, or to exercise control measures of undesirable species;

(e) *to* extend and consolidate by exchange, lands or waters suitable for these purposes.

HeinOnline -- 1977 vol. II 1333 1977

(2) The *department, with the consent of the commission,* may dispose of lands and waters acquired by it on those terms after that public notice, and without regard to other laws which provide for sale or disposal of state lands, and with or without reservation, as it considers necessary and advisable. Notice of sale describing the lands or waters to be disposed of shall be published once a week for 3 successive weeks in a newspaper with general circulation printed and published in the county where the lands or waters are situated, or if no newspaper is published in that county then in any newspaper with general circulation in that county. The notice shall advertise for cash bids to be presented to the director within 30 days from the date of the first publication. Each bid must be accompanied by a cashier's check or cash deposit in an amount equal to 10% of the amount bid. The highest bid shall be accepted upon payment of the balance due within 10 days after mailing notice by registered mail to the highest bidder. If that bidder defaults on payment of the balance due, then the next highest bidders shall be similarly notified in succession until a sale is completed. Deposits shall be returned to the unsuccessful bidders except bidders defaulting after notification. The *department* shall reserve the right to reject any bids which do not equal or exceed the full market value of the lands and waters as determined by the *department.* The *department* shall convey the lands and waters by deed without covenants of warranty, executed by the governor, or in his absence or disability by the lieutenant governor, attested by the secretary of state, and further countersigned by the *director.*

(3) Notwithstanding the provisions of 82-1918, the *department, with the consent of the commission,* is authorized to utilize the installment contract method to facilitate the acquisition of wildlife management areas, in which game and nongame fur-bearing animals, and game and nongame birds may breed and replenish, and areas which provide access to fishing sites for the public. In no case may the total cost of such installment contracts exceed the cost of purchases authorized by *the department* and appropriated by the legislature."

Section 5. Section 26-107, R.C.M. 1947, is amended to read as follows:

"26-107. State fish and game wardens — appointment — qualifications. The director shall have the power to employ and appoint a deputy director, and a sufficient number of state fish and game wardens for the proper enforcement of the fish and game laws of the state, and the orders, rules and regulations of the *department,* and for such other purposes as the director may designate. State fish and game wardens shall be selected from applicants who have passed such an examination as may be required according to the rules adopted and promulgated by the *department.* No person shall be appointed a state fish and game warden until a certificate shall have been issued to him by the *department* to the effect that he has passed the required examination and is a fit and proper person to perform the duties of the office. State fish and game wardens employed and appointed by virtue of this act shall be persons who have an interest in protection, conservation and propagation of wildlife, game and fur-bearing animals, fish and game birds; they shall devote all of their time to their official duties."

HeinOnline -- 1977 vol. II 1334 1977

Section 6. Section 26-114, R.C.M. 1947, is amended to read as follows:

"**26-114. Appointment of ex officio state fish and game wardens.** All sheriffs and their deputies, constables, all peace officers of the state, or any subdivision thereof, and all state forest officers, and such other officers of the United States forest service or agents of the United States fish and wildlife service which are assigned to duty in this state, and field personnel *of the department*, as the director may appoint are hereby made ex officio state fish and game wardens, without pay, except that the *department* may, in its discretion, allow traveling expenses, as provided for in 59-538, 59-539, and 59-801, which, if allowed, shall be paid upon proper vouchers from the state fish and game funds. *Ex officio state fish and game wardens* shall have the same powers with reference to the enforcement of the fish and game laws of this state as regularly appointed state fish and game wardens, and it is hereby made their duty to assist, whenever possible, in the enforcement of said laws."

Section 7. Section 26-119, R.C.M. 1947, is amended to read as follows:

"**26-119. Department and commission to procure plans for construction projects.** It shall be the duty of the *department, with the consent of the commission* to procure suitable plans and specifications for any construction project under its authority or under authority of the state legislature, when the estimated value or cost of the same shall be more than $1,000 but less than $5,000 and *the department, with the consent of the commission* shall cause said project to be constructed, but in accordance with such plans and specifications, by contract, said contract to be let after publishing a notice stating the time and place of letting the same, and where plans and specifications may be seen. *Notice* shall be published not less than once a week for 2 weeks prior to the time of letting such contract, in some newspaper of general circulation in the county in which said project is to be constructed, and elsewhere if deemed best by *the department. Upon concurrence of the commission, the department*, if not satisfied with the bids received, or for any other reason, may reject any and all bids received and readvertise as often as may be necessary. Only one bid need be received and the contract shall be let to the lowest responsible bidder. Any person to whom a contract may be given shall be required to give a good and sufficient bond, conditioned for the faithful performance and completion of such contract, the same to be approved by the *department, with the consent of the commission.* The *department* may contract for construction projects estimated to cost $1,000 or less without providing for plans or specifications, notice, competitive bidding or performance bonds."

Section 8. Section 26-918, R.C.M. 1947, is amended to read as follows:

"**26-918. Grounds for suspension or revocation of license.** Every license, or right to apply for and hold such license, may be suspended or revoked upon any of the following grounds:

(1) Having ceased to meet all of the qualifications for holding a license.

(2) Fraud or deception in procuring a license.

HeinOnline -- 1977 vol. II 1335 1977

(3) Fraudulent, untruthful or misleading advertising.

(4) Conviction of a felony, until civil rights are restored or until time of any deferred sentence for a felony has expired.

(5) Two convictions, or bond forfeitures, of $100 or more as to violations of the fish and game or outfitting laws or regulations of the state of Montana or of the United States.

(6) A substantial breach of any contract with any person utilizing the services of the license holder provided that such breach is established as a matter of final judgment in a court of law.

(7) The willful employment of an unlicensed guide by an outfitter.

(8) Negligence or misconduct while acting as an outfitter or guide which negligence or misconduct causes a danger or unreasonable risk of danger to person or property of any client of such outfitter or guide."

Section 9. Section 26-919, R.C.M. 1947, is amended to read as follows:

"**26-919. Procedure for revocation or suspension of license.** Proceedings for the revocation or suspension of a license issued hereunder may be taken upon charge or recommendation of any person. All such charges or recommendations must be made in writing, must state the facts upon which such charge or recommendation is based and must be signed and sworn to by the person making the charge or recommendation. Any such charge or recommendation shall be filed with the fish and game director. Thereupon, the fish and game director shall initiate a preliminary investigation of all facts in connection with the charge. A copy of all information shall be transmitted to the advisory council. The advisory council may make recommendation as to the action to be taken provided that any such recommendation shall be made, in writing and delivered to the director, within 20 days after date of transmittal of such information to the council. If the accusation be deemed to be unfounded or trivial, the fish and game director shall dismiss the same and will advise the licensee charged and the complaining party of the action. Should the fish and game director determine the charge or recommendation to have good cause and to be sufficiently founded, he shall recommend to the fish and game commission that the same be approved and the revocation or suspension be effected. The fish and game director thereupon shall cause a copy of the charge, recommendation of the council, and a record of the investigation to be served upon the licensee involved, not less than 20 days prior to the day set for hearing thereon which said hearing shall be before the fish and game commission at a time and place set by such commission. At the hearing the licensee involved may be represented by counsel. After full, fair and impartial hearing, the fish and game commission may suspend the accused's license or his right to hold a license for a period not to exceed 3 years or may order the license revoked or may dismiss the charge or recommendation based upon the facts shown at the hearing. A revoked or suspended license may be reissued or reinstated at the discretion of the commission."

Section 10. Section 26-920, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1336 1977

"**26-920. Appeal to district court.** Any person who feels aggrieved by the *denial of* issuance of a license, or *suspension or revocation of a* license as an outfitter or guide, may appeal to the district court of the county of his residence, within 30 days after the date of such action by filing with the clerk of said court a notice of appeal briefly setting forth the action complained of and appealed from. Summons and copy of the notice of appeal shall be served on the commission and all proceedings shall conform to the code of civil procedure of the state of Montana. Upon such appeal, the action shall be by trial de novo and, upon demand in writing, either party shall be entitled to trial by jury. The court may sustain or reverse the action of the commission or take such other action as the court may deem just and proper. If the commission or the court has ordered a stay of any revocation or suspension and the commission's revocation or suspension is thereafter sustained by the court the period of suspension or revocation shall begin with the first day after the court's action sustaining the decision of the commission."

Section 11. Section 26-1508, R.C.M. 1947, is amended to read as follows:

"**26-1508. Reports and objections to federal actions injuring fish and wildlife — files and records.** The Montana state fish and game department shall observe acts and omissions on the part of the government of the United States and its agencies within the state of Montana which do, will or might affect adversely the fish and wildlife resources, including but not limited to the fishing streams within the state, and upon receiving such *information*, the *department* shall without delay send formal notification in writing, by certified mail, to the appropriate federal agency or agencies involved, setting forth in detail the appropriate objections of the state of Montana to the acts and omissions aforesaid. *The department* shall keep complete files and records, available for public inspection, of all matters and things done, and all communications and correspondence sent and received, pursuant to this section."

Section 12. Section 26-1802, R.C.M. 1947, is amended to read as follows:

"**26-1802. Definitions.** As used in this *chapter the following definitions apply*:

(1) "*Department*" means the department of fish and game.

(2) "*Director*" means the director of the state department of fish and game.

(3) "*Ecosystem*" means a system of living organisms and their environment, each influencing the existence of the other and both necessary for the maintenance of life.

(4) "*Endangered* species" means any species or subspecies of wildlife actively threatened with extinction due to any of the following factors:

(a) the destruction, drastic modification, or severe curtailment of its habitat, or

HeinOnline -- 1977 vol. II 1337 1977

(b) its overutilization for scientific, commercial or sporting purposes, or

(c) the effect on it of disease, pollution, or predation, or

(d) other natural or man-made factors affecting its prospects of survival or recruitment within the state, or

(e) any combination of the foregoing factors. The *department* shall have authority to recommend that the legislature include any species or subspecies of fish and wildlife appearing on the United States' list of endangered native fish and wildlife as it appears on the effective date of this chapter (part 17 of title 50 of the Code of Federal Regulations, appendix D) as well as any species or subspecies of fish and wildlife appearing on the United States' list of endangered foreign fish and wildlife (part 17 of title 50 of the Code of Federal Regulations, appendix A), as such list may be modified hereafter.

(5) "*Management*" means the collection and application of biological information for the purposes of increasing the number of individuals within species and populations of wildlife up to the optimum carrying capacity of their habitat and maintaining such levels. The term includes the entire range of activities that constitute a modern scientific resource program including, but not limited to, research, census, law enforcement, habitat acquisition and improvement, and education. Also included within the term, when and where appropriate, is the periodic or total protection of species or populations as well as regulated taking.

(6) "*Nongame* wildlife" means any wild mammal, bird, amphibian, reptile, fish, mollusk, crustacean or other wild animal not otherwise legally classified by statute or regulation of this state. Animals designated by statute or regulation of this state as predatory in nature are not classified as "nongame wildlife" for purposes of this *chapter*.

(7) "*Optimum* carrying capacity" means that point at which a given habitat can support healthy populations of wildlife species, having regard to the total ecosystem, without diminishing the ability of the habitat to continue that function.

(8) "*Person*" means any individual, firm, corporation, association or partnership.

(9) "*Take*" means to harass, hunt, capture, or kill or attempt to harass, hunt, capture, or kill wildlife.

(10) "*Wildlife*" means any wild mammal, bird, reptile, amphibian, fish, mollusk, crustacean or other wild animal or any part, product, egg or offspring or the dead body or parts thereof."

Section 13. There is a new section that reads as follows:

Uniform terminology. (1) Wherever the words "Montana fish and game commission", "state fish and game commission", "fish and game commission", "commission", "members of said commission", or "chairman of the commission" appear in 26-104, 26-104.4, 26-104.5, 26-104.7, 26-108, 26-109, 26-110, 26-110.3, 26-118, 26-121, 26-123, 26-126, 26-127, 26-128,

HeinOnline -- 1977 vol. II 1338 1977

26-129, 26-132, 26-133, 26-135, 26-202, 26-202.1, 26-202.4, 26-202.5, 26-202.6, 26-202.7, 26-202.8, 26-204, 26-210, 26-212, 26-212.1, 26-215, 26-220, 26-222, 26-225, 26-226, 26-228, 26-230, 26-233, 26-301, 26-301.1, 26-302, 26-303.5, 26-306, 26-307, 26-307.1, 26-319, 26-320, 26-324, 26-331, 26-332, 26-334, 26-335, 26-344, 26-402, 26-501, 26-501.1, 26-510, 26-813, 26-814, 26-909, 26-911, 26-912, 26-913, 26-914, 26-915, 26-1120, 26-1121, 26-1123, 26-1124, 26-1201, 26-1206, 26-1207, 26-1208, 26-1210, 26-1402, 26-1403, 26-1502, 26-1503, 26-1504, 26-1505, 26-1509, 26-1601, 26-1602, 26-1603, 26-1605, 26-1607, 26-1608, 26-1609, 26-1610, 26-1612, 26-1613, 26-1614, 26-1701, 26-1702, 26-1704, 26-1804, 26-1805, 26-1806, 26-1807, 26-1808, 46-1903, 53-1012, 53-1020, 53-1022, 53-1025, 53-1028, 62-301, 62-304, 62-305, 62-306, 62-308, 62-310, 62-311, 62-314, 62-401, 62-402, 62-403, 68-1402, 69-3502, 69-3505, 69-3517, 69-3518, 75-5205, 89-3405, 89-3407, and 89-3449, R.C.M. 1947, the words "department of fish and game" or "department", if it is clear which department is involved, are substituted therefor.

(2) The code commissioner may make any required grammatical changes necessitated by the replacement of certain words under subsection (1).

Section 14. Section 26-324, R.C.M. 1947, is amended to read as follows:

"**26-324. Penalty.** A person violating any state law pertaining to fish and game thereto, or the orders, rules, and regulations of the commission *or department* is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than $25 nor more than $500, or imprisoned in the county jail for not more than 6 months, or both fined and imprisoned. In addition, the person shall, in the discretion of the court, forfeit his license and privilege to hunt, fish, or trap within this state for a period of 16 months from the date of conviction."

Section 15. **Repealer.** Sections 26-106, 26-124, and 82A-2003, R.C.M. 1947, are repealed.

Section 16. There is a new R.C.M. section numbered 26-103.1 that reads as follows:

26-103.1. Powers of the commission. The commission shall:

(1) set the policies for the protection, preservation, and propagation of the wildlife, fish, game, furbearers, waterfowl, nongame species and endangered species of the state, and for the fulfillment of all other responsibilities of the department as provided by law;

(2) establish the hunting, fishing, and trapping rules of the department;

(3) establish the rules of the department governing the use of lands owned or controlled by the department and waters under the jurisdiction of the department;

(4) have the power within the department to establish wildlife refuges and bird and game preserves;

HeinOnline -- 1977 vol. II 1339 1977

(5) approve all acquisitions or transfers by the department of interests in land or water;

(6) review and approve the budget of the department prior to its transmittal to the budget office; and

(7) review and approve construction projects whose estimated cost is more than $1,000 but less than $5,000.

Section 17. There is a new R.C.M. section numbered 26-106.3 that reads as follows:

26-106.3. Director to carry out policies. The director shall carry out the policies of the commission and shall adopt rules authorized by law to implement those policies.

Section 18. There is a new R.C.M. section numbered 26-109.1 that reads as follows:

26-109.1. Grievance procedure. (1) An employee of the department, aggrieved by a serious matter of his employment based upon work conditions, supervision, or the result of an administrative action, who has exhausted all administrative remedies within the department, is entitled to a hearing before the employee appeals board designated by the department of administration, under the provisions of a grievance procedure prescribed by the board, for the resolution of his grievance.

(2) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the department against an aggrieved employee because the employee has filed or attempted to file a grievance with the board shall also be the basis for a grievance and shall entitle the employee to a hearing before the board for resolution.

(3) If, upon the preponderance of the evidence taken at the hearing, the board is of the opinion that the employee is aggrieved, it may issue an order to the department requiring such action of the department as will resolve the employee's grievance. The order of the board shall be binding upon the department.

Section 19. **Effective date.** This act is effective on its passage and approval.

Approved April 18, 1977.

CHAPTER NO. 418

AN ACT TO PROVIDE FOR THE SELECTION AND ACQUISITION OF OFF-STREAM STORAGE SITES AND THE CONSTRUCTION OF RESERVOIRS BY CONSERVATION DISTRICTS AND TO PROVIDE FOR THE SALE OF WATER FROM SUCH RESERVOIRS IN EXCESS OF THE NEEDS OF PRIOR APPROPRIATORS ACCORDING TO AN ORDERING OF CERTAIN BENEFICIAL USES.

HeinOnline -- 1977 vol. II 1340 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 76-118 that reads as follows:

76-118. Selection and acquisition of water storage sites by conservation districts. (1) Each conservation district within the state shall seek and may select at least one off-stream water storage site for the construction of a reservoir.

(2) If funding is available for a reservoir or other reclamation project, the conservation district shall acquire the site by purchase.

(3) Supervisors of conservation districts may designate sites for future construction of reservoirs. The supervisors shall designate such site by filing a legal description thereof in the office of the clerk and recorder of the county in which the site is located or the counties in which the site is located if it extends across the boundaries of two or more counties. Upon filing of such designation, the state of Montana, its agencies, or political subdivisions may not acquire the properties so designated for public purposes other than reservoir sites and may not construct any public facilities except reservoirs. Supervisors may cancel a site designation by filing notice with the clerk and recorder of the county or counties affected.

Section 2. There is a new R.C.M. section numbered 76-119 that reads as follows:

76-119. Funding of storage reservoirs. Each district shall seek funding for the construction of off-stream storage reservoirs, especially funding from the renewable resource fund. The department of natural resources and conservation shall provide assistance, both administrative and technical, in the preparation of grant and funding applications by the districts.

Section 3. There is a new R.C.M. section numbered 76-120 that reads as follows:

76-120. Purposes of off-stream storage. The reservoirs shall provide water storage for appropriators within the conservation district and shall provide water for additional beneficial uses. The reservoir may be part of a federal reclamation project and may be used to provide flood control in the district.

Section 4. There is a new R.C.M. section numbered 76-121 that reads as follows:

76-121. Disposition of excess water. (1) The conservation district may dispose of water in excess of that needed to meet the requirements of prior appropriators by selling the excess water to any person who will apply the water to an agreed beneficial use within the state.

(2) In making sales under this section, the district shall allocate water on the basis of priorities established by each local district in accordance with 76-109 according to need and beneficial use.

Section 5. **Severability.** If a part of this act is invalid, all valid parts

HeinOnline -- 1977 vol. II 1341 1977

that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 18, 1977.

CHAPTER NO. 419

AN ACT TO CHANGE THE PENALTY FOR FAILURE TO MAKE TIMELY APPLICATION FOR RENEWAL OF A RETAIL LICENSE; AMENDING SECTION 84-2404, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-2404, R.C.M. 1947, is amended to read as follows:

"**84-2404. Expiration and renewal of licenses.** All licenses shall be so issued so as to expire December 31 of each calendar year. On or before December 31 of each calendar year, every firm, person, corporation, association, copartnership having a license, shall apply to the state department of revenue for a renewal license for the calendar year next ensuing. All applications for a renewal shall be made upon forms which shall be prescribed and furnished by the state department of revenue.

Each such application for a renewal license shall be accompanied by the license fee as prescribed in 84-2405 and 84-2407.

All licenses shall lapse on December 31 of the year for which the license was issued, and if, by December 31, an application for a renewal license for the calendar year next ensuing has not been made, the fee charged shall be *110% of* the rate prescribed in 84-2405 and 84-2407, *if application is made on or before January 31 following the date of expiration. If application for renewal is made after January 31, the fee charged shall be double the rate prescribed in 84-2405 and 84-2407.*"

Approved April 18, 1977.

CHAPTER NO. 420

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE VII, SECTION 2, OF THE MONTANA CONSTITUTION TO ALLOW THE LEGISLATURE TO DISAPPROVE RULES FOR ADMISSION TO THE BAR PROMULGATED BY THE SUPREME COURT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article VII, section 2, of the Montana constitution is amended to read as follows:

HeinOnline -- 1977 vol. II 1342 1977

"**Section 2. Supreme court jurisdiction.** (1) The supreme court has appellate jurisdiction and may issue, hear, and determine writs appropriate thereto. It has original jurisdiction to issue, hear, and determine writs of habeas corpus and such other writs as may be provided by law.

(2) It has general supervisory control over all other courts.

(3) It may make rules governing appellate procedure, practice and procedure for all other courts, admission to the bar and the conduct of its members. Rules of procedure *and rules for admission to the bar* shall be subject to disapproval by the legislature.

(4) Supreme court process shall extend to all parts of the state."

Section 2. **Effective date.** If approved by the electorate, this amendment shall be effective January 1, 1979.

Section 3. **Submission to the electors.** This amendment shall be submitted to the electors of the state of Montana at the general election to be held in November, 1978, by printing on the ballot the full title of this act and the following:

☐ FOR allowing the legislature to disapprove rules for admission to the bar promulgated by the supreme court.

☐ AGAINST allowing the legislature to disapprove rules for admission to the bar promulgated by the supreme court.

Approved (Constitutional Amendment).

CHAPTER NO. 421

AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO SNOWMOBILES; AMENDING SECTIONS 26-220, 26-221, 26-222, 26-223 AND TITLE 53, CHAPTER 10, R.C.M. 1947; AND ADDING AUTHORIZATION FOR NONRESIDENT TEMPORARY-USE PERMITS; AND REPEALING SECTION 53-1024, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-1012, R.C.M. 1947, is amended to read as follows:

"**53-1012. Definition of terms.** As used in this *chapter*, the following terms shall have the meanings indicated herein, unless the context otherwise clearly requires that another meaning *is* intended:

(1) "Person" includes an individual, partnership, association, corporation, and any other body or group of persons, whether incorporated or not, and regardless of the degree of formal organization.

(2) "Snowmobile" includes any self-propelled vehicle *of an overall width of 48 inches or less excluding accessories* designed primarily for travel on snow or ice, which may be steered by skis or runners and which

HeinOnline -- 1977 vol. II 1343 1977

is not otherwise registered or licensed under the laws of the state of Montana.

(3) "Owner" *includes* every person as defined herein, other than a lien holder or other person having a security interest only, holding *a certificate of ownership* to a snowmobile, and entitled to the use or possession thereof.

(4) "Operator" *includes* every person who operates or is in actual physical control of the operation of a snowmobile.

(5) "Roadway" *includes* only those portions of any highway, road, or street improved, designed, or ordinarily used for travel or parking of motor vehicles.

(6) "Commission" means the fish and game commission of the state of Montana.

(7) "dbA" means sound pressure level measured on the "A" weight scale in decibels.

(8) "New snowmobile" means any snowmobile that has not been previously sold to an "owner" as defined in subsection *(3)*."

Section 2. Section 53-1013, R.C.M. 1947, is amended to read as follows:

"**53-1013. Certificate of ownership.** (1) No snowmobile *may* be operated upon any public lands, trails, easements, lakes, rivers, streams, roadways or shoulders of roadways, streets or highways, unless *a certificate of ownership* has first been *obtained from* the registrar of motor vehicles in accordance with the laws of this state.

(2) Before such *certificate* may be *obtained*, the owner of a snowmobile shall make application for a certificate of ownership with the county treasurer of the county in which the owner resides, upon forms to be furnished for this purpose, *which shall require* the following information: *name* of owner, residence by town and county, business or home mail address, name and address of lien holder, amount due under contract or lien, name and address of manufacturer, model number or name, serial number, and name and address of dealer or other person from whom acquired. The application shall be signed by at least one owner or by a properly authorized officer or representative of the owner.

(3) If a *certificate of ownership for a* snowmobile has previously been *issued* under the provisions of this *chapter*, the application for *a new certificate* must be accompanied by the immediately previous *certificate* or by an affidavit upon a prescribed form stating under oath that the vehicle had not been operated during the immediately previous year. *This subsection does not apply* to snowmobiles that are purchased as new and unused machines or that were operated when the provisions of this *chapter* were not in force and effect.

(4) Upon completion of the application in quintuplicate on forms furnished by the registrar of motor vehicles, the county treasurer shall issue to the applicant two copies of the application, one of which shall be

HeinOnline -- 1977 vol. II 1344 1977

marked "file copy", and forward one copy and the *original* application to the registrar of motor vehicles, who shall cause to be entered the information contained in the application upon the corresponding records of his office, and shall furnish the applicant a certificate of ownership which shall contain the information found on the *application and a permanent ownership number. The* owner shall at all times retain possession of the certificate of ownership, except when the same is being transmitted to and from the registrar of motor vehicles for endorsement or cancellation. *The certificate of ownership is not required to be renewed annually, and is valid as long as the person holding it owns the snowmobile. The owner of a snowmobile shall display his certificate of ownership number on both sides of the cowling of the snowmobile and shall maintain the number in legible condition at all times. The number shall read from left to right and be marked in Arabic numerals, in block characters of good proportion, and shall be a minimum of 3 inches in height, excluding border or trim, and of a color that contrasts with the color of the background.*

(5) Upon application for *a* certificate of *ownership,* a fee of *$3* shall be paid to the county treasurer, one-half of which fee shall be forwarded by the county treasurer to the registrar of motor vehicles.

(6) Before a *tax-paid* decal may be applied for pursuant to the laws of this state, the owner must present the certificate of ownership, or copy of completed application therefor, as a prerequisite to completing the application for the *tax-paid* decal."

Section 3. Section 53-1014, R.C.M. 1947, is amended to read as follows:

"53-1014. Transfer of interest. (1) Upon a transfer of any *certificate of ownership* to a snowmobile registered under the provisions of this *chapter,* the person or persons whose title or interest is to be transferred shall write their signatures with pen and ink upon the certificate of ownership issued for such vehicle, in the appropriate space provided upon the reverse side of such certificate, and such signature shall be acknowledged before a notary public.

(2) Within 10 days thereafter, the transferee shall forward the certificate of ownership so endorsed together with the information required under this *chapter,* to the registrar, who shall file the same upon receipt thereof and no certificate of ownership shall be issued by the registrar of motor vehicles until the outstanding certificates are surrendered to that office or their loss established to his reasonable satisfaction. The registrar of motor vehicles shall collect a fee of *$3* for each application for transfer of ownership.

(3) The provisions of *subsection* (2) of this section, requiring a transferee to forward the certificate of ownership after endorsement to the registrar, shall not apply in the event of the transfer of a snowmobile to a duly licensed snowmobile dealer intending to resell such vehicle and who operates the same only for demonstration purposes, but every such dealer shall upon transferring such interest deliver such certificate of ownership with an application for *a new certificate* executed by the new owner in accordance with the provisions of this *chapter,* and the registrar

HeinOnline -- 1977 vol. II 1345 1977

upon receipt of *the* certificate of ownership and application for *a new certificate*, together with the conditional sales contract or other lien, if any, shall issue a new certificate of ownership together with a statement of any conditional sales contract, mortgage, or other lien."

Section 4. Section 53-1015, R.C.M. 1947, is amended to read as follows:

"**53-1015. Lost or mutilated certificates.** In the event any certificate of ownership *is* lost, mutilated, or *becomes* illegible, the persons to whom the same *were* issued shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of $1."

Section 5. Section 53-1016, R.C.M. 1947, is amended to read as follows:

"**53-1016. Exemptions.** (1) The provisions of this *chapter*, with respect to certification of *ownership, do* not apply to snowmobiles owned or used by the United States or another state or any agency or political subdivision thereof, any snowmobile registered in a country other than the United States and to be temporarily used within this state for a period of not more than 30 days, or *to* any snowmobile registered in another state of the United States but to be temporarily used within this state for not more than 30 days. Snowmobiles owned by the state of Montana or any agency or political subdivision thereof *are* exempt only from the payment of fees *and* shall otherwise comply with all the requirements of this *chapter.*

(2) No political *subdivision* of this state *may* prescribe further licensing or registration of snowmobiles and no political subdivision *may* levy fees or charges for use or operation of snowmobiles within the subdivision.

(3) The provisions of this chapter with respect to registration and certification of ownership do not apply to unregistered snowmobiles owned by nonresidents of the state of Montana displaying visual proof that a "nonresident temporary-use permit" has been purchased."

Section 6. There is a new R.C.M. section numbered 53-1016.1 that reads as follows:

53-1016.1. Nonresident temporary-use permits. (1) The requirements pertaining to the "nonresident temporary-snowmobile-use permit" are as follows:

(a) Application for the issuance of the permit shall be made at locations and upon forms prescribed by the department. The forms shall include but are not limited to:

(i) applicant's name and permanent address;

(ii) make, model, year, and serial number of the snowmobile; and

(iii) affidavit declaring the nonresidency of the applicant.

(b) Upon submission of the application and a fee of $6, a nonresident temporary-snowmobile-use sticker shall be issued. The sticker shall be displayed in a conspicuous manner on the snowmobile.

HeinOnline -- 1977 vol. II 1346 1977

(2) The temporary permit is valid for a consecutive 30-day period as designated by the permit.

(3) The permit is not proof of ownership and no certificate of ownership may be issued.

(4) All money collected by payment of fees under this section shall be turned over to the state treasurer and placed in the earmarked revenue fund to the credit of the department of fish and game with one-half to be used in administering this section and one-half to be used in the development, maintenance, and operation of snowmobile facilities.

(5) The failure to display the permit as required by this section or the making of false statements in obtaining the permit is a misdemeanor, punishable by a fine of not less than $25 or more than $100.

Section 7. Section 26-220, R.C.M. 1947, is amended to read as follows:

"**26-220. License agents — appointment.** The director may appoint license agents as needed to sell state hunting and fishing licenses *and any permits or certificates prescribed by the commission*, according to rules adopted by the commission."

Section 8. Section 26-221, R.C.M. 1947, is amended to read as follows:

"**26-221. Bond of license agent — preferred claim of state for license money.** (1) An appointed license agent shall furnish a corporate surety bond of one thousand dollars ($1,000), or in an amount equal to the value of the licenses, *permits, and certificates* received for distribution, the amount to be fixed at the discretion of the director. The bond shall secure the faithful performance of the duties imposed on the license agent and the accounting for and payment to the state of all moneys received from the sale of hunting and fishing licenses *and any permits or certificates prescribed by the commission*. The license agent shall properly account for all unsold licenses, *permits, and certificates,* annually on April 1, or at any other time at the request of the director.

(2) All money received for the sale of licenses, *permits, and certificates* at all times belongs to the state. In case of an assignment for the benefit of creditors, receivership, or bankruptcy, the state has a preferred claim against the assets and estate of a license agent for all moneys owed the state."

Section 9. Section 26-222, R.C.M. 1947, is amended to read as follows:

"**26-222. Compensation — duties.** *(1)* License agents, except salaried employees of the department, shall receive for all services rendered the sum of fifteen cents (15¢) for each license, *permit, or certificate* issued. On or before the 10th day of each month each license agent shall submit to the department all duplicates of each class of licenses sold during the preceding month and shall accompany the duplicate licenses with all moneys received for the sale of the licenses, less a fee of fifteen cents (15¢) for each license sold. Each license agent shall keep his license account open at all reasonable hours to inspection by the commission, the director, the wardens, or the legislative auditor.

HeinOnline -- 1977 vol. II 1347 1977

(2) For purposes of this section, the term "license" includes any license, permit, and certificate prescribed by the commission."

Section 10. Section 26-223, R.C.M. 1947, is amended to read as follows:

"26-223. Appointments nontransferable — revocation — oaths. Appointments of license agents shall be nontransferable, and each appointment shall be valid only at the single location of the business as stated on the certificate of appointment. Such appointments may be summarily revoked at any time by the state fish and game director upon discontinuance of the business at the stated location or for noncompliance with the provisions of this act or other regulations. Duly appointed license agents are hereby authorized to administer oaths to applicants for hunting and fishing licenses *and for other permits and certificates prescribed by the commission.*"

Section 11. Section 53-1017, R.C.M. 1947, is amended to read as follows:

"53-1017. Report of stolen and recovered snowmobiles. *The* sheriff of every county of the state and the chief of police or commissioner of police of every city *shall* make *an* immediate report to the registrar of motor vehicles of all snowmobiles reported to him as stolen or recovered, upon forms provided for by the registrar of motor vehicles. Upon receipt of such information, the registrar of motor vehicles shall file the same in an index to be known as the "stolen and recovered snowmobile index". *The* registrar of motor vehicles *shall* file reports of stolen and recovered snowmobiles reported to him from other states. The registrar of motor vehicles shall prepare once a month a list of all snowmobiles stolen or recovered during the previous month and forward a copy of the same to every sheriff and all police departments in cities of the first, second, and third class. Such list shall also be forwarded to the secretary of state or other proper official in each state of the United States. Before a certificate of *ownership may* be issued under this *chapter*, the motor and serial number on the *snowmobile for which such certificate is to be issued* shall be checked against the stolen and recovered snowmobile index."

Section 12. Section 53-1018, R.C.M. 1947, is amended to read as follows:

"53-1018. Operation on public roads and streets. (1) No person shall operate a snowmobile upon a controlled access highway or facility at any time. Snowmobile operation may be permitted on the roadway or shoulder of any public road or highway, state highway, county road, or city street located within the boundaries of any municipality, only in the event that *the* street, road, or highway is drifted or covered by snow to such an extent that travel thereon by other motor vehicles is impractical or impossible; the operator *has received permission or is otherwise authorized* for such travel by the municipality in the case of town or city streets, the board of county commissioners for county roads, or the state highway patrol for all other highways; or such operation has been specifically so authorized *on municipal streets* by a municipal ordinance.

HeinOnline -- 1977 vol. II 1348 1977

(2) A snowmobile may make a direct crossing of a street or highway *whenever* such crossing is necessary to get to another authorized area of operation. Such crossing shall be made at an angle of approximately *90* degrees to the direction of *traffic* at a place where no obstruction prevents a quick and safe crossing. The snowmobile shall make a complete stop before entering upon any part of *traffic way*, and the operator shall yield the *right-of-way* to all oncoming traffic.

(3) No snowmobile *may* be operated upon a public street or, highway, when permitted to do so by this *chapter*, unless equipped with at least one head lamp and one tail lamp, which shall be lighted at all times during such operation, and unless equipped with a suitable braking device which may be operated by either hand or foot.

(4) The operator of a snowmobile who operates his vehicle upon a public roadway, street or highway when allowed to do so under the provisions of this *chapter*, shall have in his possession a license to drive a motor vehicle as required by the laws of the state of Montana. An operator who crosses a street, road or highway, *or who operates a snowmobile upon a street, road or highway that is drifted or covered with snow to such an extent that travel thereon by other motor vehicles is impractical or impossible,* or who operates a snowmobile in any other areas of the state where operation is lawfully permitted *is* not required to apply for or possess a driver's license under the laws of the state of Montana."

Section 13. Section 53-1019, R.C.M. 1947, is amended to read as follows:

"**53-1019. Unlawful operation on streets and highways.** It *is* unlawful for any person to drive or operate any snowmobile upon a public street or highway in any one or more of the following manners:

(1) *at* a rate of speed greater than provided by law for motor vehicles;

(2) *while* under the influence of intoxicating liquor or narcotics or habit-forming drugs;

(3) *in* a careless or reckless manner so as to endanger the person or property of another or to cause injury or damage to either;

(4) operating a snowmobile or permitting such operation by any person who by reason of age or physical or mental disability is incapable of operating the snowmobile as required for safety under the prevailing circumstances."

Section 14. Section 53-1020, R.C.M. 1947, is amended to read as follows:

"**53-1020. Other unlawful operation.** *(1)* No person while operating a snowmobile *may* use the same:

(a) for the purpose of driving, rallying, or harassing any of the game animals, game birds, or fur-bearing animals of the state or any livestock. *(An* owner of livestock is not prohibited from managing or driving his own livestock by the use of snowmobiles and may direct other persons to so manage or drive his livestock *and* the department of fish and game,

including its duly authorized employees, is not prohibited from managing or driving game animals, game birds, or fur-bearing animals by the use of snowmobiles*);*

(b) to discharge a firearm from or upon a snowmobile*;*

(c) without a lighted headlight and taillight between the hours of dusk and dawn;

(2) (a) Except as provided in this section, every snowmobile shall be equipped at all times with noise-suppression devices, including an exhaust muffler in good working order and in constant operation. No snowmobile *may* be modified by any person in any manner that *will* amplify or otherwise increase total noise emissions to a level greater than that emitted by the snowmobile as originally constructed, regardless of date of manufacture.

(b) No new snowmobile manufactured prior to June 30, 1975, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 82 dbA measured at 50 feet. Every person who owns or operates a snowmobile manufactured after June 30, 1972, but prior to June 30, 1975, shall maintain his machine in such a manner that it will not exceed a sound level limitation of 82 dbA measured at 50 feet.

(c) No new snowmobile manufactured after June 30, 1975, but prior to June 30, 1978, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 78 dbA measured at 50 feet. Every person who owns or operates a snowmobile manufactured after June 30, 1975, but prior to June 30, 1978, shall maintain his machine in such a manner that it will not exceed a sound level limitation of 78 dbA measured at 50 feet.

(d) No new snowmobile manufactured after June 30, 1978, except snowmobiles designated for competition purposes only, may be sold or offered for sale unless that machine has been certified by the manufacturer as being able to conform to a sound level limitation of not more than 73 dbA measured at 50 feet. Every person who owns or operates a snowmobile manufactured after June 30, 1978, shall maintain his machine in such a manner that it will not exceed a sound level limitation of 73 dbA measured at 50 feet.

(e) The fish and game commission *may* adopt and revise sound level limitations for all snowmobiles manufactured after June 30, 1978. However, a sound level limitation adopted or revised by the commission *may* not be higher than a decibel standard of 73 dbA measured at 50 feet. The adoption or revision of sound level limitation by the commission shall be effective beginning June 30 of the succeeding calendar year and any sound level limitation formally adopted or revised shall remain in effect for a minimum period of 2 years. Every person who owns or operates a snowmobile manufactured after June 30, 1978, shall maintain his machine in compliance with the sound level limitation which is applicable to new snowmobiles manufactured during the period that a sound level limitation adopted by the commission is in effect.

HeinOnline -- 1977 vol. II 1350 1977

(f) A manufacturer who certifies that a new snowmobile can comply with the noise limitation requirements of this *chapter* shall affix a permanent notice of that certification to every snowmobile offered for sale in the state of Montana.

(g) In certifying that a new snowmobile can comply with the noise limitation requirements of this *chapter*, a manufacturer shall make such a certification based upon measurements made in accordance with SAE recommended practice J192, as amended. The fish and game commission, in enforcing the provisions of this act, shall make measurements of snowmobile noise in accordance with applicable practices outlined in the "procedure for sound level measurements of snowmobiles" used by the international snowmobile industry association (January, 1969), as amended, or with such other standards for measurement of sound level as the commission may adopt.

(h) This section does not apply to organized races or similar competitive events held on

(i) private lands, with the permission of the owner, lessee, or custodian of the land; or

(ii) public lands, with the consent of the public agency having the authority to grant such consent, provided that total sound produced by such an event *may* not exceed 50 dbA at any point 50 feet or more outside the area under the control of the sponsoring entity."

Section 15. Section 53-1022, R.C.M. 1947, is amended to read as follows:

"**53-1022. Enforcement.** The following persons may enforce the provisions of this *chapter*:

(1) *the* enforcement officers employed by the state department of fish and game, with respect to violations relating to wildlife or birds, discharging firearms, or sound level limitations. However, with respect to the sale of any new snowmobile which is subject to the provisions of this *chapter*, the attorney general of the state of Montana shall, upon the request of the commission, sue for the recovery of the penalties provided in 53-1023 and bring an action for a restraining order or temporary or permanent injunction against a person who sells or offers to sell a new snowmobile that does not satisfy the sound level limitations imposed by this *chapter*.

(2) *the* sheriffs of the respective counties and the police officers of cities and towns, within their respective jurisdictions, and the state highway patrol, with respect to any violation of this *chapter* upon the public streets or highways or any public right-of-way."

Section 16. Section 53-1023, R.C.M. 1947, is amended to read as follows:

"**53-1023. Penalties.** (1) A person who violates any provision of this *chapter* or a rule adopted pursuant thereto shall pay a civil penalty of not less than $15 *or* more than $500 for each separate violation.

(2) A person who willfully violates any provision of this *chapter* or a

HeinOnline -- 1977 vol. II 1351 1977

rule adopted pursuant thereto shall pay a civil penalty of not less than $50 *or* more than $1,000 for each separate violation.

(3) A manufacturer who certifies that a new snowmobile can meet the sound level limitations imposed by this *chapter* shall be subject to the penalty provisions of subsections (1) and (2) if any machine so certified does not meet the appropriate sound level limitation.

(4) For the purposes of this section, every sale of a new snowmobile that does not meet the sound level limitations imposed by this *chapter constitutes* a separate violation."

Section 17. Section 53-1025, R.C.M. 1947, is amended to read as follows:

"**53-1025. Display of tax-paid decals on snowmobiles required — application and issuance.** *(1)* No snowmobile *may* be operated by any person in the state of Montana unless there is displayed in a conspicuous place thereon a decal as visual proof that Montana personal property taxes have been paid thereon for the current year. Application for the issuance of such tax-paid decal shall be made to the county treasurer upon forms to be furnished for this purpose, which may be obtained from the registrar of motor vehicles or at the county assessor's office in the county wherein the owner resides and *which shall* provide for substantially the following information: name of owner, address, *certificate of ownership* number, name of manufacturer, model number, make, horsepower, year of manufacture, statement evidencing assessment, payment of property tax, and such other information as the registrar of motor vehicles may require. *The* application shall be signed by the county treasurer and transmitted by him to the registrar of motor vehicles accompanied by a fee of $2. All moneys collected from payment of such fees *and all interest accruing from use of these moneys* shall be turned over to the state treasurer and placed by him in the earmarked revenue fund to the credit of the state fish and game commission, with $1 designated for use in enforcing the purposes of this *chapter* and $1 designated for use in *the development, maintenance, and operation of* snowmobile facilities. Upon receipt of the application in approved form the registrar of motor vehicles or county treasurer shall issue to the applicant a decal in the style and design prescribed by the registrar of motor vehicles and of a different color than the preceding year, numbered *consecutively.*

(2) Before filing the application with the county treasurer, the applicant shall submit the same to the county assessor of the county and the county assessor shall enter on the application in a place provided for that purpose, the full and true and assessed valuation of the snowmobile for the year for which the application is made.

(3) The applicant shall pay the county treasurer the application fee and shall also pay the personal property taxes assessed against the snowmobile for the current year before the application may be accepted by the county treasurer."

Section 18. Section 53-1025.1, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1352 1977

"**53-1025.1. Duplicate decal.** In the event any *tax-paid* decal *is* lost, mutilated, or *becomes* illegible, the persons to whom the same *were* issued shall immediately make application for and may obtain a duplicate thereof, upon payment of a fee of $1 to the county treasurer."

Section 19. Section 53-1027, R.C.M. 1947, is amended to read as follows:

"**53-1027. Failure to display decal a misdemeanor — penalty.** *(1)* The failure to display a current tax-paid decal during the time provided in this *chapter is* a misdemeanor, punishable by a fine of not less than *$10 or* more than $50.

(2) All fines and forfeitures collected under Title 53, chapter 10 relating to snowmobiles shall be transmitted to the state treasurer who shall deposit such fines and forfeitures in the earmarked revenue fund to the credit of the department of fish and game to be used only for snowmobile safety and education."

Section 20. Section 53-1028, R.C.M. 1947, is amended to read as follows:

"**53-1028. Officers authorized to enforce chapter.** The fish and game commission, enforcement personnel, the sheriffs and their deputies of the various counties of the state, the Montana highway patrol, and the police of each municipality shall enforce the provisions of this *chapter.*"

Section 21. Section 53-1029, R.C.M. 1947, is amended to read as follows:

"**53-1029. Issuance of dealer registration certificate.** (1) A dealer registration certificate shall be issued in accordance with this *chapter.*

(2) Upon receipt of dealer application and payment of fees which will be $5, the dealer shall be issued two dealer snowmobile identification cards which *shall* be carried by dealer or dealer's customer when operating or demonstrating dealer's snowmobiles.

(3) No bond *is* required of the dealer.

(4) Additional dealer snowmobile identification cards may be purchased by the dealer for a fee of $2.

(5) A dealer registration certificate and identification cards expire on June 30 following the date of issuance.

(6) All money collected from such fees and all interest accruing from use of this money shall be deposited in the earmarked revenue fund to the credit of the department of fish and game, with one-half designated for use in enforcing the purposes of this chapter and one-half designated for use in the development, maintenance, and operation of snowmobile facilities."

Section 22. **Repealer.** Section 53-1024, R.C.M. 1947, is repealed.

Approved April 19, 1977.

CHAPTER NO. 422

AN ACT TO CLARIFY THE PROCEDURES FOR THE TERMINATION

HeinOnline -- 1977 vol. II 1353 1977

OF THE PARENTAL RIGHTS OF CHILDREN PROPOSED TO BE RELEASED FOR ADOPTION; REPEALING SECTIONS 61-317, 61-325, AND 61-326, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 61-328 that reads as follows:

61-328. Form, execution, and revocation of releases — termination of parents' or guardians' rights. (1) Any parent or guardian who proposes to relinquish custody of a child for purposes of placing the child for adoption may do so by formally executing a release whereby all parental rights to the child are voluntarily relinquished to an agency of the state of Montana, a licensed adoption agency, or a person.

(2) Except as otherwise provided in this section, a release shall be by a separate instrument executed before a notary public.

(3) If the person from whom a release is required is a member of any of the armed services or is in prison, the release may be executed and acknowledged before any person authorized by law to administer oaths.

(4) If the release is executed in another state or country, the court having jurisdiction over the adoption proceeding in this state shall determine whether the release was executed in accordance with the laws of that state or country and may not proceed unless it finds that the release was so executed.

(5) Upon the filing of the release of a child by a parent or guardian, the court immediately shall issue an order terminating the rights of that parent or guardian to that child. If the rights of both parents, the surviving parent, or the guardian have been terminated, the court shall issue an order committing the child to the agency of the state of Montana, the licensed adoption agency, or the person to which the release was given.

(6) Entry of an order terminating the rights of both parents pursuant to subsection (5) terminates the jurisdiction of the district court over the child in any divorce or separate maintenance action.

(7) Upon petition of the person or persons who executed the release and of the agency of the state of Montana, licensed adoption agency, or person to which the child was released, the court with which the release was filed may grant a hearing to consider whether the release should be revoked. A release may not be revoked if the child has been placed for adoption. A verbatim record of testimony related to a petition to revoke a release shall be made.

Section 2. There is a new R.C.M. section numbered 61-329 that reads as follows:

61-329. Children born out of wedlock — release — consent. (1)

HeinOnline -- 1977 vol. II 1354 1977

If the mother of a child born out of wedlock proposes to release the child for adoption and the release or consent of the natural father cannot be obtained, the child may not be placed for adoption until the parental rights of the father are terminated by the court as provided in this chapter, by the court pursuant to Title 10, chapter 13, or by a court of competent jurisdiction in another state or country.

(2) Pending the termination or other disposition of the rights of the father of the child born out of wedlock, the mother may execute a release terminating her rights to the child. If the mother releases the child, the agency of the state of Montana, the licensed adoption agency, or the person to which the child is released may file a petition under this chapter or a petition of dependency or neglect pursuant to Title 10, chapter 13. Pending disposition of the petition, the court may enter an order authorizing temporary care of the child.

(3) At the request of the mother, her formal execution of a release shall be delayed until after the court has determined the identity of the father and has awarded custody of the child to the father or terminated his rights under this chapter.

Section 3. There is a new R.C.M. section numbered 61-330 that reads as follows:

61-330. Notice of intent to claim paternity. (1) Before the birth of a child born out of wedlock, a person claiming under oath to be the father of the child may file a verified notice of intent to claim paternity with the district court in any county of this state. The form of the notice shall be prescribed by the director of the department of health and environmental sciences and supplied to the clerks of the district courts. The notice shall include the claimant's address. On the next business day after receipt of the notice, the court shall transmit the notice to the records and statistics bureau of the department of health and environmental sciences. If the mother's address is stated on the notice, the records and statistics bureau shall send a copy of the notice by first-class mail to the mother of the child at the stated address.

(2) A person filing a notice of intent to claim paternity or acknowledging paternity in accordance with 61-305 shall be presumed to be the father of the child for purposes of this chapter unless the mother denies that the claimant is the father. Such notice is admissible in a paternity proceeding under 61-307 and creates a rebuttable presumption as to the paternity of that child for purposes of that section. Such notice creates a rebuttable presumption as to paternity of the child for purposes of a dependency or neglect proceeding under Title 10, chapter 13.

(3) A person who makes a timely filing of notice of intent to claim paternity or who formally acknowledges paternity under 61-305 is entitled to notice of any hearing to determine the identity of the father of the child and any hearing to determine or terminate his paternal rights to the child.

Section 4. There is a new R.C.M. section numbered 61-331 that reads as follows:

HeinOnline -- 1977 vol. II 1355 1977

61-331. Expected child — intent to release or consent, petition and notice. (1) In order to provide due notice at the earliest possible time to a putative father who may have an interest in the custody of an expected child or in the mother's intended release of an expected child for adoption and in order to facilitate early placement of a child for adoption, a woman pregnant out of wedlock may file with the district court an ex parte petition which sets forth the following:

(a) her intent to release her expected child for adoption;

(b) the approximate date and location of conception;

(c) the expected date of her delivery; and

(d) the identity and whereabouts of the putative father of her expected child.

(2) The petition may allege more than one putative father whenever circumstances warrant. The petition shall be verified. Upon the filing of the petition, the court shall issue a notice of intent to release, which notice shall be served upon the putative father or fathers in the manner provided by the Montana rules of civil procedure or in any other manner which the court may direct. Proof of such service shall be filed with the court.

(3) A notice of intent to release shall:

(a) indicate the approximate date and location of conception of the child and the expected date of delivery;

(b) inform the putative father of his right under 61-330 to file a notice of intent to claim paternity before the birth of the child;

(c) inform the putative father of the rights to which his filing of notice of intent to claim paternity will entitle him under 61-330(3); and

(d) inform the putative father that his failure to file a notice of intent to claim paternity before the expected date of delivery constitutes a waiver of his right to receive the notice to which he would otherwise be entitled under 61-330(3) and constitutes a denial of his interest in the custody of the child, which denial shall result in the court's termination of his rights to the child.

(4) The petition shall be filed with the court not later than 30 days prior to the expected date of delivery.

Section 5. There is a new R.C.M. section numbered 61-332 that reads as follows:

61-332. Proceeding to determine father's identity and terminate rights. (1) If a child is born out of wedlock and the mother executes or proposes to execute a release terminating her rights to the child or if the child otherwise becomes the subject of an adoption proceeding, the agency or person to whom the child has been or is to be relinquished or the mother or person having custody of the child shall file a petition in the district court to terminate the parental rights of the father, unless the father's relationship to the child has been previously terminated or determined not to exist by the court. The court shall hold a hearing as soon as prac-

HeinOnline -- 1977 vol. II 1356 1977

tical to determine the identity of the father and to determine or terminate the rights of the father as provided in this section and in 61-333 and 61-334. This section is not applicable if the father is a person whose consent to adoption is not required under 61-205.

(2) Proof of service of a notice of intent to release or the putative father's verified acknowledgment of notice of intent to release shall be filed with the court, if such notice was given to the putative father. The court shall request the records and statistics bureau of the department of health and environmental sciences to send to the court a copy of any notice of intent to claim paternity of the particular child which the bureau has received.

(3) If the mother has failed to name a putative father or has failed to file a notice of intent to release, the court shall cause inquiry to be made of the mother in an effort to identify the natural father. The inquiry shall include the following: whether the mother was married at the time of conception of the child or at any time thereafter; whether the mother was cohabitating with a man at the time of conception or birth of the child; whether the mother has received support payments or promises of support payments with respect to the child or in connection with her pregnancy; or whether any man has formally or informally acknowledged or declared his possible paternity of the child. Notwithstanding this section or any other provisions of law and in consideration of her right to privacy, no mother of a child who is the subject of proceedings under this act may be compelled to testify concerning, or to divulge the identity of, the father or possible father of that child.

(4) Notice of the hearing shall be served upon the following persons in the manner appropriate under the Montana rules of civil procedure or any manner which the court shall direct:

(a) a putative father who has timely filed a notice of intent to claim paternity as provided in 61-330 or 61-331;

(b) a putative father who has not been served with a notice of intent to release at least 30 days before the expected date of delivery specified in the notice of intent to release;

(c) any other male who was not served pursuant to 61-331(2) with a notice of intent to release and who the court, after inquiry of the mother or any other appropriate person, has reason to believe may be the father of the child.

(5) The notice of hearing shall inform the putative father that his failure to appear at the hearing constitutes a denial of his interest in custody of the child, which denial will result in the court's termination of his rights to the child.

(6) Proof of service of the notice of hearing required by subsection (4) shall be filed with the court. A verified acknowledgment of service by the party to be served is proof of personal service. Notice of hearing need not be required if the putative father is present at the hearing. A waiver of notice of hearing by a person entitled to receive it is sufficient. If no person has been identified as the natural father or possible father, the

HeinOnline -- 1977 vol. II 1357 1977

court, on the basis of all information available, shall determine whether publication or public posting of notice of the proceeding is likely to lead to identification and, if so, shall order publication or public posting at the times and places and in the manner it considers appropriate. The name of the natural mother may be included in such publication only with her written consent.

(7) At the hearing, the court shall receive evidence as to the identity of the father of the child. Based upon the evidence received and the court's inquiry, the court shall enter a finding identifying the father or declaring that the identity of the father cannot be determined.

(8) If the court finds that the father of the child is a person who did not receive either a timely notice of intent to release pursuant to 61-331 or a notice required pursuant to 61-332(4) and who has not waived his right to notice of hearing and is not present at the hearing, the court shall adjourn further proceedings until that person is served with a notice of hearing.

Section 6. There is a new R.C.M. section numbered 61-333 that reads as follows:

61-333. Grounds for termination of father's rights. (1) If the court has proof that the person who it determines pursuant to 61-332 to be the father of the child was timely served with notice of intent to release pursuant to 61-331 or was served with or waived the notice of hearing required by 61-332(4), the court may permanently terminate the rights of the putative father if:

(a) the putative father submits a verified acknowledgment of his paternity and a denial of his interest in custody of the child;

(b) the putative father files a denial of paternity. For purposes of this section the filing of the denial of paternity constitutes a waiver of notice of hearing and constitutes a denial of his interests in the custody of the child.

(c) the putative father was served with a notice of intent to release in accordance with 61-331(2) at least 30 days before the expected date of delivery specified in that notice but failed to file an intent to claim paternity either before the expected date of delivery or before the birth of the child; or

(d) the putative father is given proper notice of hearing in accordance with subsection (4) or (6) of 61-332 but either fails to appear at the hearing or appears and denies his interest in the custody of the child.

(2) If the identity of the father cannot be determined or if the identity of the father is known but his whereabouts cannot be determined, the court shall receive evidence to determine the facts in the matter. The court may terminate the rights of the putative father if the court finds from the evidence that reasonable effort has been made to identify and locate the father and that any of the following circumstances exist:

(a) The putative father, whose identity is not known, has not made a provision for the child's care and did not provide support for the mother during her pregnancy or during her hospitalization.

HeinOnline -- 1977 vol. II 1358 1977

(b) The putative father, whose identity is known but whose whereabouts are unknown, has not provided support for the mother, has not shown any interest in the child, and has not made provision for the child's care, for at least 90 days preceding the hearing required under 61-332.

(3) Subject to the disposition of an appeal, upon the expiration of 6 months after an order terminating parental rights is issued under this section, the order cannot be questioned by any person, in any manner or upon any ground, including fraud, misrepresentation, failure to give any required notice, or lack of jurisdiction of the parties or of the subject matter.

Section 7. There is a new R.C.M. section numbered 61-334 that reads as follows:

61-334. Best interests of the child — custody to father — legitimation. (1) If the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the father's parental rights should be given recognition in view of his effort or lack of effort to make provision for the mother while she was pregnant and for the child upon birth and whether the best interests of the child will be served by granting custody to him or to the agency of the state of Montana, licensed adoption agency, or person to which the mother has released or proposed to release custody of the child. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the mother of the child has released the custody of the child to an agency of the state of Montana, a licensed adoption agency, or a person, the agency or person shall be a proper party to petition the court for custody of the child.

(3) If the parental rights of the mother are terminated pursuant to this chapter or other law and if the court awards custody of the child out of wedlock to the putative father, the court shall enter an order granting custody to the putative father and legitimating the child for all purposes.

Section 8. **Repealer.** Sections 61-317, 61-325, and 61-326, R.C.M. 1947, are repealed.

Section 9. **Effective date.** This act is effective on its passage and approval.

Approved April 19, 1977.

CHAPTER NO. 423

AN ACT TO AMEND SECTION 50-1203, R.C.M. 1947, AS IT DEFINES SMALL MINERS.

HeinOnline -- 1977 vol. II 1359 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1203, R.C.M. 1947, is amended to read as follows:

"**50-1203. Definitions.** As used in this act, unless the context indicates otherwise *the following definitions apply*:

(1) "Surface mining" *means* all or any part of the process involved in mining of minerals by removing the overburden and mining directly from the mineral deposits thereby exposed, including but not limited to, open-pit mining of minerals naturally exposed at the surface of the earth, mining by the auger method, and any and all similar methods by which earth or minerals exposed at the surface are removed in the course of mining. Surface mining shall not include the extraction of oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock, or uranium nor excavation or grading conducted for on-site farming, on-site road construction, or other on-site building construction.

(2) "Unit of surface mined area" *means* that area of land and surface water included within an operating permit actually disturbed by surface mining during each twelve-month period of time, beginning at the date of the issuance of the permit, and shall comprise and include the area from which overburden and/or minerals have been removed, the area covered by mining debris, and all additional areas used in surface mining or underground mining operations which, by virtue of such use, are thereafter susceptible to erosion in excess of the surrounding undisturbed portions of land.

(3) "Disturbed land" *means* that area of land or surface water disturbed, beginning at the date of the issuance of the permit, and shall comprise that area from which the overburden, and/or minerals have been removed; tailings ponds, waste dumps, roads, conveyor systems, leach dumps, and all similar excavations or covering resulting from said operation and which has not been previously reclaimed under the reclamation plan.

(4) "Abandonment of surface or underground mining" may be presumed when it is shown that continued operation will not resume.

(5) "Underground mining" *means* all methods of mining other than surface mining.

(6) "Person" *means* any person, corporation, firm, association, partnership or other legal entity engaged in exploration for or development or mining of minerals on or below the surface of the earth.

(7) "Mineral" *means* any ore, rock or substance, other than oil, gas, bentonite, clay, coal, sand, gravel, phosphate rock or uranium, taken from below the surface or from the surface of the earth for the purpose of milling, concentration, refinement, smelting, manufacturing, or other subsequent use or processing or for stockpiling for future usage, refinement or smelting.

(8) "Exploration" *means* all activities conducted on or beneath the surface of lands resulting in material disturbance of the surface for the

HeinOnline -- 1977 vol. II 1360 1977

purpose of determining the presence, location, extent, depth, grade, and economic viability of mineralization in those lands, if any, other than mining for production and economic exploitation, as well as all roads made for the purpose of facilitating exploration, except as noted in section 20 [50-1220] and section 24 [50-1224] herein.

(9) "Development" *means* all operations between exploration and mining.

(10) "Mining" shall be deemed to have commenced at such time as the operator shall first mine ores or minerals in commercial quantities for sale, beneficiation, refining, or other processing or disposition or shall first take bulk samples for metallurgical testing in excess of aggregate of ten thousand (10,000) short tons.

(11) "Reclamation plan" *means* the operator's written proposal, as required and approved by the board for reclamation of the land that will be disturbed, which proposal shall include to the extent practical at the time of application for a developing or operating permit:

(a) a statement of the proposed subsequent use of the land after reclamation;

(b) Plans for surface gradient restoration to a surface suitable for the proposed subsequent use of the land after reclamation is completed, and proposed method of accomplishment;

(c) Manner and type of revegetation or other surface treatment of disturbed areas;

(d) Procedures proposed to avoid foreseeable situations of public nuisance, endangerment of public safety, damage to human life or property, or unnecessary damage to flora and fauna in or adjacent to the area;

(e) Method of disposal of mining debris;

(f) Method of diverting surface waters around the disturbed areas where necessary to prevent pollution of such waters or unnecessary erosion;

(g) Method of reclamation of stream channels and stream banks to control erosion, siltation, and pollution;

(h) Such maps and other supporting documents as may be reasonably required by the department;

(i) A time schedule for reclamation that meets the requirements of 50-1209.

(12) "Vegetative cover" as used in this act *means* the type of vegetation, grass, shrubs, trees, or any other form of natural cover deemed suitable at time of reclamation.

(13) "Board" *means* the board of land commissioners, or such state employee or state agency as may succeed to its powers and duties under this act.

(14) "Department" *means* the department of state lands.

HeinOnline -- 1977 vol. II 1361 1977

(15) "Small miner" *means* any person, firm, or corporation engaged in the business of mining who does not remove from the earth during any *calendar year* material in excess of *36,500* tons in the aggregate."

Approved April 19, 1977.

CHAPTER NO. 424

AN ACT TO EXTEND TO 99 YEARS THE TERM FOR WHICH SCHOOL DISTRICT TRUSTEES MAY LEASE BUILDINGS OR LAND FROM THE COUNTY, MUNICIPALITY, ANOTHER DISTRICT, OR ANY PERSON IF PRIOR APPROVAL OF THE QUALIFIED ELECTORS OF THE DISTRICT IS OBTAINED; ALLOWING SUCH TRUSTEES TO USE RENTAL MONEY COLLECTED FOR ANY PROPER SCHOOL PURPOSE; AMENDING SECTIONS 75-6801, 75-7214, 75-8209, AND 75-8211, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6801, R.C.M. 1947, is amended to read as follows:

"**75-6801. Fund definitions.** As used in this *title*, unless the context clearly indicates otherwise, *a* "fund" means a separate detailed account of receipts and expenditures for a specific purpose as authorized by law. Funds are classified as follows:

(1) A "budgeted fund" means any fund for which a budget must be adopted in order to expend any moneys from such fund. The general fund, transportation fund, bus depreciation reserve fund, elementary tuition fund, retirement fund, debt service fund, leased facilities fund, building reserve fund, adult education fund, nonoperating fund, *postsecondary* vocational-technical center fund, and any other funds so designated by the legislature shall be budgeted funds.

(2) A "nonbudgeted fund" means any fund for which a budget is not required in order to expend any moneys on deposit in such fund. The school food services fund, miscellaneous federal programs fund, building fund, housing and dormitory fund, traffic education fund, interlocal *cooperative* fund and any other funds so designated by the legislature shall be nonbudgeted funds."

Section 2. Section 75-8209, R.C.M. 1947, is amended to read as follows:

"**75-8209. Authorization to lease buildings or land for school purposes.** The trustees of any district *may* lease buildings *or land* suitable for school purposes when it is within the best interests of the district to lease such building *or land* from the county, *municipality,* another district, or any person. *The* lease may be for a term of not more than 3 years *unless prior approval of the qualified electors of the district is obtained in the manner prescribed by law for school elections; in which case the*

HeinOnline -- 1977 vol. II 1362 1977

lease may be for a term of not more than 99 years. Whenever the lease is for a period of time that is longer than the current school fiscal year, the lease requirements for the succeeding school fiscal years shall be an obligation of the final budgets for such years."

Section 3. Section 75-8211, R.C.M. 1947, is amended to read as follows:

"**75-8211. Leasing district property and disposition of any rentals.** The trustees of any district *may* rent, lease, or let any buildings, *land* or facilities of the district under the terms specified by the trustees. Any money collected for such rental, lease, or letting *may, in the discretion of the trustees, be used for any proper school purpose and deposited in such fund as the trustees consider appropriate.*"

Section 4. Section 75-7214, R.C.M. 1947, is amended to read as follows:

"**75-7214. Housing and dormitory fund.** *(1)* The trustees of any district that provides pupil or teacher housing in district-owned buildings under a lease or rental agreement with pupils or teachers or receives moneys under the provision of 75-8211 *may* establish a housing and dormitory fund. All moneys received from such lease or rental agreements *may* be deposited with the county treasurer to the credit of the housing and dormitory fund, general fund, the debt service fund, *or any other appropriate fund.* Whenever the end-of-the-year cash balance of *a* housing and dormitory fund is more than $3,000, such cash balance in excess of $3,000 shall be transferred to the general fund of the district.

(2) Any expenditure of moneys from *a* housing and dormitory fund shall be made for the maintenance and operation of the district-owned buildings to which the lease or rental agreements apply or for the acquisition of additional housing or dormitory facilities. The financial administration of the housing and dormitory fund shall be in accordance with the financial administration provisions of this title for a nonbudgeted fund."

Approved April 19, 1977.

CHAPTER NO. 425

AN ACT REVISING THE LAW REGARDING PUBLIC ASSISTANCE RECORDS; REPEALING SECTION 71-231.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 71-231.4 that reads as follows:

71-231.4. Audit of public assistance records. All applications, information, and records concerning any applicant or recipient of assistance or services under this title are subject to audit for legislative oversight or determination of welfare fraud.

HeinOnline -- 1977 vol. II 1363 1977

Section 2. **Repealer.** Section 71-231.1, R.C.M. 1947, is repealed.

Approved April 19, 1977.

CHAPTER NO. 426

AN ACT TO AMEND SECTION 16-2714, R.C.M. 1947, TO REQUIRE THAT A BOND BE FURNISHED BY A PARTY REQUESTING SERVICE OF A WRIT OF EXECUTION OR ATTACHMENT WHEN THE SHERIFF WILL INCUR SUBSTANTIAL COSTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-2714, R.C.M. 1947, is amended to read as follows:

"**16-2714. Direction to sheriff must be in writing.** No direction or authority by a party or his attorney to a sheriff, in respect to the execution of process or return thereof, or any act or omission relating thereto, is available to discharge or excuse the sheriff from a liability for neglect or misconduct, unless it is contained in a writing signed by the attorney of the party or by the party. *If the sheriff will incur substantial costs in transporting, keeping, or storing the property seized, the party requesting service of a writ of execution or attachment shall provide a bond or other security to pay for all costs which may be incurred as a result of the service of such writ.*"

Approved April 19, 1977.

CHAPTER NO. 427

AN ACT EXTENDING THE TIME FOR ACTING ON OPERATING PERMIT APPLICATIONS UNDER THE HARD-ROCK MINE RECLAMATION LAW; DEFINING TERMS; PROVIDING FOR NOTICE; AMENDING SECTIONS 50-1210 AND 50-1216, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1210, R.C.M. 1947, is amended to read as follows:

"**50-1210. Inspection of mining site — issuance of operating permit — modification of reclamation plan — succession to interest in uncompleted mining operation.** *(1) (a) Unless the time period is extended under the provisions of [subsection (1)(b) of this section], the board shall either issue an operating permit to the applicant or return any incomplete or inadequate application, along with a description of the deficiencies, within 60 days of receipt of the complete application and reclamation plan by the board and receipt of the permit fee.*

HeinOnline -- 1977 vol. II 1364 1977

(b) (i) Prior to issuance of a permit, the department shall inspect the site. If the site is not accessible due to extended adverse weather conditions, the department may extend the 60-day time period, by not more than 180 days, to allow inspection of the site and reasonable review. The department must serve written notice of extension upon the applicant in person or by certified mail, and any such extension is subject to appeal to the board in accordance with the Montana Administrative Procedure Act.

(ii) If the department determines that additional time is needed to review the application and reclamation plan for a major operation, the department and the applicant shall negotiate to extend the 60-day period by not more than 365 days in order to permit reasonable review.

(c) Failure of the board to act upon a complete application within the period prescribed or any extension thereof constitutes approval of the application and the permit shall be issued promptly thereafter.

(2) The operating permit shall be granted for the period required to mine the land covered by the plan and shall be valid until the surface or underground mining authorized by the permit is completed or abandoned, unless the permit is suspended or revoked by the board as provided in this act. The operating permit shall provide that the reclamation plan may be modified by the board, upon proper application of the permittee, or department, after timely notice and opportunity for hearing, at any time during the term of the permit and for any of the following reasons:

(a) *to* modify the requirements so they will not conflict with existing laws;

(b) *when the* previously adopted reclamation plan is impossible or impracticable to implement and maintain;

(c) *when* significant environmental problem situations are revealed by field inspection.

(3) When one operator succeeds to the interest of another in any uncompleted mining operation by sale, assignment, lease, or otherwise, the board may release the first operator from the duties imposed upon him by this act as to such operation, provided that both operators have complied with the requirements of this act and the successor operator assumes the duty of the former operator to complete the reclamation of the land, in which case the board shall transfer the permit to the successor operator upon approval of the successor operator's bond as required under this act.

(4) This act shall not apply to applications filed with the department prior to January 1, 1977, and for which an agreement has been signed, and for so long as it continues, extending the 60-day review period presently contained in 50-1210."

Section 2. Section 50-1216, R.C.M. 1947, is amended to read as follows:

"50-1216. Administrative remedies — notice — parties. *(1) Upon receipt of an application for an operating permit, the department shall*

HeinOnline -- 1977 vol. II 1365 1977

provide notice of the application by publication in a newspaper of general circulation in the area to be affected by the operation. The notice shall be published once a week for 3 successive weeks.

(2) All hearings and appeal procedures shall be in accordance with the Administrative Procedure Act. Any person whose interests may be adversely affected as a result of an action taken pursuant to this act may become a party to any proceeding held hereunder upon a showing that such person is capable of adequately representing the interests claimed.

(3) As used in this section, "person" means any individual, corporation, partnership, or other legal entity."

Section 3. **Effective date.** This act is effective upon its passage and approval.

Approved April 19, 1977.

CHAPTER NO. 428

AN ACT TO PROVIDE FOR DENIAL OF UNEMPLOYMENT BENEFITS IN THE CASE OF ATHLETES AND ILLEGAL ALIENS AS PROVIDED FOR IN PUBLIC LAW 94-566; AMENDING SECTION 87-105, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-105, R.C.M. 1947, is amended to read as follows:

"**87-105. Benefit eligibility conditions.** An unemployed individual shall be eligible to receive benefits for any week of total unemployment within his benefit year; only if the division finds that—

(a) He has registered for work at and thereafter has continued to report at an employment office in accordance with such regulation as the division may prescribe, except that the division may, by regulation, prescribe that such types of cases or situations with respect to which it finds that compliance with such requirements would be oppressive, or would be inconsistent with the purposes of this act, provide for registration and reporting for work by mail or through other governmental agencies.

(b) He has made a claim for benefits in accordance with the provisions of section 87-107(a).

(c) He is able to work and is available for work and is seeking work, provided, however, that no claimant shall be considered ineligible in any week of unemployment for failure to comply with the provisions of this subsection if such failure is due to an illness or disability which occurs after he has registered for work and no suitable work has been offered to such claimant after the beginning of such illness or disability.

(d) Prior to any week for which he claims benefits he has been totally unemployed for a waiting period of one (1) week. However, if claimant's benefit year expires during a period of compensable unemployment,

HeinOnline -- 1977 vol. II 1366 1977

claimant will continue to receive weekly benefits, in a new benefit year, if otherwise eligible, without interruption to serve the waiting week for the new benefit year, but will thereafter be required to serve the waiting week before receiving benefits during subsequent unemployment in the new benefit year. No week shall be counted as a week of total unemployment for the purposes of this subsection:

(1) If benefits have been paid with respect thereto;

(2) Unless the individual was eligible for benefits with respect thereto;

(3) Unless it occurs within the benefit year of the claimant;

(4) Unless it occurs after benefits first could become payable to any individual under this act.

(e) An individual who received benefits during a benefit year must perform services for remuneration after the beginning of that year as a condition for receiving benefits in a second benefit year. The service may be in either covered or noncovered employment, however, the individual must have earned the lesser of three-thirteenths (3/13) of his high quarter of his second benefit year or six (6) times his weekly benefit amount of that same year.

(f) Benefits based on service in employment defined in section 87-148(j)(6) and (7) and section 87-110(d) shall be payable in the same amount, on the same terms and subject to the same conditions as compensation payable on the basis of other service subject to this act; except that benefits based on service in an instructional, research, or principal administrative capacity *for* an *educational* institution shall not be paid to an individual for any week of unemployment which begins during the period between two successive academic years, or during a similar period between two regular terms, whether or not successive, or during a period of paid sabbatical leave provided for in the individual's contract, if the individual has a contract *to* perform services in any such capacity for any such *educational* institution for both such academic years or both such terms.

(g) Effective January 1, 1978, benefits shall not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if such individual performed such services in the first of such seasons (or similar periods) and there is a reasonable assurance that such individual will perform such services in the later of such seasons (or similar periods).

(h) Effective January 1, 1978, benefits shall not be paid on the basis of services performed by an alien unless such alien is an individual who has been lawfully admitted for permanent residence or otherwise is permanently residing in the United States under color of law (including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act).

(1) Any data or information required of individuals applying for bene-

fits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(2) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of his alien status shall be made except upon a preponderance of the evidence."

Approved April 19, 1977.

CHAPTER NO. 429

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO MUNICIPAL COURTS; TO CHANGE THE POPULATION REQUIREMENT FOR CITIES ADOPTING MUNICIPAL COURTS FROM 20,000 TO 10,000; TO PROVIDE THAT MUNICIPAL COURT JUDGES BE ELECTED EVERY FOUR YEARS; TO PROVIDE QUALIFICATIONS FOR AND RESTRICTIONS ON MUNICIPAL COURT JUDGES; TO PROVIDE THAT THE CITY PROVIDE THE FACILITIES FOR THE COURT; TO PRESCRIBE THE SESSIONS OF THE COURT; AND TO PRESCRIBE THE AMOUNT AND DISPOSITION OF FINES IN THE COURT; AMENDING SECTIONS 11-1701, 11-1703, 11-1704, 11-1705, 11-1708, 11-1710, 11-1711, 11-1717, 11-1718, AND 93-102, R.C.M. 1947; REPEALING SECTION 11-1709, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1701, R.C.M. 1947, is amended to read as follows:

"**11-1701. Establishment of municipal court.** *(1) All* cities in the state of Montana with a population of *10,000* or more, according to the last federal census, *may have* a court known as *the* municipal court of the city of (designating the name of the city) of the state of Montana. *The* court shall be a court of record.

(2) The provisions of this *chapter* apply only after the governing body of *the* city *has* elected by a two-thirds majority vote to adopt *them* by ordinance and, in *the* ordinance, *has* provided the manner *in which* and time *when the* municipal court *is to* be established *and shall assume continuing jurisdiction over all pending city court cases. The* ordinance *must* be consistent with the provisions of this *chapter.*"

Section 2. Section 11-1703, R.C.M. 1947, is amended to read as follows:

"**11-1703. Election of judges — term of office.** *(1) One judge of each municipal court* shall be elected at the general city election. The *judge's* term shall commence on the first Monday in May *following the election.* The judge shall hold office for the term of *4* years and until *his* successor is elected and qualified.

HeinOnline -- 1977 vol. II 1368 1977

(2) All elections of municipal judges *are* governed by the laws applicable to the election of city officials, except that the *name* of *a candidate* for municipal judge shall be placed on the ballot without any party designation or any statement, measure, or principle which the candidate advocates or any slogan after his name."

Section 3. Section 11-1704, R.C.M. 1947, is amended to read as follows:

"**11-1704. Qualifications and salary.** *A municipal court judge must* have the same qualifications as *a judge* of *a* district court, *as set forth in Article VII, section 9, of the 1972 Montana constitution, except that a municipal court judge need only be admitted to the practice of law in Montana for at least 2 years prior to the date of appointment or election. A municipal court judge* must be a resident and voter in the city *in* which he is elected at the time of his election.

(2) The salary of *the municipal court judge* shall be set by city ordinance and *shall be* payable monthly by the city treasurer."

Section 4. There is a new R.C.M. section numbered 11-1704.1 that reads as follows:

11-1704.1. Restrictions on municipal court judges. No municipal court judge may practice law or hold office in a political party during his term of office.

Section 5. Section 11-1705, R.C.M. 1947, is amended to read as follows:

"**11-1705. Courtroom and supplies.** A room for *the municipal* court, with necessary furniture, fixtures, and supplies, shall be provided by the *city* wherein *the court* is located."

Section 6. Section 11-1708, R.C.M. 1947, is amended to read as follows:

"**11-1708. Sessions of the court.** *The municipal* court shall be in continuous session from *9* a.m. to *12 noon and from 1* p.m. *to 4 p.m.* on every day *except nonjudicial days. The* judge may designate *additional hours as he,* in his discretion, *sees fit.*"

Section 7. Section 11-1710, R.C.M. 1947, is amended to read as follows:

"**11-1710. Summons — time for answer.** Summons in municipal court shall be signed by the clerk and shall conform to the provisions of *M.R.Civ.P., Rules 4 and 12(a),* except that the time for answering *is 10* days."

Section 8. Section 11-1711, R.C.M. 1947, is amended to read as follows:

"**11-1711. Applicability of rules for justices' courts — reply to counterclaim or new matter.** *(1)* The provisions of 93-6901 *through* 93-7405 and 93-7701 *through* 93-7714 are applicable to municipal *courts,* except *when they* are *inconsistent with* the provisions of this *chapter, the*

HeinOnline -- 1977 vol. II 1369 1977

words "municipal court" being substituted for justice court and "judge" for justice of the peace.

(2) Whenever the answer contains a counterclaim or any new matter, the plaintiff shall within *5* days after the service and filing of the answer reply to *the* counterclaim or new matter in the manner and form provided for in *M.R.Civ.P., Rules 7(a), 8(e)(2), and 10(b).*"

Section 9. Section 11-1717, R.C.M. 1947, is amended to read as follows:

"**11-1717. Appeals.** *(1) A party may* appeal to district court *from a judgment of* municipal court.

(2) Appeal from a municipal court may be limited by requiring by ordinance that a minimum amount in controversy, not to exceed $200, be met before the district court has jurisdiction to hear the appeal, except:

(a) if the judgment of the municipal court includes incarceration no minimum amount in controversy *may be required for appeal; and*

(b) upon petition by an aggrieved party the district court may, in the interests of justice, accept appeal jurisdiction notwithstanding the amount in controversy.

(3) The municipal court shall establish rules for appeal to district court. The rules are subject to the supreme court's rule-making and supervisory authority."

Section 10. Section 11-1718, R.C.M. 1947, is amended to read as follows:

"**11-1718. Fees and fines.** The fees *and fines* in municipal court shall be the same as the fees *and fines* provided by law *or ordinance*, and all fees *and fines* collected by *the* court shall be paid into the city treasury."

Section 11. Section 93-102, R.C.M. 1947, is amended to read as follows:

"**93-102. Courts of record.** The *court of impeachment, the supreme court, the district courts, and the municipal courts* are courts of record."

Section 12. **Repealer.** Section 11-1709, R.C.M. 1947, is repealed.

Section 13. Effective date. This act is effective on its passage and approval.

Approved April 19, 1977.

CHAPTER NO. 430

AN ACT TO REVISE THE PENALITIES FOR DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO CLARIFY THAT HABITUAL USERS WHO DRIVE ARE NOT SUBJECT TO CRIMINAL PENALTIES UNLESS THEY ARE UNDER THE INFLUENCE WHEN THEY DRIVE; TO PROVIDE FOR SUSPENDED EXECUTION OF SENTENCE CONDITIONED UPON EDUCATION OR TREATMENT;

HeinOnline -- 1977 vol. II 1370 1977

AMENDING SECTIONS 31-145, 31-146, 31-149, AND 32-2142, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 32-2142, R.C.M. 1947, is amended to read as follows:

"**32-2142. Persons under the influence of alcohol or of drugs.** *(1)* In any criminal prosecution for a violation of *subsection (2)* of this section relating to driving a vehicle while under the influence of *alcohol*, the amount of alcohol in the defendant's blood at the time alleged, as shown by chemical analysis of the defendant's blood, urine, breath, or other bodily substance, shall give rise to the following presumptions:

(a) If there was at that time 0.05 per cent or less by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was not under the influence of *alcohol.*

(b) If there was at that time in excess of 0.05 per cent but less than 0.10 per cent by weight of alcohol in the defendant's blood, such fact shall not give rise to any presumption that the defendant was or was not under the influence of *alcohol*, but such fact may be considered with other competent evidence in determining the guilt or innocence of the defendant.

(c) If there was at that time 0.10 per cent or more by weight of alcohol in the defendant's blood, it shall be presumed that the defendant was under the influence of *alcohol.*

Per cent by weight of alcohol in the blood shall be based upon grams of alcohol per one hundred (100) cubic centimeters of blood.

The foregoing provisions of *this subsection (1)* shall not be construed as limiting the introduction of any other competent evidence bearing upon the question whether or not the defendant was under the influence of *alcohol.*

(2) It is unlawful and punishable as provided in *subsection (3)* of this section for any person who is under the influence of *alcohol or* any narcotic drug or any other drug to a degree which renders him incapable of safely driving a motor vehicle to drive *or be in actual physical control of* a motor vehicle within this state. The fact that any person charged with a violation of this *subsection* is or has been entitled to use such a drug under the laws of this state *does* not constitute a defense against any charge of violating this *subsection.*

(3) Every person who is convicted of a violation of this section shall be punished by a fine of not less than $100 or more than $500. On a second conviction, he shall be punished by a fine of not less than $300 *or* more than $500. On the third or subsequent conviction, he shall be punished by imprisonment for a term of not less than 30 days *or* more than 1 year, to which may be added, *in* the discretion of the court, a fine of not less than $500 *or* more than $1,000.

HeinOnline -- 1977 vol. II 1371 1977

(4) Except as otherwise provided in this section, the court may, in its discretion, suspend the execution of any sentence imposed under subsection (3) on the condition that the defendant successfully complete a course in a driver improvement school approved by the court or an alcohol treatment program approved by the department of institutions. Each school or institution providing such education or treatment shall, at the commencement of the education or treatment, notify the court that the defendant has been accepted by the school or treatment program. If the defendant fails to attend the school or the treatment program, the school or institution shall notify the court of the failure.

(5) Each municipality in this state is given authority to enact *subsections (1) through (4)* of this section, with the word "state" in the first sentence of *subsection (2)* changed to read "municipality", as an ordinance and is given jurisdiction of the enforcement of *the* ordinance and of the imposition of the fines and penalties therein provided."

Section 2. Section 31-146, R.C.M. 1947, is amended to read as follows:

"**31-146. Mandatory revocation of license by board or chief upon proper authority.** The board or chief upon proper authority shall forthwith revoke the license or operating privilege of any operator or chauffeur upon receiving a record of such operator's or chauffeur's conviction or forfeiture of bail not vacated of any of the following offenses, when such conviction or forfeiture has become final:

1. Manslaughter resulting from the operation of a motor vehicle;

2. Driving a motor vehicle while under the influence of *alcohol* or narcotic drug, or willfully or knowingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof *except as provided in 31-149*;

3. Any felony in the commission of which a motor vehicle is used;

4. Failure to stop and render aid as required under the laws of this state in the event of a motor-vehicle accident resulting in the death or personal injury of another;

5. Perjury or the making of a false affidavit or statement under oath to the board under this act or under any other law relating to the ownership or operation of motor vehicles;

6. Conviction, or forfeiture of bail not vacated, upon three (3) charges of reckless driving committed within a period of twelve (12) months."

Section 3. Section 31-145, R.C.M. 1947, is amended to read as follows:

"**31-145. When court to forward license to division and report convictions.** (a) Whenever any person is convicted of any offense for which this act makes mandatory the revocation of the operator's or chauffeur's license of such person by the *division of motor vehicles of the department of justice*, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then held by the person so convicted. The court shall thereupon, within 5 days, forward *the* license to the *division* and at the same time forward a record

HeinOnline -- 1977 vol. II 1372 1977

of such conviction to the *division*, providing that if such person does not possess a driver's license the court shall so indicate in its report to the *division*.

(b) Every court having jurisdiction over offenses committed under any act of this state or municipal ordinance regulating the operation of motor vehicles on highways, shall forward, within 5 days, to the *division* a record of the conviction or forfeiture of bail, not vacated, of any person in *the* court for a violation of any *such* laws, other than regulations governing standing or parking, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted. *The court may also recommend that the division issue a restricted probationary license in lieu of the suspension required in 31-149(b) on the condition that the individual attend a driver improvement school or an alcohol treatment program if one is available. The division shall issue a restricted probationary license unless the person otherwise is not entitled to a Montana operator's or chauffeur's license.*

(c) For the purposes of this act the term "conviction" shall mean a final conviction. Also, for the purposes of this act a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.

(d) Any person convicted of any offense which makes mandatory the revocation of the operator's or chauffeur's license, such period of revocation shall commence from date of conviction or forfeiture of bail."

Section 4. Section 31-149, R.C.M. 1947, is amended to read as follows:

"**31-149. Period of suspension or revocation.** (a) The *division may* not suspend or revoke a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one (1) year, except as permitted under sections 31-148, 31-155, *31-184.1,* 53-424, and 53-430, R.C.M. 1947.

(b) Any person whose license or privilege to drive a motor vehicle on the public highways has been suspended or revoked shall not be entitled to have such license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of the period of such revocation or suspension, such person may make application for a new license as provided by law, but the *division may* not then issue a new license unless and until it is satisfied after investigation of character, habits, and driving ability of such person that it will be safe to grant the privilege of driving a motor vehicle on the public highways. Provided, however, when any person is convicted or forfeits bail or collateral not vacated for the offense of operating or being in actual physical control of a motor vehicle while under the influence of *alcohol* or narcotic drug, or knowingly or willingly under the influence of any other drug to a degree which renders him incapable of safely driving a motor vehicle or a combination thereof, the *division* shall, upon receiving a report of such conviction or forfeiture of bail or collateral not vacated, suspend the license or driving privilege of such person for a period of *6 months*. Upon receiving a report of a conviction or forfeiture of bail or collateral for a *second, third, or subsequent* offense within 5 years *of the*

HeinOnline -- 1977 vol. II 1373 1977

first offense, the *division* shall revoke the license or driving privilege of such person for a period of 1 year.

(c) The revocation period for all revocations made mandatory by section 31-146, R.C.M. 1947, shall be one (1) year, except as provided in subsection (b) of this section."

Approved April 19, 1977.

CHAPTER NO. 431

AN ACT TO PROVIDE FOR A SPECIFIC TIME PERIOD IN WHICH A CRIMINAL CHARGE MAY BE AMENDED BY THE PROSECUTION WITHOUT LEAVE OF THE DISTRICT COURT AS TO MATTERS OF SUBSTANCE AND TO LIMIT SUCH AMENDMENTS TO ONE OCCASION; AMENDING SECTION 95-1505, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 95-1505, R.C.M. 1947, is amended to read as follows:

"**95-1505. Amending the charge.** (a) A charge may be amended *once* in matters of substance at any time, *not less than 5 days before trial*, without leave of court.

(b) The court may permit any charge to be amended as to form at any time before verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(c) No charge shall be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant."

Approved April 19, 1977.

CHAPTER NO. 432

AN ACT TO PROVIDE THAT THE BOARD OF CHIROPRACTORS ARE NO LONGER REQUIRED TO HOLD A REGULAR MEETING ON THE FIRST TUESDAY OF EACH OCTOBER; TO PROVIDE FOR A TEMPORARY PERMIT UNDER BOARD GUIDELINES; TO REQUIRE THAT CHIROPRACTIC APPLICATIONS BE PRESENTED 21 DAYS BEFORE A BOARD MEETING AND THAT FULL APPLICATION FEE MUST ACCOMPANY THE APPLICATION; AND TO ALLOW THE USE OF NAME INSTEAD OF NUMBER ON A CLINICAL PROFICIENCY EXAMINATION; AMENDING SECTIONS 66-503, 66-504, 66-505, AND 66-506, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-503, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1374 1977

"**66-503. Organization of board — meetings — powers and duties.** (1) The board shall elect annually a president, vice-president, and secretary-treasurer from its membership.

(2) The board shall hold a regular meeting each year at Helena, and shall hold special meetings at times and places as a majority of the board designates. Not more than four meetings may be held in any one year. A majority of the board constitutes a quorum.

(3) The board may administer oaths, take affidavits, summon witnesses, and take testimony as to matters coming within the scope of the board. It shall adopt a seal, which shall be affixed to licenses issued, and shall make rules necessary for the performance of its duties, and shall make a schedule of minimum educational requirements, which are without prejudice, partiality, or discrimination as to the different schools of chiropractic. The department shall keep a record of the proceedings of the board, which shall at all times be open to public inspection."

Section 2. Section 66-504, R.C.M. 1947, is amended to read as follows:

"**66-504. Practicing without license — temporary permits.** (1) It is unlawful for a person to practice chiropractic in this state without first obtaining a license under this act.

(2) When application for examination for license is filed with the department, under section 66-505, the board may authorize the department to issue a temporary permit to practice."

Section 3. Section 66-505, R.C.M. 1947, is amended to read as follows:

"**66-505. Applications to practice — fees for license.** (1) A person wishing to practice chiropractic in this state shall make application to the department on the form and in the manner prescribed by the board, at least *21* days prior to a meeting of the board. Each applicant shall be a graduate of a college of chiropractic approved by the board in which he has attended a course of study of 4 school years of not less than 9 months each, and shall present evidence showing completion of 2 full academic years of college or university work from an institution acceptable to the board of education. Application shall be made in writing and shall be sworn to by an officer authorized to administer oaths, and shall recite the history of applicant's educational qualifications, how long he has studied chiropractic, of what school or college he is a graduate, and the length of time he has been engaged in practice, accompanying the same with proofs by diplomas, certificates, etc., and shall accompany the application with satisfactory evidence of good character and reputation.

(2) There shall be paid to the department, by an applicant for a license, a fee of $50. Like fees shall be paid for a subsequent examination and application."

Section 4. Section 66-506, R.C.M. 1947, is amended to read as follows:

"**66-506. Examinations — subjects embraced in.** (1) Examinations for a license to practice chiropractic shall be made by the department subject to section 82A-1603, according to the method considered by the

HeinOnline -- 1977 vol. II 1375 1977

board to be the most practicable and expeditious to test the applicant's qualifications. The application shall be designated by a number instead of the applicant's name, so that the identity will not be discovered or disclosed until after the examination papers are graded.

(2) Examinations shall be made in writing, the subjects of which are as follows: anatomy, physiology, symptomatology, diagnosis, chiropractic orthopedy, principles of chiropractic and adjusting, sanitation and hygiene, urinalysis, gynecology, and palpation. Additional subjects may be prescribed by the board to meet new conditions. A license shall be granted to applicants who correctly answer 75% of all questions asked, and if an applicant fails to answer correctly 60% of the questions on any branch of the examination, he is not entitled to a license.

(3) The board may accept the grades an applicant has received in the written examinations given by the national board of chiropractic examiners and may authorize the department to issue a license without further written examination to an applicant who holds a valid certificate from the national board of chiropractic examiners, if the applicant meets the other requirements of this chapter and satisfactorily passes a *clinical proficiency* examination before the department, subject to section 82A-1603."

Approved April 19, 1977.

CHAPTER NO. 433

AN ACT TO PROVIDE THAT MULTIPLE DEFENDANTS IN NEGLIGENCE ACTIONS CONTRIBUTE TO PAYMENT OF THE JUDGMENT IN PROPORTION TO THEIR COMPARATIVE NEGLIGENCE AND TO SPECIFY THE APPLICABILITY OF THAT PROVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 58-607.2 that reads as follows:

58-607.2. Multiple defendants jointly and severally liable — right of contribution. (1) Whenever the comparative negligence of the parties in any action is an issue and recovery is allowed against more than one party, each such party is jointly and severally liable for the amount awarded to the claimant but has the right of contribution from any other party against whom recovery is allowed. Contribution shall be proportional to the negligence of the parties against whom recovery is allowed.

(2) If for any reason all or part of the contribution from a party liable for contribution cannot be obtained, each of the other parties against whom recovery is allowed is liable to contribute a proportional part of the unpaid portion of the noncontributing party's share and may obtain judgment in a pending or subsequent action for contribution from the noncontributing party.

Section 2. **Applicability of act.** This act applies to any cause of action

HeinOnline -- 1977 vol. II 1376 1977

which accrued after July 1, 1975, but which has not yet been determined by trial or judgment in the district court as of July 1, 1977.

Approved April 19, 1977.

CHAPTER NO. 434

AN ACT TO ESTABLISH A PROGRAM OF SUBSIDIES FOR THE ADOPTION OF HARD-TO-PLACE CHILDREN; AND REPEALING SECTIONS 71-1801 THROUGH 71-1805, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 71-1806 that reads as follows:

71-1806. Short title. This act may be cited as "The Subsidized Adoption Act of 1977".

Section 2. There is a new R.C.M. section numbered 71-1807 that reads as follows:

71-1807. Purpose. The purpose of this act is to encourage and promote the adoption of children who are hard to place by providing information and assistance in completing the adoption process and financial assistance when necessary to ensure the health and welfare of the hard-to-place child.

Section 3. There is a new R.C.M. section numbered 71-1808 that reads as follows:

71-1808. Definitions. As used in this chapter, the following definitions apply:

(1) "Department" means the department of social and rehabilitation services.

(2) "Hard-to-place child" means a minor as defined by 64-101, who is a dependent of a public or voluntary licensed child-placing agency, legally free for adoption, and is not likely to be adopted because of:

(a) physical or mental disease or disability;

(b) recognized high risk of physical or mental disease or disability; or

(c) sibling relationship to another child who is eligible for adoption.

Section 4. There is a new R.C.M. section numbered 71-1809 that reads as follows:

71-1809. Power and duties of the department. (1) The department shall establish, administer, and regulate a continuing program of subsidized adoption.

(2) The department shall keep such records as are necessary to evaluate the program in terms of the number of children adopted under the program, the cost of the program, and any other pertinent information.

HeinOnline -- 1977 vol. II 1377 1977

(3) The department may adopt rules necessary for the proper administration of this act.

Section 5. There is a new R.C.M. section numbered 71-1810 that reads as follows:

71-1810. Certification and eligibility. (1) Whenever the conditions of 71-1808 are found to exist and the foster parents seek to adopt the child, the child shall be certified as hard to place.

(2) In all other cases in which the conditions of 71-1808 are found to exist and after reasonable efforts have been made and no appropriate adoptive family without the use of subsidy has been found for a child, the department shall certify the child as hard to place.

(3) If the child is the dependent of a voluntary licensed child-placing agency, that agency shall present to the department evidence of inability to place the child for adoption due to any of the conditions specified in 71-1808. The agency shall present evidence that reasonable efforts have been made to place the child without subsidy, such as recruitment of potential parents, use of adoption resource exchanges, and referral to appropriate specialized adoption agencies. Upon such a showing, the department shall certify the child as hard to place.

(4) Any family which applies for an adoption subsidy and which is approved by the department as a suitable adoptive family and which is or may be financially unable to meet the special needs of a hard-to-place child as determined by the department and which adopts a hard-to-place child is eligible for subsidy regardless of the domicile or residence of the family at the time of application for adoption, placement, legal decree of adoption, or thereafter.

Section 6. There is a new R.C.M. section numbered 71-1811 that reads as follows:

71-1811. Subsidy agreement. (1) When parents are approved for adoption of a child certified as hard to place and before the final decree of adoption is issued, there shall be a written agreement between the family entering into the subsidized adoption and the department. The terms of the adoption subsidy agreement may commence with the adoption placement or at an appropriate time after the adoption decree.

(2) The amount and duration and scope of the subsidy may vary with the special needs of the child as well as the availability of other resources, including those of the adoptive parents, to meet these needs. The subsidy may be for services only or for the money payments, but in no case may the amount of the subsidy exceed: (a) in the case of a sibling relationship, that which would be allowable for such child under foster family care; or (b) in the case of a medical subsidy, the reasonable fee for the services rendered not to exceed the amount of $2,600 annually.

(3) The subsidy agreement shall continue in accordance with its terms until the child reaches majority or for as long as the adopted child is the legal dependent of the adoptive parents and the child's condition continues. Termination or modification of the subsidy agreement may be requested by the adoptive parents or the department at any time.

HeinOnline -- 1977 vol. II 1378 1977

(4) When subsidies are for more than 1 year, the adoptive parents shall present an annual sworn certificate that the adopted child remains under their care and the condition that caused the child to be certified continues to exist.

(5) All records regarding subsidized adoption shall be confidential and may be disclosed only in accordance with the provisions of 61-209.

Section 7. There is a new R.C.M. section numbered 71-1812 that reads as follows:

71-1812. Subsidized adoption program limited. In providing for the subsidization of adoption as provided for in 71-1806 through 71-1812, the department may not expend or otherwise obligate funds in excess of those specifically appropriated for that purpose.

Section 8. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 9. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 10. **Repealer.** Sections 71-1801 through 71-1805, R.C.M. 1947, are repealed.

Approved April 19, 1977.

CHAPTER NO. 435

AN ACT TO AMEND SECTION 70-113, R.C.M. 1947, TO MAKE EFFECTIVE RATES IN SCHEDULES OR CONTRACTS FILED WITH THE PUBLIC SERVICE COMMISSION 9 MONTHS AFTER FILING OR UPON COMMISSION ACTION, WHICHEVER OCCURS FIRST; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-113, R.C.M. 1947, is amended to read as follows:

"**70-113. Schedules of rates, tolls and charges.** Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established, and which are in force at the time, for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges in force at the time of passage of this act. Every public utility shall file with, and as a part of such schedule, all rules and regulations that in any manner affect the rates charged or to be charged for any service. A copy of so much of said schedule as

HeinOnline -- 1977 vol. II 1379 1977

the commission shall deem necessary for the use of the public shall be printed in plain type, and kept on file in every station or office of such public utility, where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public, and as can be conveniently inspected.

When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office as prescribed in the first paragraph of this section.

No change shall thereafter be made in any schedule, including schedules of joint rates, except as approved by the commission *or upon the passage of 9 months.* Before it may approve any change increasing the rate or rates for utility service in a schedule generally affecting consumers in a utility's service area *or before any change may become effective due to the passage of 9 months,* the commission shall publish a notice of the proposed change, conforming to the requirements of section 82-4209(2) in one or more newspapers published and of general circulation within the area affected by the proposed change. This notice shall announce a hearing on the proposed change and shall inform interested persons how they may petition the commission to become parties to the hearing. The commission shall proceed to conduct the hearing under the *Montana* Administrative Procedure Act. *The final decision of the commission in any matter decided after a hearing conducted pursuant to this section shall conform to the requirements of a decision in a contested case under the Montana Administrative Procedure Act.* The consumer counsel may in his discretion petition to become a party to the hearing.

Notwithstanding any provision of this title to the contrary, *and notwithstanding the existence of and authorization for the office of consumer counsel, the rates, tolls, or charges set forth in any schedule hereafter filed with the commission pursuant to this section shall become effective and be lawful rates, tolls, or charges for the utility service rendered 9 months after the date upon which the schedule was filed under the rules of practice and procedure for filing as adopted by the commission or upon commission approval, whichever shall occur first; provided, however, that if the rates, tolls, or charges become effective because of the passage of 9 months' time, the revenues collected thereunder shall be subject to rebate, plus interest at the rate of 10% per year, to the extent that the rates, tolls, or charges ultimately approved by the commission in its final decision produce revenues which are less than those collected under the filed schedules.* The commission may temporarily approve an increase pending a hearing and final decision. If the final decision is to disapprove the increase the commission shall order a rebate to all consumers for the amount collected retroactive to the date of the temporary approval."

Section 2. **Effective date.** This act is effective upon its passage and approval.

Approved April 19, 1977.

CHAPTER NO. 436

AN ACT TO AMEND SECTION 95-2206 TO PROVIDE THAT A SEN-

HeinOnline -- 1977 vol. II 1380 1977

TENCE FOR DRIVING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS IS NOT DEFERRABLE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 95-2206, R.C.M. 1947, is amended to read as follows:

"**95-2206. Sentence.** Whenever any person has been found guilty of a crime or offense upon a verdict or a plea of guilty the court may:

(1) Defer imposition of sentence, *excepting sentences for driving under the influence of alcohol or drugs,* a period not to exceed one (1) year for any misdemeanor; for a period not to exceed three (3) years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(a) jail base release;

(b) jail time not to exceed ninety (90) days;

(c) conditions for probation;

(d) restitution;

(e) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(f) any combination of the above.

(2) Suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

(a) jail base release;

(b) jail time not to exceed (90) days;

(c) conditions for probation;

(d) restitution;

(e) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(f) any combination of the above.

If any restrictions or conditions are violated, any elapsed time, except jail time, shall not be a credit against the sentence, unless the court shall otherwise order.

(3) Impose a fine as provided by law for the offense.

(4) Commit the defendant to a correctional institution with or without fine by law for the offense.

HeinOnline -- 1977 vol. II 1381 1977

(5) Impose any combination of subsections (2), (3), or (4) above.

(6) The district court may also impose any of the following restrictions or conditions on the above sentence which it deems necessary to obtain the objective of rehabilitation and the protection of society:

(a) prohibit the defendant the right to hold public office;

(b) prohibit the defendant the right to own or carry a dangerous weapon;

(c) prohibit freedom of association;

(d) prohibit freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation or the protection of society.

(7) The judge in the justice court shall not have the authority to restrict an individual's rights as enumerated in subsection (6).

Any judge who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence or deferred imposition of sentence to revoke such suspension or impose sentence and order such person committed, or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law, or retain such jurisdiction with this court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing."

Approved April 19, 1977.

CHAPTER NO. 437

AN ACT TO IMPOSE A GROSS RECEIPTS ASSESSMENT ON ALL PASSENGER TRAMWAY OPERATORS IN MONTANA; AMENDING SECTION 69-6609, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 69-6608.1 that reads as follows:

69-6608.1. Assessment on passenger tramways receipts. The department of administration is hereby authorized to impose an assessment of ¼ of 1% on the gross receipts of all passenger tramways operated in the state of Montana. A minimum of $100 shall be collected annually from the owner of a passenger tramway facility. The assessment shall be calculated upon gross receipts received during the period July 1 of any year to July 1 of the following year. The assessments shall be collected by the department of revenue and remitted to the general fund by December 31 of each year. All proceeds of the gross receipts assessment shall

HeinOnline -- 1977 vol. II 1382 1977

be used only to support the duties of the department set forth in Title 69, chapter 66, R.C.M. 1947.

Section 2. Section 69-6609, R.C.M. 1947, is amended to read as follows:

"**69-6609. Deposit of fees.** All fees collected by the department shall be deposited in *the general fund. It is the legislature's intent that such fees and assessments generate sufficient revenue for a general fund appropriation for contracted inspection services.*"

Section 3. **Effective date and transition period.** This act is effective upon its passage and approval. Assessments for the period beginning on the effective date of this act and ending July 1, 1977, shall be collected by December 31, 1977.

Approved April 19, 1977.

CHAPTER NO. 438

AN ACT ADDING TO THE TREASURY FUND STRUCTURE THOSE FUNDS NEEDED TO PROPERLY MANAGE THE FINANCIAL AFFAIRS OF MONTANA'S COLLEGES AND UNIVERSITIES AND TO PROVIDE THE CONDITIONS UNDER WHICH EXPENDITURES MAY BE MADE FROM THOSE FUNDS; AMENDING SECTION 79-410, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 79-410, R.C.M. 1947, is amended to read as follows:

"**79-410. Fund structure.** There are in the state treasury only the following funds:

(1) General fund. The general fund consists of all moneys deposited in the state treasury which are available to defray the general costs of state government and which do not fall into one of the categories enumerated below.

(2) Earmarked revenue fund. The earmarked revenue fund consists of moneys from state sources deposited in the state treasury which are specifically earmarked by law for the purpose of defraying the costs of a particular agency, program, or function of state government.

(3) Sinking fund. The sinking fund consists of moneys deposited in the state treasury for the payment of principal and interest, and the accumulation of reserves for bonded or other indebtedness.

(4) Federal and private revenue fund. The federal and private revenue fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which are to be used for the operation of state government.

HeinOnline -- 1977 vol. II 1383 1977

(5) Federal and private grant clearance fund. The federal and private grant clearance fund consists of all expendable moneys deposited in the state treasury from federal or private sources, including trust income, which the state disburses to persons, associations or units of local government. When the final disposition of expendable federal or private moneys is unknown at the time of receipt, they shall be deposited in the federal and private grant clearance fund; but those moneys to be used for the operation of state government shall be transferred to the federal and private revenue fund prior to disbursement.

(6) Bond proceeds and insurance clearance fund. The bond proceeds and insurance clearance fund consists of

(a) Moneys deposited in the state treasury obtained from the sale of bonds, certificates of indebtedness or similar obligations.

(b) Moneys indemnifying the state for loss or damage of property.

(7) Revolving fund. The revolving fund consists of moneys used to

(a) Defray reimbursable expenditures, and

(b) Supply working capital for enterprise-type operations.

(8) Trust and legacy fund. The trust and legacy fund consists of moneys deposited in the state treasury which the state administers as a trustee pursuant to a law or a trust agreement restricting the use of the money for a specified purpose and prohibiting the expenditure of the principal for a period of at least five (5) years.

(9) Agency fund. The agency fund consists of moneys deposited in the state treasury which are held and disbursed by the state as a custodian or agent, and includes, but not limited to moneys held for the purpose of paying insurance or retirement benefits, moneys arising from lost or unclaimed property, and other moneys of a similar nature.

(10) University current fund. The university current fund consists of moneys deposited in the state treasury which are used to pay current operating costs relating to instruction, research, public service, and allied support operations and programs conducted within the Montana university system. The financial activities of the university current fund shall be subdivided, for operation purposes, into the four following subfunds to serve the purpose indicated:

(a) The unrestricted subfund segregates that portion of the university current fund's financial resources that can be expended for general operations and is free of externally imposed restrictions, except those imposed by the legislature.

(b) The restricted subfund segregates that portion of the university current fund's financial resources that can be expended for general operations but only for purposes imposed by sources external to the board of regents and the legislature.

(c) The designated subfund segregates that portion of the university current fund's financial resources that is associated with general operations but is separately classified in order to accumulate costs that are

HeinOnline -- 1977 vol. II 1384 1977

to be recharged as allocated to other funds or subfunds; identifies financial activities related to special organized activities of educational departments wherein the activity is fully supported by supplemental assessments; and identifies special supply and facility fees that are approved for collections beyond normal course fees and their disposition.

(d) The auxiliary subfund segregates that portion of the university current fund's financial resources that is devoted to providing essential on-campus services primarily to students, faculty, or staff wherein a fee, which is directly related to but does not necessarily equal the cost of the service provided, is charged to the consumer.

(11) University student loan fund. The university student loan fund consists of moneys deposited in the state treasury which may be loaned to students, faculty, or staff for purposes related to education, organized research, or public services by the Montana university system.

(12) University endowment fund. The university endowment fund consists of moneys deposited in the state treasury by the Montana university system wherein the principal portion of the amount received is nonexpendable but is available for investment, thus producing consumable income. Expendable earnings on endowment funds are to be transferred to appropriate operating funds pursuant to prevailing administrative requirements.

(13) University annuity and life income fund. The annuity and life income fund consists of moneys deposited in the state treasury by the Montana university system under an agreement whereby the moneys are made available on condition that the receiving unit of the Montana university system binds itself to pay stipulated amounts periodically to the donor or others designated by the donor over a specified period of time.

(14) University plant fund. The university plant fund consists of those financial resources allocated to or received by the Montana university system for capital outlay purposes or to retire long-term debts associated with construction or acquisition of fixed assets and the net accumulative results of these activities.

(15) University agency fund. The university agency fund consists of moneys deposited in the state treasury wherein the Montana university system acts in the capacity of a custodian or fiscal agent for individual students, faculty, staff, and qualified organizations."

Section 2. There is a new section that reads as follows:

Sunset provision. The additional funds established by subsections (10) through (15) of 79-410 are effective only through June 30, 1981, at which time they shall cease to exist as a part of the treasury fund structure.

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved April 19, 1977.

HeinOnline -- 1977 vol. II 1385 1977

CHAPTER NO. 439

AN ACT REQUIRING CONTINUING EDUCATION FOR LICENSED PHARMACISTS AND ALLOWING THE BOARD OF PHARMACISTS TO CHARGE AN ADDITIONAL FEE FOR LICENSE RENEWAL; AMENDING SECTIONS 66-1502 AND 66-1507, R.C.M. 1947; AND PROVIDING A DELAYED EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-1502, R.C.M. 1947, is amended to read as follows:

"**66-1502. Definitions.** Unless the context requires otherwise, in this act:

(1) "Pharmacy" means a drug store or other established place registered by the department of professional and occupational licensing, in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold at retail.

(2) "Pharmacist" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons, and who may affix to his name the term REG-PH.

(3) "Intern" means a natural person licensed by the department to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons in a pharmacy having a pharmacist in charge.

(4) "Drug" means (a) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or a supplement to them; (b) articles intended for use in diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (c) articles (other than food) intended to affect the structure or function of the body of man or other animals; and (d) articles intended for use as a component of an article specified in subsection (a), (b) or (c); but does not include devices or their components, parts, or accessories.

(5) "Medicine" means a remedial agent which has the property of curing, preventing, treating, or mitigating diseases, or which is used for this purpose.

(6) "Poison" means a substance which, when introduced into the system, either directly or by absorption, produces violent, morbid, or fatal changes or which destroys living tissue with which it comes in contact.

(7) "Chemical" means medicinal or industrial substances, whether simple, compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

(8) "Board" means the board of pharmacists, provided for in section 82A-1602.21.

(9) "Person" includes an individual, copartnership, corporation, or association.

HeinOnline -- 1977 vol. II 1386 1977

(10) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(11) "Wholesale" means a sale for the purpose of resale.

(12) "Commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

(13) "Prescription" means an order given individually for the person for whom prescribed directly from the prescriber to the furnisher or indirectly to the furnisher by means of an order signed by the prescriber and bearing the name and address of the prescriber, his license classification, the name of the patient, the name and the quantity of the drug or drugs prescribed, the directions for use and the date of its issue. These stipulations apply to both written and telephoned prescriptions.

(14) "Continuing education" means professional pharmaceutical postgraduate education in the following areas:

(a) the socioeconomic and legal aspects of health care;

(b) the properties and actions of drugs and dosage forms; and

(c) the etiology, characteristics, and therapeutics of the disease state."

Section 2. Section 66-1507, R.C.M. 1947, is amended to read as follows:

"**66-1507. Annual renewal of registration fees.** *(1)* A person licensed and registered by the department shall annually pay to the department before June 30, a renewal of registration fee of $15. A default in the payment of a renewal fee for a period of 30 days after the date it is due increases the renewal fee to $30. It is unlawful for a person who refuses or fails to pay the renewal fee to practice pharmacy in this state. The practice of pharmacy is a professional practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest. A certificate and renewal expires at the time prescribed, not later than 1 year from its date. A defaulter in a renewal fee may be reinstated within 1 year of the default without examination on payment of the arrears *and compliance with the continuing education provisions of this chapter.*

(2) The board may charge an additional fee of up to $10 for each license renewal to be used in administering the continuing education provisions of this chapter."

Section 3. There is a new R.C.M. section numbered 66-1507.1 that reads as follows:

66-1507.1. Continuing education required. (1) After July 1, 1979, no pharmacist's license may be renewed unless the pharmacist has certified, upon a form prescribed by the board, that he has obtained the number of hours of approved continuing education required by the board.

(2) Upon adequate demonstration of good cause for having failed to obtain the required number of continuing education hours through

HeinOnline -- 1977 vol. II 1387 1977

attendance of regularly accredited programs, the board shall renew the license of a pharmacist who has completed an alternative program of compliance prescribed by the board. Alternative programs shall insure competency essentially equivalent to that gained through regularly accredited continuing education programs and may include home study courses, examinations, or any other program prescribed by the board.

Section 4. There is a new R.C.M. section numbered 66-1507.2 that reads as follows:

66-1507.2. Continuing education rules. The board shall adopt rules for the proper administration of the continuing education provisions of this chapter including but not limited to:

(1) determinations as to accredited programs;

(2) the number of hours of continuing education required for license renewal; and

(3) alternative methods for fulfilling continuing education requirements as prescribed in 66-1507.1(2).

Section 5. **Effective date.** This act is effective on July 1, 1979.

Approved April 19, 1977.

CHAPTER NO. 440

AN ACT TO AMEND SECTIONS 81-2503 THROUGH 81-2513, R.C.M. 1947, TO REFLECT ADMINISTRATIVE CHANGES IN STATE HISTORIC PRESERVATION PROGRAM; SUBSTITUTING MONTANA HISTORICAL SOCIETY FOR FISH AND GAME DEPARTMENT; ADDING "ARCHITECTURAL" TO DEFINITION OF SITE AND OBJECT; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 81-2503, R.C.M. 1947, is amended to read as follows:

"**81-2503. Definitions.** As used in this act:

(1) "Society" means the Montana historical society.

(2) "Board" means the state board of land commissioners.

(3) "Historical" means after the advent of white man into Montana.

(4) "Prehistorical" means before the advent of white man into Montana.

(5) "Paleontological" means noncultural prehistorical material of a geological nature such as fossilized plants and animals.

(6) "Site" means any historic, prehistoric, archaeologic, paleontologic, scientific, *architectural,* or cultural site upon lands subject to this act.

HeinOnline -- 1977 vol. II 1388 1977

(7) "Object" means any historic, prehistoric, archaeologic, paleontologic, scientific, *architectural,* or cultural object or cluster of objects or materials, buildings, structures, or combinations thereof.

(8) "Registered site" means any site registered by the *society* as provided in this act or covered by cooperative agreement under 81-2508.

(9) "Registered objects" mean any object registered by the *society* as provided in this act or covered by cooperative agreement under 81-2508.

(10) "Person" means any individual, partnership, association, society, institute, corporation or the agents thereof; the singular includes the plural."

Section 2. Section 81-2504, R.C.M. 1947, is amended to read as follows:

"81-2504. Registration of sites and objects on state land — protection. The board is authorized on the recommendation of the society to designate for registration by the *society* sites and objects situated on land under the control of the state of Montana. The board may withdraw or reserve, at any time, sufficient state land administered by the board as may be necessary for the proper care and management of such sites and objects. No state land may be sold nor any development shall be allowed which will disturb the registered site or registered object unless it is protected or excavated in accordance with this act. The use of state land for the care and management of such sites and objects is hereby declared by the legislature to be a worthy object of the trust as specified in section 81-103. The board is authorized to take adequate steps to protect such sites and objects."

Section 3. Section 81-2505, R.C.M. 1947, is amended to read as follows:

"81-2505. Permit to excavate, remove or restore registered site or object. No person may excavate, remove or restore any registered site or registered object without first obtaining a permit from the *society.* Said permits are to be granted only after careful consideration of the application for a permit, and be subject to the strict compliance with the following guidelines:

(a) Permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific or educational institutions, societies or persons with a view toward dissemination of knowledge about cultural properties, provided no such permit shall be granted unless the *society* is satisfied that the applicant or applicants possess the necessary qualifications to guarantee the proper excavation of those sites and objects which may add substantially to man's knowledge about Montana and its antiquities.

(b) The permit must specify that a summary report of such investigations, containing relevant maps, documents, drawings and photographs be submitted to the *society* which shall in turn submit the report to an appropriate repository. The *society* shall determine the appropriate time period allowable between all work undertaken, and submission of the summary report.

HeinOnline -- 1977 vol. II 1389 1977

(c) Permits will be preferentially granted to resident persons unless in the event that a state person is unavailable, unqualified, or uninterested in the work proposed for investigation. In the event that a permit is granted to a nonstate person, there must be provision that removed objects may not leave or must revert to the state of Montana, provided that all specimens so collected shall be and remain the property of the state of Montana, and provided further that the society may give permission for the loan of such materials for scientific or educational purposes."

Section 4. Section 81-2506, R.C.M. 1947, is amended to read as follows:

"**81-2506. Distribution of collections — loans only.** The society shall supervise the distribution of all collections made under the provisions of this act and shall distribute material from such collections on loan only."

Section 5. Section 81-2507, R.C.M. 1947, is amended to read as follows:

"**81-2507. State historical register.** The *society* is authorized and directed to compile and keep a register of all registered sites and registered objects. This register shall be known as the state historical register."

Section 6. Section 81-2508, R.C.M. 1947, is amended to read as follows:

"**81-2508. Co-operative agreements with private owners.** The *society* is authorized to enter into cooperative agreements with private landowners or the owners of objects to preserve, mark, maintain, excavate, or otherwise deal with such sites and objects upon such terms as may be agreed upon by the *society* and such private owners. The cooperative agreements may contain a clause that the sites and objects shall be registered under this act, and also a provision that the state of Montana shall hold the owner harmless for any liability that may occur while the property is under the control of the state of Montana."

Section 7. Section 81-2509, R.C.M. 1947, is amended to read as follows:

"**81-2509. Co-operation with governmental units.** The *society* is authorized and directed to cooperate with all federal, state and local government agencies, in the identification, acquisition, restoration, enhancement, preservation and administration of all such sites and objects for the use and enjoyment of the people, and for the purpose of exhibition and interpretation of the history and culture of the state of Montana."

Section 8. Section 81-2510, R.C.M. 1947, is amended to read as follows:

"**81-2510. Injunction to prevent waste, destruction and removal — protection program.** The *society* is authorized and directed to apply to any district court of the state of Montana for a writ of injunction to

HeinOnline -- 1977 vol. II 1390 1977

prevent the waste, removal and destruction of any such registered site or registered object. The *society* shall not be required to give any bond in such application. Upon hearing of the petition for injunction, the court may restrain waste, removal or destruction upon said site, or of such object for a period of one (1) year. The court may also provide in its order that during such period the *society* shall present to the parties involved a program for the protection, preservation, restoration and maintenance of the registered site or registered objects."

Section 9. Section 81-2511, R.C.M. 1947, is amended to read as follows:

"**81-2511. Violation as misdemeanor — penalty.** Any person who shall willfully injure, remove or damage any registered site or object thereon without obtaining a permit or shall violate any of the regulations made by the *society* relating to state parks, historical, paleontological or prehistorical sites, buildings, structures, monuments or objects, shall be guilty of a misdemeanor and shall upon conviction be fined not more than one thousand dollars ($1,000), or be imprisoned in the county jail for not more than six (6) months, or both such fine and imprisonment."

Section 10. Section 81-2512, R.C.M. 1947, is amended to read as follows:

"**81-2512. Report of discovered sites or objects — preservation.** Any person conducting any activities, including survey, excavation or construction who discovers on any lands owned, leased or controlled by this state or any agency thereof, any object or objects as defined in this act, shall promptly report to the *society* the existence of any such site or object discovered in the course of such survey, excavation or construction, and shall take all reasonable steps to secure its preservation."

Section 11. Section 81-2513, R.C.M. 1947, is amended to read as follows:

"**81-2513. Advisory council.** The governor may appoint an advisory council from properly qualified persons in the fields of anthropology, archaeology, paleontology, and history and other related disciplines to advise and consult with the *society* and the board relating to all matters of Montana's antiquities."

Section 12. **Effective date.** This act is effective on its passage and approval.

Approved April 19, 1977.

CHAPTER NO. 441

AN ACT TO PROVIDE AN EFFICIENT CENTRALIZED RECORDS RETENTION AND DESTRUCTION PROGRAM WITHIN THE HISTORICAL SOCIETY FOR ALL OFFICIAL RECORDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 59-530.1 that reads as follows:

HeinOnline -- 1977 vol. II 1391 1977

59-530.1. Definitions. As used in this act the following definitions apply:

(1) "Constitutionally designated and elected officials of the executive branch of government" means the governor, lieutenant governor, attorney general, secretary of state, superintendent of public instruction, and auditor.

(2) "Official records" means any paper, correspondence, form, book, photograph, microfilm, magnetic tape, computer storage media, map, drawing, or other document, including all copies thereof, regardless of physical form or characteristics, that has been made or received by a constitutionally designated and elected official of the executive branch of government in transacting his official duties and preserved for informational value or as evidence of a transaction.

Section 2. There is a new R.C.M. section numbered 59-530.2 that reads as follows:

59-530.2. Ownership of records. All official records shall remain the property of the state. They shall be delivered by outgoing officials to their successors and shall be preserved, stored, transferred, destroyed, or disposed of and otherwise managed only in accordance with the provisions of this act.

Section 3. There is a new R.C.M. section numbered 59-530.3 that reads as follows:

59-530.3. Official records management — powers and duties. In order to insure the proper management and safeguarding of official records, the Montana historical society shall:

(1) establish and operate the state archives as authorized by appropriation for the purpose of storing and servicing official records transferred to the custody of the state archives;

(2) in cooperation with the department of administration and any committee or council established by law to regulate the retention of public records, establish guidelines for the inventorying, cataloging, retention, and transfer of all official records;

(3) maintain and enforce restrictions on access to official records in the custody of the state archives in accordance with the provisions of this act;

(4) provide adequate housing and care of official records in the custody of the state archives to insure their proper preservation and use by the public;

(5) in accordance with the guidelines established pursuant to subsection (2), remove and destroy duplicate official records and official records of insignificant historical value from the records deposited in the state archives.

Section 4. There is a new R.C.M. section numbered 59-530.4 that reads as follows:

HeinOnline -- 1977 vol. II 1392 1977

59-530.4. Outgoing officials — records management duties. (1) Within 2 years after the completion of the final term of office of a constitutionally designated and elected official of the executive branch of government, all of the official records not necessary to the current operation of that office shall be subject to storage, disposal, or transfer in accordance with the provisions of this act.

(2) All official records of a retiring constitutionally designated and elected official not necessary to the current operation of that office and considered worthy of preservation by the Montana historical society shall be transferred to the custody of the state archives within that 2-year period.

(3) An outgoing official, in consultation with staff members of the Montana historical society, shall review his official records and isolate any items of a purely personal nature. Such personal papers are not subject to this act but they may be deposited with the official papers, at the official's discretion.

(4) An outgoing official, in consultation with staff members of the Montana historical society, may restrict access to certain segments of his official records. No restrictions may be longer than the lifetime of the depositing official. Restricted access may be imposed only to protect the confidentiality of personal information contained in the records. Restricted access may not be imposed unless the demand of individual privacy clearly exceeds the merits of public disclosure.

(5) Any question concerning the transfer or other status of official records arising between the state archives and an elected official's office shall be decided by a ¾ vote of the members of the state records committee.

Approved April 19, 1977.

CHAPTER NO. 442

AN ACT TO REQUIRE THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO STUDY COONEY DAM, THE DAM SPILLWAY, AND ASSOCIATED STRUCTURES AND TO DEVELOP AND CARRY OUT A PROGRAM OF REPAIR AND FINANCING; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Study of Cooney Dam.** The department of natural resources shall conduct a study of Cooney Dam, the dam spillway, and associated structures. The study shall take into account present-day societal concerns about dam safety, all appropriate legal requirements, and modern engineering knowledge and practice. The study shall determine various repair programs and their cost so that Cooney Dam and its spillway are structurally sound. The Rock Creek water users' association shall be given a full opportunity to participate in the study. The study shall be completed by September 1, 1977.

HeinOnline -- 1977 vol. II 1393 1977

Section 2. **Cooney Dam repair program.** (1) After considering the alternative repair programs presented by the study provided for in section 1, the department of natural resources and conservation shall develop a repair program which will insure that Cooney Dam and the spillway are structurally sound.

(2) The department shall then develop a program of financing to be presented to the legislature no later than 1979. The financing plan shall take into account all beneficiaries of the Cooney Dam project, including the fishermen and other recreationists using Cooney Reservoir, those benefited by the flood control aspects of the project, and the state of Montana. The department shall attempt to secure federal financing of all or part of the repair program. To the extent federal financing is unavailable the department may issue water conservation revenue bonds or secure financing pursuant to Title 89, chapter 1.

Section 3. **Costs of study.** The department may not assess the Rock Creek water users' association for the costs of the study carried out under section 1.

Section 4. **Commencement of repairs.** As soon as a satisfactory program of spillway repair has been developed and funding has been secured, the department shall commence work on the repair program.

Section 5. **Effective date.** This act shall be effective upon passage and approval.

Approved April 19, 1977.

CHAPTER NO. 443

AN ACT TO PROVIDE FOR AN INCREASE IN RETIREMENT ALLOWANCES RECEIVED UNDER THE TEACHERS' RETIREMENT SYSTEM BY BENEFICIARIES WHO WERE RECEIVING SUCH ALLOWANCES PRIOR TO JULY 1, 1971; PROVIDING FUNDING FOR THE INCREASE; AMENDING SECTION 75-6207 AND 75-6208, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6208, R.C.M. 1947, is amended to read as follows:

"**75-6208. Benefits.** The retirement, disability and other benefits of the retirement system shall be granted on the basis of the following provisions:

(1) Superannuation member retirement:

(a) Any member with five (5) years of creditable service the last five (5) years of which shall have been in this state, and who has attained the age of sixty (60), or who has completed thirty (30) years of creditable service, may retire from service, if he files with the retirement board his written application setting forth the fact of his retirement.

HeinOnline -- 1977 vol. II 1394 1977

(b) Any member in service who has attained the age of seventy (70) years during any school year shall be retired on the first day of September following his seventieth birthday, except that this provision shall not apply to teachers in the Montana university system who may be employed beyond the age of seventy (70) upon the recommendation of the president of the employing unit to the board of regents. Members over seventy (70) years of age shall not: (1) be allowed creditable service for services rendered after the end of the school year in which the age of seventy (70) is attained, (2) contribute to the retirement system after the end of such school year, and (3) have the compensation received after the end of such school year used in computing average final salary. Initial employment of teachers in the Montana university system beyond the age of seventy (70) may be made upon the recommendation of the president of the employing unit and the approval of the board of regents but such employees shall be denied membership in the retirement system.

(c) Any retired member may be employed as a part-time or substitute teacher in Montana and may earn an amount not to exceed one-fourth (¼) of his average final compensation without loss of retirement benefits.

(2) Allowance for superannuation retirement. Upon superannuation retirement a member shall receive a retirement allowance which shall consist of:

(a) A pension which, together with an annuity, shall provide a retirement allowance equal to one-half (½) of his average final compensation provided his creditable service is at least thirty (30) years, otherwise a pension together with his annuity of one sixtieth (1/60) of his average final compensation multiplied by the number of years of creditable service.

(b) The minimum annual retirement allowance for a member who has completed thirty (30) or more years of service shall be twenty-four hundred dollars ($2,400) and the minimum retirement allowance for a member whose service is less than thirty (30) years shall be based on the proportionate amount of twenty-four hundred dollars ($2,400) that his service bears to thirty (30) years of service.

(c) *(i)* On July 1, 1975, and July 1, 1976, every beneficiary receiving a retirement allowance shall be entitled to an increase in his monthly retirement allowance of one-fourth of one percent (.25%) multiplied by the number of months he has been retired during the preceding fiscal year.

(ii) On July 1, 1977, every beneficiary receiving a retirement allowance who was receiving such allowance prior to July 1, 1971, will be entitled to an increase in his monthly retirement allowance of $1 per month for each year of creditable service plus $2 per month for each year he was retired prior to July 1, 1971. In the case of beneficiaries who are receiving an early retirement allowance, the latter figure of $2 per month shall be multiplied by a fraction, the numerator of which is the number of years of his creditable service and the denominator of which is 30.

(d) Any member who has completed five (5) years of creditable service,

HeinOnline -- 1977 vol. II 1395 1977

the last five years of which shall have been in this state, and who has attained the age of fifty-five (55) may retire from service and be eligible to an early retirement allowance if he files with the retirement board his written application setting forth the fact of his retirement. The early retirement allowance shall be determined as prescribed in subsections (a) through (f) above, with the further provision that such allowance will be reduced by one half of one percent (.5%) multiplied by the number of months which the retirement date precedes the date on which he would have retired had he attained sixty (60) years of age or had he completed thirty (30) years of creditable service.

(e) In the event of death of a member after retirement, a death benefit of five hundred dollars ($500) will be payable to his designated beneficiary.

(f) In the event payments made to an annuitant do not equal the amount of the member's accumulated contributions prior to the annuitant's death, the difference between the total retirement allowance paid and the amount of the accumulated contributions shall be paid to the beneficiary.

(3) Disability member retirement:

(a) Upon the application of an active member or of his employer, any active member who has five (5) or more years of creditable service may be retired by the retirement board the month immediately following the month in which his disability caused his retirement upon filing an application for a disability retirement allowance. Before any member shall be eligible for a disability retirement, the board of the retirement system shall certify that he is mentally or physically incapacitated for the further performance of his duties, that such incapacity is likely to be permanent and that he should be retired.

(b) Re-examination of beneficiaries retired on account of disability. Once each year during the first five (5) years following the retirement of a member on disability retirement allowance, and once in every three (3) year period thereafter the retirement board may, and upon his application shall, require a disability beneficiary who has not yet attained the age of sixty (60) to undergo a medical examination by the medical board or a physician or physicians designated by the medical board. The examination shall be made at the place of residence of the beneficiary or other place mutually agreed upon. Should any disability beneficiary who has not yet attained the age of sixty (60) refuse to submit to at least one (1) medical examination in any year by the medical board or its representative, his allowance may be discontinued until his withdrawal of such refusal, and should his refusal continue for one (1) year, all his rights in and to his disability pension may be revoked by the retirement board.

(c) Should the medical board report and certify to the retirement board that any disability beneficiary is engaged in or is able to engage in a gainful occupation paying more than the difference between his retirement allowance and his average final compensation and should the retirement board concur in such report, then the amount of his pension shall be reduced to an amount which, together with his annuity and the

HeinOnline -- 1977 vol. II 1396 1977

amount earnable by him, shall equal the amount of his average final compensation. Should his earning capacity be changed later, the amount of his pension may be further modified but the new pension shall not exceed the amount of the pension originally granted, nor an amount which when added to the amount earnable by the beneficiary, together with his annuity, equals the amount of his average final compensation. A beneficiary restored to active service at a salary less than the average final compensation upon the basis of which he was retired shall not become a member of the retirement system while receiving a reduced benefit.

(d) Should a disability beneficiary under age sixty (60) be restored to active service at a compensation not less than his average final compensation, his retirement allowance shall cease, and he shall again become an active member of the retirement system. Any prior service certificate on the basis of which his service was computed at the time of his disability retirement shall be restored to full force and effect an addition upon his subsequent retirement, and he shall be credited with all his subsequent service as a member. Should he be restored to active service on or after the attainment of the age of fifty-five (55) years, his pension upon subsequent retirement shall not exceed the pension that he would have received had he remained in service during the period of his previous retirement nor the sum of the pension which he was receiving immediately prior to his last restoration to service and the pension that he would have received on account of his service since his last restoration had he entered service at that time as a new member.

(4) Allowance for disability retirement. Upon retirement for disability, a member shall receive a superannuation allowance prescribed under subsection (2) above if he is eligible; otherwise he shall receive a disability retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of retirement.

(b) A pension which together with his annuity, shall provide a total retirement allowance equal to one sixtieth (1/60) of his average final compensation multiplied by the number of years of his creditable service, if such retirement allowance exceeds one-quarter (¼) of his average final compensation; otherwise, a pension which, together with his annuity, shall provide a total retirement allowance equal to one-quarter (¼) of his average final compensation, provided, however, that no such allowance shall exceed one sixtieth (1/60) of his average final compensation multiplied by the number of years which would be creditable to him were his service to continue until the attainment of the minimum age for superannuation retirement.

(c) In the event payments made to a person retired because of disability do not equal the amount of his accumulated contributions prior to his death, the difference between the total retirement allowance paid and the amount of the accumulated contributions of the member shall be paid to the beneficiary.

(5) Withdrawal of accumulated contributions. Any inactive member electing to do so or any person whose membership terminates may with-

HeinOnline -- 1977 vol. II 1397 1977

draw his accumulated contributions to his annuity account in the retirement system in accordance with the following provisions:

(a) An inactive member under the provisions of subsections (1) or (3) of section 75-6210 may elect, without right of revocation to withdraw his accumulated contributions, and if he does not withdraw his accumulated contributions he shall thereafter remain an inactive member of the retirement system with the right to qualify for the benefits of the retirement system;

(b) Upon recovery from a disabling illness or separation from the armed forces, any person qualifying as an inactive member under the provisions of subsection (2) of section 75-6210 may withdraw his accumulated contributions unless he returns to active membership.

(c) Any person whose membership terminates under the provisions of subsection (4) of section 75-6211 may withdraw his accumulated contributions.

(6) Allowances for death of member.

(a) Should a member die before retirement the amount of the member's accumulated contributions shall be paid to his estate or such person as he may have designated in the manner prescribed by the retirement board which shall be filed with the board prior to the member's death.

(b) In lieu of benefits provided in (a) above, if the deceased member had qualified by reason of service for a retirement benefit, the beneficiary nominated by the deceased member may elect to receive a monthly life annuity. The monthly life annuity shall be determined as prescribed in subsections (2)(a) through (2)(h) assuming the member had elected option A as prescribed in subsection (7)(a) below. In addition, if the deceased member had five (5) or more years of creditable service and was an active member in the state of Montana within one (1) year prior to his death, a lump sum death benefit of $500 will be payable to his designated beneficiary.

(c) If the deceased member had five (5) or more years of creditable service and was an active member in the state of Montana within one (1) year prior to his death, the sum of one hundred dollars ($100) per month shall be paid to each minor child of the deceased member until such child reaches his eighteenth (18th) birthday.

(7) Optional allowances. With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of his death; until the first payment on account of any benefit becomes normally due, any member may elect to receive his benefit in a retirement or disability allowance payable throughout life as hereinabove provided. This benefit shall be referred to as the normal form of retirement allowance. In lieu of normal form of retirement allowance, the member may elect an optional allowance which would be the actuarial equivalent at the time of his retirement or disability allowance and would provide an allowance payable throughout his lifetime and upon his death

HeinOnline -- 1977 vol. II 1398 1977

continue to such person as he shall nominate by written designation duly acknowledged and filed with the retirement board at the time of his retirement with the provision that:

(a) Option A. The optional allowance will continue to the member during his lifetime and upon his death, continue throughout the lifetime of his designated beneficiary; or

(b) Option B. The optional allowance will continue throughout his lifetime and upon his death, one-half (½) of his optional allowance will be continued throughout the lifetime of his designated beneficiary; or

(c) Option C. The optional benefit will continue throughout his lifetime and upon his death, two-thirds (⅔) of the optional allowance shall be continued throughout the lifetime of his designated beneficiary; or

(d) Option D. The optional allowance shall continue while both the member and his designated beneficiary are living and upon the death of either, one-half (½) of the optional allowance shall be continued throughout the lifetime of the survivor; or

(e) Option E. The optional allowance will be payable while both the member and his designated beneficiary are living and upon the death of either, two-thirds (⅔) of the optional allowance shall be continued throughout the lifetime of the survivor; or

(f) Option F. Some other benefit or benefits shall be paid either to the member or his surviving designated beneficiary. The provisions of this retirement allowance shall be approved by the retirement board."

Section 2. There is a new R.C.M. section numbered 75-6207.1 that reads as follows:

75-6207.1. Funding for increase in prior retirement allowances. The funds to pay for the increases in retirement allowances prescribed in 75-6208(2)(c)(ii) shall be provided as follows:

(1) one-half from an increase, sufficient for the purpose, in the payroll deduction provided for in 75-6207(1)(a); and

(2) one-half from an increase, sufficient for the purpose, in the employer's contribution provided for in 75-6207(3)(a).

Section 3. Section 75-6207, R.C.M. 1947, is amended to read as follows:

"**75-6207. Method of financing.** The retirement board shall establish and maintain the following funds in which all of the assets of the retirement system shall be credited according to the purpose for which the assets are held.

(1) Annuity savings fund. The annuity savings fund shall be a fund in which the contributions from the members to provide for their annuities shall be accumulated in individual accounts for each member. Contributions to and payments from the annuity savings fund shall be made in the following manner.

(a) Each employer shall deduct from the compensation of each active

HeinOnline -- 1977 vol. II 1399 1977

member on each and every payroll of such member for each and every payroll period subsequent to the date on which such member became a member an amount equal to *6.187%* of such member's earnable compensation, but no employer shall make any deductions for annuity purposes from the compensation of a member who has attained the age of sixty (60) and rendered thirty (30) years of creditable service if such member elects not to contribute.

(b) Such deductions shall be made notwithstanding that the minimum compensation provided by law for a member may be reduced thereby. Every member shall be deemed to consent and agree to the deductions prescribed by this section; and payment of salary or compensation less the deductions shall be a full and complete discharge of all claims whatsoever for the services rendered by such person during the period covered by such payment except as to the benefits provided by the retirement system.

(c) In addition to the contributions deducted from compensation and subject to the approval of the retirement board, any member may redeposit in the annuity savings fund by a single payment or by an increased rate of contribution an amount equal to the accumulated contributions plus interest in the amount the contributions would have earned had the contributions not been withdrawn, or any part thereof, which he had previously withdrawn. The accumulated contributions of a member withdrawn by him, or paid to his estate or to his designated beneficiary in event of his death shall be paid from the annuity savings fund, and an amount equivalent to the difference between the accumulated contributions calculated at regular interest and the amount paid shall be transferred to the pension accumulation fund. Upon the retirement of a member his accumulated contributions shall be transferred from the annuity savings fund to the annuity reserve fund.

(2) Annuity reserve fund. The annuity reserve fund shall be the fund in which shall be held the reserves on all annuities in force and from which shall be paid all annuities and all benefits in lieu of annuities. Should a beneficiary retired on account of disability be restored to active service with a compensation not less than his average final compensation at the time of his last retirement, his annuity reserve shall be transferred from the annuity reserve fund to the annuity savings fund and credited to his individual account therein.

(3) Pension accumulation fund. The pension accumulation fund shall be the fund in which shall be accumulated all reserves for the payment of all pensions and from which pensions and benefits in lieu thereof shall be paid to or on account of beneficiaries credited with prior service. Contributions to and payments from the pension accumulation fund shall be made as follows:

(a) Each employer shall pay into the pension accumulation fund an amount equal to *6.312%* of the earnable compensation of each member employed during the whole or part of the preceding payroll period.

(b) If the employer is a district or community college district, the trustees shall budget and pay for the employer's contribution under the provisions of section 75-7204.

HeinOnline -- 1977 vol. II 1400 1977

(c) If the employer is the superintendent of public instruction, a public institution of the state of Montana, a unit of the Montana university system or the Montana state deaf and blind school, the legislative assembly shall appropriate to each employer an adequate amount to allow the payment of the employer's contribution.

(d) If the employer is a county, the county commissioners shall budget and pay for the employer's contribution in the manner provided by law for the adoption of a county budget and for payments under such budget.

(e) All interest and other earnings realized on the moneys of the retirement system shall be credited to the pension accumulation fund and the amounts required to allow regular interest on the annuity savings fund, and the annuity reserve fund shall be transferred to the respective funds from the pension accumulation fund.

(f) All pensions and benefits in lieu thereof, including pensions payable under section 75-6218, shall be paid from the pension accumulation fund.

(g) The retirement board may in its discretion transfer to and from the pension accumulation fund the amount of any surplus or deficit which may develop in the reserve creditable to the annuity reserve fund, as shown by actuarial valuation, and also such expenses as hereinafter provided.

(4) Expense fund. The expense fund shall be the fund to which shall be credited all moneys for the administrative expenses of the retirement system and from which the expenses of administration of the retirement system shall be paid exclusive of amounts payable as retirement allowances or other benefits. The retirement board shall determine annually the amount required for the expense fund to defray the administrative expense in the ensuing fiscal year and shall credit such an amount to the expense fund from interest and other earnings realized on the moneys of the retirement system."

Approved April 19, 1977.

CHAPTER NO. 444

AN ACT GENERALLY REVISING TITLE 69, CHAPTER 48; AMENDING THE DEFINITION OF POLLUTION; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO CHANGE A STREAM CLASSIFICATION WHEN A STREAM HAS BEEN IMPROPERLY CLASSIFIED; AUTHORIZING THE SERVICE OF COMPLIANCE ORDERS BY MAIL; AND AMENDING SECTIONS 69-4802, 69-4806, 69-4808.2, 69-4809.1, AND 69-4820.1, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4802, R.C.M. 1947, is amended to read as follows:

"**69-4802. Definitions.** Unless the context requires otherwise in this chapter *the following definitions apply*:

(1) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings including discharge from human beings or animals together with ground water infiltration and surface water present.

(2) "Industrial waste" means any waste substance from the process of business or industry, or from the development of any natural resource together with any sewage that may be present.

(3) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

(4) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes creating a hazard to human health.

(5) "Pollution" means contamination, or other alteration of the physical, chemical, or biological properties of any state waters, which exceeds that permitted by Montana water quality standards, including, but not limited to, standards relating to change in temperature, taste, color, turbidity, or odor; or *the* discharge, *seepage, drainage, infiltration or flow* of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge, *seepage, drainage, infiltration or flow* which is authorized under the pollution discharge permit rules of the board is not "pollution" under this chapter.

(6) "Sewerage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

(7) "Treatment works" means works installed for treating or holding sewage, industrial wastes, or other wastes.

(8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes, and includes sewerage systems and treatment works.

(9) "State waters" means any body of water, irrigation system, or drainage system either surface or underground; however, this subsection does not apply to irrigation waters where the waters are used up within the irrigation system and the waters are not returned to any other state waters.

(10) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity.

(11) "Council" means the state water pollution control advisory council provided for in section 82A-607.

HeinOnline -- 1977 vol. II 1402 1977

(12) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(13) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.

(14) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(15) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(16) "Owner or operator" means any person who owns, leases, operates, controls or supervises a point source.

(17) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants which reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, where practicable, a standard permitting no discharge of pollutants.

(18) "Effluent standard" means any restriction or prohibition on quantities, rates and concentrations of chemical, physical, biological and other constitutents which are discharged into state waters."

Section 2. Section 69-4806, R.C.M. 1947, is amended to read as follows:

"69-4806. Pollution unlawful — permits. It is unlawful to:

(1) cause pollution as defined in section 69-4802(5), R.C.M. 1947, of any state waters or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any state waters;

(2) carry on any of the following activities without a current permit from the department:

(a) construct, modify, or operate a disposal system which discharges *into* any state waters;

(b) construct or use any outlet for the discharge of sewage, industrial wastes, or other wastes *into* any state waters; or

(c) discharge sewage, industrial wastes, or other wastes into any state waters;

(3) violate any *provision set forth in* a permit *or stipulation, including but not limited to limitations and conditions contained therein;*

(4) violate any order issued pursuant to this chapter; or

(5) violate any provision of this chapter."

Section 3. Section 69-4808.2, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1403 1977

"**69-4808.2. Duties of board.** (1) The board shall:

(a) Establish and modify the classification of all waters in accordance with their present and future most beneficial uses.

(b) Formulate standards of water purity and classification of water according to its most beneficial uses, giving consideration to the economics of waste treatment and prevention.

(c) Review from time to time, at intervals of not more than three (3) years, established classifications of waters and standards of water purity and classification *as follows*:

(i) In revising classifications or standards or in adopting new classifications or standards the board may not so formulate standards of water purity or classify any state water as to lower any water quality standard applicable to any state water below the level applicable under the classifications and standards adopted *except upon a finding that a particular* state water *has been classified under a standard or classification of water quality that is higher than the actual water quality that existed at the time of classification and only if the action is taken pursuant to 69-4814.*

(ii) The board shall require that any state waters, whose existing quality is higher than the established water quality standards, be maintained at that high quality unless it has been affirmatively demonstrated to the board that a change is justifiable as a result of necessary economic or social development and will not preclude present and anticipated use of these waters; and

(iii) The board shall require any industrial, public, or private project or development, which would constitute a new source of pollution or an increased source of pollution to high quality waters, referred to in subsection (1)(c)*(ii)*, to provide the degree of waste treatment necessary to maintain that existing high water quality.

(d) Adopt rules governing application for permits to discharge sewage, industrial wastes, or other wastes into state waters including rules requiring the filing of plans and specifications relating to the construction, modification, or operation of disposal systems.

(e) Adopt rules governing the issuance, denial, modification, or revocation of permits *as follows*:

(i) The rules shall allow the issuance or continuance of a permit only if the department finds that operation consistent with the limitations of the permit will not result in pollution of any state waters, except that:

(ii) The rules may allow the issuance of a temporary permit under which pollution may result, if the department insures that such permit contains a compliance schedule designed to meet all applicable effluent standards and water quality standards in the shortest reasonable period of time.

(iii) The rules shall provide that the department may revoke a permit if the department finds that the holder of the permit has violated its terms, unless the department also finds that the violation was accidental

HeinOnline -- 1977 vol. II 1404 1977

and unforeseeable and that the holder of the permit corrected the condition resulting in the violation as soon as was reasonably possible; and

(f) Hold hearings necessary for the proper administration of this chapter or, in the case of permit issuance hearings, delegate this function to the department.

(g) Adopt rules for the administration of this chapter.

(h) Adopt pretreatment standards for waste-water discharged into a municipal disposal system, adopt effluent standards as defined in section 69-4802(18), adopt toxic effluent standards and prohibitions, and establish standards of performance for new point source discharges.

(2) The board may:

(a) accept loans and grants from the federal government and other sources to carry out the provisions of this chapter; and

(b) establish minimum requirements for the treatment of wastes."

Section 4. Section 69-4809.1, R.C.M. 1947, is amended to read as follows:

"**69-4809.1. Duties of department.** (1) The department shall:

(a) Issue, suspend, revoke, modify, or deny permits to discharge sewage, industrial wastes, or other wastes *into* state waters, consistently with rules made by the board;

(b) Examine plans and other information needed to determine whether a permit should be issued or suggest changes in plans as a condition to the issuance of a permit;

(c) Clearly specify in any permit any limitations imposed as to the volume, strength, and other significant characteristics of the waste to be discharged;

(d) Collect and furnish information relating to the prevention and control of water pollution;

(e) Conduct or encourage necessary research and demonstrations concerning water pollution;

(f) Issue orders to any person to clean up any material which he or his employee, agent, or subcontractor has accidentally or purposely dumped, spilled, or otherwise deposited in or near state waters and which may pollute them;

(g) Take such actions as are authorized or required under section 69-4820.1 to insure that the terms and conditions of issued permits are complied with and to insure that violations of this chapter are appropriately prosecuted; *and*

(h) Advise, consult, and cooperate with other states, other state and federal agencies, affected groups, political subdivisions, and industries in the formulation of a comprehensive plan to prevent and control pollution.

(2) The department may accept loans and grants from the federal government and other sources to carry out the provisions of this chapter."

Section 5. Section 69-4820.1, R.C.M. 1947, is amended to read as follows:

"**69-4820.1. Additional enforcement remedies.** (1) In addition to all other remedies created by this act, the department is authorized to take appropriate enforcement action on its own initiative to:

(a) prevent, abate, and control the pollution of state waters;

(b) prevent, abate, and control any violation of a condition or limitation imposed by a permit issued under section 69-4806, R.C.M. 1947; *or*

(c) prevent, abate, and control any violations of regulations relating to pretreatment standards.

(2) In furtherance of subsection (1) of this section, any person violating any condition, limitation, standard or other requirement established pursuant to this chapter may be served with a compliance order issued by the department. Such order must specify the condition, limitation, standard or other requirement violated and must set a time for compliance. However, in establishing a time for compliance, the department shall take into account the seriousness of the violation and any good faith efforts that have been made to comply with the condition, limitation, standard or other requirement that has been violated. The compliance order issued under this section shall be *either* personally served by *a person qualified to perform service under the Montana rules of civil procedure or by certified mail.*

(3) The department is authorized to commence a civil action seeking appropriate relief, including a permanent or temporary injunction, for any violation which would be subject to a compliance order under subsection (2) of this section. Any action under this subsection may be commenced in the district court of any county in which the defendant is located or resides or is doing business, and the court shall have jurisdiction to restrain such violation and to require compliance.

(4) Any person found to be in violation of a condition, limitation, standard or other requirement established pursuant to this section shall be subject to the penalty provisions of section 69-4823, R.C.M. 1947.

(5) For the purpose of this subsection, the term "person" shall mean, in addition to the definition contained in section 69-4802, R.C.M. 1947, any responsible corporate officer."

Approved April 19, 1977.

CHAPTER NO. 445

AN ACT TO PERMIT MEMBERS OF THE NATIONAL GUARD TO FILE APPLICATIONS TO BECOME MEMBERS OF THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM AND TO RECEIVE CREDIT FOR PRIOR SERVICE; AMENDING SECTION 68-2510, R.C.M. 1947.

HeinOnline -- 1977 vol. II 1406 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-2510, R.C.M. 1947, is amended to read as follows:

"**68-2510. Federally subsidized employees eligible — national guardsmen.** (1) A person whose compensation is paid either fully or in part from federal funds, but who is not subject to the federal retirement system, is considered an employee and is entitled to all benefits and is required to make all employee contributions under the retirement system based upon the full salary received by such employee, including that portion of salary paid from federal funds.

(2) Each member of the Montana army and air national guard is considered an employee. Any such person may, while he is an employee, file with the board an election to become a member and receive credit for prior service under the provisions of *68-1607 and* 68-1608."

Approved April 19, 1977.

CHAPTER NO. 446

AN ACT TO GIVE JUSTICE, MUNICIPAL, AND CITY COURTS CONCURRENT JURISDICTION WITH THE YOUTH COURT OVER ALL TRAFFIC AND ALCOHOLIC BEVERAGE VIOLATIONS; AMENDING SECTION 10-1206, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1206, R.C.M. 1947, is amended to read as follows:

"**10-1206. Jurisdiction of the court.** (1) The court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth; a youth in need of supervision; or a youth in need of care, or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town prior to having become 18 years of age.

(2) Justice, municipal, and *city* courts have concurrent jurisdiction with the youth court over all *alcoholic beverage,* traffic, and fish and game violations alleged to have been committed by a youth."

Approved April 19, 1977.

CHAPTER NO. 447

AN ACT AMENDING SECTIONS 16-216 AND 16-234, R.C.M. 1947, TO EXPAND GALLATIN AND PARK COUNTIES TO INCLUDE CONTIGUOUS PORTIONS OF YELLOWSTONE NATIONAL PARK THAT ARE WITHIN THE STATE OF MONTANA BUT THAT ARE NOT WITHIN A COUNTY; PROVIDING FOR APPROVAL OF THE

HeinOnline -- 1977 vol. II 1407 1977

VOTERS AS REQUIRED BY THE CONSTITUTION; AND PROVIDING AN EFFECTIVE DATE FOR THE BOUNDARY CHANGE IF APPROVED.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-216, R.C.M. 1947, is amended to read as follows:

"**16-216. Gallatin County.** Beginning at the intersection of the continental divide, the same being the boundary line between the state of Montana and the state of Idaho, with what will be when it is surveyed, a line two (2) miles east of the west line of township thirteen (13) south, range three (3) east; thence northerly along said line to the southwest corner of section thirty-three (33), township nine (9) south, range three (3) east; thence north along the section line to the northwest corner of section four (4), township eight (8) south, range three (3) east; thence along what will be when surveyed, the west line of sections thirty-three (33), twenty-eight (28) twenty-one (21), sixteen (16), nine (9) and four (4), township seven (7) south, range three (3) east, to the southwest corner of section thirty-three (33), township six (6) south, range three (3) east; thence north along the section lines to the northwest corner of section nine (9), township six (6) south, range three (3) east; thence north to what will be when surveyed, the northwest corner of section four (4), township six (6) south, range three (3) east; thence east along the first standard parallel south to what will be, when surveyed, the southwest corner of section thirty-four (34), township five (5) south, range three (3) east; thence north along what will be, when surveyed, the west line of sections thirty-four (34), twenty-seven (27), twenty-two (22), fifteen (15), ten (10) and three (3), to the northwest corner of section three (3), township five (5) south, range three (3) east; thence north along the section line to the southwest corner of section twenty-two (22), township two (2) south, range three (3) east; thence west along the section line to the southwest corner of section nineteen (19), township two (2) south, range two (2) east; thence north to the southeast corner of section thirteen (13); thence west to the southwest corner of section thirteen (13); thence north to the northwest corner of section thirteen (13); thence west to the southwest corner of section eleven (11); thence north to the northwest corner of section eleven (11); thence west to the southwest corner of section three (3); thence north to the northwest corner of section three (3), all in township two (2) south, range one (1) east; thence west to the southwest corner of section thirty-three (33); thence north to the northwest corner of section thirty-three (33); thence west to the southwest corner of section twenty-nine (29); thence north to the northwest corner of section twenty-nine (29); thence west to the southwest corner of section nineteen (19); thence north to the northwest corner of section nineteen (19), all in township one (1) south, range one (1) east; thence west along the section line to the southwest corner of section fifteen (15); thence north along the section line to the northwest corner of section ten (10); thence west along the section line to the southwest corner of section five (5); thence north to the northwest corner of section five (5); thence west along the north line of section six (6) to the northwest corner thereof, all in township one (1) south, range one (1) west; thence west along the south line of section thirty-six (36),

HeinOnline -- 1977 vol. II 1408 1977

township one (1) north, range two (2) west, to the southwest corner thereof; thence north along the west line of said section thirty-six (36) to a point in the center of the main channel of Jefferson river; thence down the middle of the Jefferson river to its mouth; thence down the middle of the Missouri river to the intersection with a curve line 500 feet southeasterly from the main line of the Chicago, Milwaukee and St. Paul railroad where the same crosses the Missouri river; thence in a general northeasterly direction 500 feet distant from and parallel to the center line of the Chicago, Milwaukee and St. Paul railroad to the west line of section nine (9), township four (4) north, range three (3) east; thence north along said west line to a point therein 500 feet distant from; in a northerly direction, the center line of the said Chicago, Milwaukee and St. Paul railroad; thence in a general northeasterly direction parallel to and 500 feet distant from the center line of the Chicago, Milwaukee and St. Paul railroad to the west line of section three (3) township four (4) north, range three (3) east; thence north along the west boundary of section three (3) to the northwest corner thereof; thence east along the first standard parallel north to the southwest corner of section thirty-four (34), township five (5) north, range three (3) east; thence north along the section line to the west quarter corner of section fifteen (15), township five (5) north, range three (3) east; thence east along the half section line to the east quarter corner of section thirteen (13), township five (5) north, range four (4) east; thence north to what will be, when the same is surveyed, the west quarter corner of section eighteen (18), township five (5) north, range five (5) east; thence east through what will be, when the same is surveyed, the centers of sections eighteen (18), seventeen (17), sixteen (16), fifteen (15), fourteen (14) and thirteen (13), township five (5) north, range five (5) east, to the west quarter corner of section eighteen (18), township five (5) north, range six (6) east; thence east along the half section line to the east quarter corner of section thirteen (13), township five (5) north, range seven (7) east; thence south along the township line to the southeast corner of township five (5) north, range seven (7) east; thence west along the first standard parallel north to the northeast corner of township four (4) north, range seven (7) east; thence south along the township line to the southeast corner of township one (1) north, range seven (7) east; thence west along the base line to the northeast corner of township one (1) south, range seven (7) east; thence south along the township line to the east quarter corner of section twelve (12), township three (3) south, range seven (7) east; thence west through the center of sections twelve (12), eleven (11), and ten (10), to the east quarter corner of section (9); thence south along the section line to the southeast corner of section thirty-three (33), township three (3) south, range seven (7) east; thence west to the southeast corner of township three (3) south, range six (6) east; thence south to what will be, when the same is surveyed, the southwest corner of township five (5) south, range seven (7) east; thence west to what will be, when the same is surveyed, the northwest corner of township six (6) south, range six (6) east; thence south along what will be the township line, when the same is surveyed, to the *boundary line with the state of Wyoming; thence west along the boundary line between Montana and Wyoming to the northwest corner of the state of Wyoming; thence south along the boundary line between Montana and Wyoming to an intersection with the continental divide, the same being the point of intersection of the boundaries of Mon-*

tana, Wyoming, and Idaho; thence northwesterly along said continental divide to the point of beginning. The county seat is Bozeman, Montana."

Section 2. Section 16-234, R.C.M. 1947, is amended to read as follows:

"**16-234. Park County.** Beginning at the southwest corner of section thirty-five (35), township seven (7) south, range twelve (12) east, and running thence north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11) and two (2) of said township seven (7) south, range twelve (12) east, continuing north along the west boundaries of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11) and two (2) of township six (6) south, range twelve (12) east, to the first standard parallel south; thence east along said first parallel south to the southwest corner of section thirty-five (35), township five (5) south, range twelve (12) east; thence north along the west boundary of sections thirty-five (35), twenty-six (26), twenty-three (23), fourteen (14), eleven (11) and two (2) in each of townships five (5), four (4), three (3), two (2) and one (1), respectively, range twelve (12) east to the northwest corner of section two (2), township one (1) south, range twelve (12) east; thence west along the base line to the line between ranges eleven (11) and twelve (12) east; thence north along the line between ranges eleven (11) and twelve (12) east to the quarter corner on the east line of section thirteen (13), township five (5) north, range eleven (11) east; thence west along the half section line through the center of sections thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17) and eighteen (18), township five (5) north, ranges eleven (11), ten (10), nine (9) and eight (8) east to the quarter corner on the west line of section eighteen (18), township five (5) north, range eight (8) east; thence south along the township line to the southeast corner of township five (5) north, range seven (7) east; thence west along the first standard parallel north to the northeast corner of township four (4) north, range seven (7) east, thence south along the range line between ranges seven (7) and eight (8) east to the southeast corner of township one (1) north, range seven (7) east; thence west along the base line to the northeast corner of township one (1) south, range seven (7) east; thence south along the township line to the east quarter corner of section twelve (12), township three (3) south, range seven (7) east; thence west through the center of sections twelve (12), eleven (11) and ten (10) to the east quarter corner of section nine (9); thence south along the section line to the southeast corner of section thirty-three (33), township three (3) south, range seven (7) east; thence west to the southeast corner of township three (3) south, range six (6) east; thence south to what will be, when the same is surveyed, the southwest corner of township five (5) south, range seven (7) east; thence west to what will be, when the same is surveyed, the northwest corner of township six (6) south, range six (6) east; thence south along what will be the township line, when the same is surveyed, to an intersection with the boundary line between Montana and Wyoming; thence east along said boundary line between Montana and Wyoming to an intersection with the line between ranges fifteen (15) and sixteen (16) east; thence north along the line between ranges fifteen (15) and sixteen (16) east; to the northeast corner of township eight (8) south, range fifteen (15) east; thence west along the line between townships seven (7) and eight (8), south to the place of beginning. The county seat is Livingston, Montana."

HeinOnline -- 1977 vol. II 1410 1977

Section 3. There is a new section that reads as follows:

Approval of county boundary change by voters. The question of whether the boundaries of Gallatin County or Park County shall be changed as provided in [sections 1 and 2] shall be placed on the ballot in each of the respective counties. The registrar of each affected county shall designate a place to register and vote for eligible persons located in the areas proposed for inclusion in the county. If approved, by a majority of those voting on the question in the county affected and area proposed for inclusion in that county, the amendments in [sections 1 and 2] become effective upon approval.

Section 4. **Effective date.** This act is effective on its passage and approval.

Approved April 19, 1977.

CHAPTER NO. 448

AN ACT TO RENUMBER SECTION 11-1932, R.C.M. 1947; PROVIDING FOR THE MINIMUM WAGES OF FIREMEN IN CITIES OF FIRST AND SECOND CLASS AND OVERTIME REQUIREMENTS; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1932, R.C.M. 1947, is renumbered 41-2303.1.

Section 2. There is a new R.C.M. section numbered 41-2303.2 that reads as follows:

41-2303.2. Exceptions. The provisions of chapter 23 relating to the payment of a rate of compensation of not less than 1 ½ times the hourly wage for employment in excess of 40 hours in a work week shall not apply to employment of appointed and confirmed members of a fire department of cities and towns unless such compensation is agreed upon in a collective bargaining agreement.

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved April 19, 1977.

CHAPTER NO. 449

AN ACT TO ESTABLISH A MANDATORY PRETRIAL REVIEW PANEL FOR MEDICAL MALPRACTICE CLAIMS; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 17-1301 that reads as follows:

HeinOnline -- 1977 vol. II 1411 1977

17-1301. Short title. This act may be cited as the "Montana Medical Malpractice Panel Act".

Section 2. There is a new R.C.M. section numbered 17-1302 that reads as follows:

17-1302. Purpose. The purpose of this act is to prevent where possible the filing in court of actions against health care providers and their employees for professional liability in situations where the facts do not permit at least a reasonable inference of malpractice and to make possible the fair and equitable disposition of such claims against health care providers as are or reasonably may be well founded.

Section 3. There is a new R.C.M. section numbered 17-1303 that reads as follows:

17-1303. Definitions. As used in this act, the following definitions apply:

(1) "Health care provider" means a physician licensed to practice medicine in Montana or a hospital, hospital-related facility, or long-term care facility.

(2) "Malpractice claim" means any claim or potential claim against a health care provider for medical treatment, lack of medical treatment, or other alleged departure from accepted standards of health care which proximately results in damage to the patient, whether the patient's claim or potential claim sounds in tort or contract, and includes but is not limited to allegations of battery or wrongful death.

(3) "Panel" means the Montana medical malpractice panel provided for in 77-1304.

Section 4. There is a new R.C.M. section numbered 17-1304 that reads as follows:

17-1304. Montana medical malpractice panel. (1) The Montana medical malpractice panel is created. The panel is attached to the Montana supreme court for administrative purposes only, except that 82A-108(2) does not apply. The panel shall review all malpractice claims or potential claims against health care providers covered by this act, except those claims subject to a valid arbitration agreement allowed by law or upon which suit has been filed prior to the effective date of this act.

(2) Those eligible to sit on the panel are health care providers licensed pursuant to Montana law and residing in Montana and the members of the state bar of Montana.

(3) Claimants shall submit a case for the consideration of the panel prior to filing a complaint in any district court or other court sitting in Montana by addressing an application, in writing, signed by the patient or his attorney, to the director of the panel.

(4) The director of the panel shall be appointed by the executive director of the Montana medical association, subject to the approval of the chief

HeinOnline -- 1977 vol. II 1412 1977

justice of the Montana supreme court. The director shall serve at the pleasure of, and the director's salary shall be set by, the executive director of the Montana medical association, subject to the approval of the chief justice.

Section 5. There is a new R.C.M. section numbered 17-1305 that reads as follows:

17-1305. Compensation of the panel and staff — facilities for offices and hearings. (1) All members of the panel shall be paid a salary in the amount of $40 an hour, under guidelines promulgated by the Montana supreme court.

(2) All members of the panel, the director, and his staff are entitled to travel expenses incurred while on the business of the panel, as provided in 59-538, 59-539, and 59-801, but such expenses shall be approved by the director before payment is made.

(3) The panel may provide for the administration of oaths, the receipt of claims filed, the promulgation of forms required by this act, the issuance of subpoenas in connection with the administration of this act, and the performance of all other acts required to fairly and effectively administer this act.

(4) The director, subject to the approval of the chief justice, may employ and fix the compensation for clerical and other assistants as he considers necessary.

(5) The panel shall maintain adequate offices, in which its records shall be kept and its official business transacted.

(6) Panel hearings may be held in any county the panel considers necessary or advisable. The county commissioners or other governing authority shall provide, upon request of the director of the panel, suitable facilities for any such hearing.

Section 6. There is a new R.C.M. section numbered 17-1306 that reads as follows:

17-1306. Funding of act. (1) There is created a pretrial review fund to be administered by the director exclusively for the purposes stated in this act. The fund and any income from it shall be held in trust, deposited in an account, and invested and reinvested by the director with the prior approval of the director of the Montana medical association. The fund may not become a part of or revert to the general fund of this state but shall be open to auditing by the legislative auditor.

(2) To create the fund, an annual surcharge shall be levied on all health care providers. The amount of the assessment shall be set by the director, who shall allocate a projected cost among health care providers on a per capita basis. The director may provide a different allocation upon approval by the supreme court. Surplus funds, if any, over and above the amount required for the annual administration of the act shall be retained by the director and used to finance the administration of this act in succeeding years, in which event the director shall reduce the annual assessment in subsequent years, commensurate with the proper administration of this act.

HeinOnline -- 1977 vol. II 1413 1977

(3) The annual surcharge for 1977 shall be paid on or before September 1, 1977, and annually thereafter on or before the date physicians' annual registration fees are due under 66-1042. The director has the same powers and duties in connection with the collection of and failure to pay the annual surcharge as the department of professional and occupational licensing has under 66-1042 in connection with physicians' annual registration fees.

Section 7. There is a new R.C.M. section numbered 17-1307 that reads as follows:

17-1307. Panel decision required — application. (1) No malpractice claim may be filed in any court against a health care provider before an application is made to the panel and its decision is rendered.

(2) The application shall contain the following:

(a) a statement in reasonable detail of the elements of the health care provider's conduct which are believed to constitute a malpractice claim, the dates the conduct occurred, and the names and addresses of all physicians and hospitals having contact with the claimant and all witnesses. Any amendments to the application must be filed not less than 14 days prior to the hearing date.

(b) a statement authorizing the panel to obtain access to all medical and hospital records and information pertaining to the claim and, for the purposes of its consideration of this matter only, waiving any privilege as to the contents of those records. Nothing in that statement may in any way be construed as waiving that privilege for any other purpose or in any other context, in or out of court.

Section 8. There is a new R.C.M. section numbered 17-1308 that reads as follows:

17-1308. Application procedure. (1) Upon receipt of an application for review, the director or his delegate shall cause to be served a true copy of the application on the health care providers involved. Service shall be effected pursuant to the Montana rules of civil procedure. If a health care provider involved chooses to retain legal counsel, his attorney shall informally enter his appearance with the director.

(2) The health care provider shall answer the application for review and shall submit a statement authorizing the panel to inspect all medical and hospital records and information pertaining to the application and, for the purposes of such inspection only, waiving any privilege as to the contents of those records. Nothing in the statement waives that privilege for any other purpose.

(3) In instances where applications are received employing a theory of respondeat superior or some other derivative theory of recovery, the director shall forward the application to the state professional societies, associations, or licensing boards of both the individual health care provider whose alleged malpractice caused the application to be filed and the health care provider named a respondent as employer, master, or principal.

HeinOnline -- 1977 vol. II 1414 1977

(4) The panel director shall cooperate fully with the claimant in retaining a physician qualified in the field of medicine involved, who will consult with the claimant upon payment of a reasonable fee by the claimant.

Section 9. There is a new R.C.M. section numbered 17-1309 that reads as follows:

17-1309. Panel selection. (1) Application for review shall be promptly transmitted by the director to the directors of the health care provider's state professional society or association and the state bar, which shall each select three panelists within 30 days from the date of transmittal of the application.

(2) If no state professional society or association exists or if the health care provider does not belong to such a society or association, the director shall transmit the application to the health care provider's state licensing board, which shall in turn select three persons from the health care provider's profession, and where applicable, to persons specializing in the same field or discipline as the health care provider.

(3) Whenever there are multiple defendants, the case against each health care provider may be reviewed by a separate panel, or at the discretion of the panel initially appointed or by stipulation of the parties, a single combined panel may review all the claims against all parties defendant.

(4) Three panel members from the health care provider's profession and three panel members from the state bar shall sit in review of each case.

(5) In those cases where the theory of respondeat superior or some other derivative theory of recovery is employed, two of the panel members shall be chosen from the individual health care provider's profession and one panel member shall be chosen from the profession of the health care provider named a respondent as employer, master, or principal.

(6) Any member shall disqualify himself from consideration of any case in which, by virtue of his circumstances, he feels his presence on the panel would be inappropriate, considering the purpose of the panel. The director may excuse a proposed panelist from serving.

(7) Whenever a party makes and files an affidavit that a panel member selected pursuant to this section cannot, according to the belief of the party making the affidavit, sit in review of the application with impartiality, that panel member may proceed no further. Another panel member must be selected by the health care provider's professional association, state licensing board, or the state bar, as the case may be. A party may not disqualify more than three panel members in this manner in any single malpractice claim, and the affidavit must be filed at least 20 days prior to the date of hearing.

Section 10. There is a new R.C.M. section numbered 17-1310 that reads as follows:

17-1310. Time and place of hearing. A date, time, and place for

HeinOnline -- 1977 vol. II 1415 1977

hearing shall be fixed by the director subject to 17-1305(6), and prompt notice thereof shall be given to the parties involved, the attorneys, and the members of the panel. In no instance may the date set be more than 120 days after the transmittal by the director of the application for review unless the panel finds good cause exists for extending the period.

Section 11. There is a new R.C.M. section numbered 17-1311 that reads as follows:

17-1311. Hearing procedures. (1) At the time set for hearing, the claimant submitting the case for review shall be present and shall make a brief introduction of his case, including a resume of the facts constituting the alleged professional malpractice which he is prepared to prove. The health care provider against whom the claim is brought and his attorney may be present and may make an introductory statement of his case.

(2) Both parties may call witnesses to testify before the panel, which witnesses shall be sworn. Medical texts, journals, studies, and other documentary evidence relied upon by either party may be offered and admitted if relevant. Written statements of facts by treating health care providers may be reviewed.

(3) The hearing will be informal, and no official transcript may be made.

(4) At the conclusion of the hearing, the panel may take the case under advisement or may request that additional facts, records, witnesses, or other information be obtained and presented to it at a supplemental hearing, which shall be set for a date and time certain, not longer than 30 days from the date of the original hearing unless the attorney bringing the matter for review consents in writing to a longer period.

(5) Any supplemental hearing shall be held in the same manner as the original hearing, and the parties concerned and their attorneys may be present.

(6) No panel member may be called to testify in any proceeding concerning the deliberations, discussions, decisions, and internal proceedings of the panel.

(7) No statement made by any person during a hearing before the panel may be used as impeaching evidence in court.

(8) At least 10 days prior to the hearing, the director shall furnish to each panel member copies of all claims, briefs, medical records, and other documents the director considers necessary.

Section 12. There is a new R.C.M. section numbered 17-1312 that reads as follows:

17-1312. Panel deliberations and decisions. (1) At or prior to the time set for the hearing, the attorney members of the panel shall select a chairman who shall be an attorney and who shall preside over the panel deliberations. The deliberations of the panel are confidential. Upon consideration of all the relevant material, the panel shall decide:

(a) whether there is substantial evidence that the acts complained of occurred and that they constitute malpractice; and

HeinOnline -- 1977 vol. II 1416 1977

(b) whether there is a reasonable medical probability that the patient was injured thereby.

(2) All votes of the panel on the questions for discussion shall be by secret ballot. The decision shall be by a majority vote of those voting members of the panel who sat on the entire case. The decision shall be communicated in writing to the parties and attorneys concerned, and a copy thereof shall be retained in the permanent files of the panel.

(3) The decision shall in every case be signed for the panel by the chairman and shall contain only the conclusions reached by a majority of its members and shall list the number of members, if any, dissenting therefrom. The majority may briefly explain the reasoning and the basis for their decision, and the dissenters may likewise explain the reason for disagreement.

(4) The report of the medical review panel is not admissible as evidence in any action subsequently brought in any court of law. The copy of the report shall be sent to the health care provider's professional licensing board.

(5) Panelists and witnesses are absolutely immune from civil liability for all communications, findings, opinions, and conclusions made in the course and scope of the duties prescribed by this act.

(6) The panel's decision is without administrative or judicial authority and is not binding upon any party. The panel may recommend an award, approve settlement agreements, and discuss the same, all in a manner not inconsistent with this section, and all such approved settlement agreements are binding on the parties.

Section 13. There is a new R.C.M. section numbered 17-1313 that reads as follows:

17-1313. Director — rules of procedure. The director, in consultation with the state bar of Montana and subject to approval of the supreme court, is authorized to adopt and publish rules of procedure necessary to implement and carry out the duties of the medical review panel. No rules may be adopted, however, which require a party to make a monetary payment as a condition to bringing a malpractice claim before the medical review panel.

Section 14. There is a new R.C.M. section numbered 17-1314 that reads as follows:

17-1314. Tolling of the statute of limitations. The running of the applicable limitation period in a malpractice claim is tolled upon receipt by the director of the application for review and does not begin again until 30 days after the panel's final decision is entered in the permanent files of the panel and a copy is served upon the complainant and his attorney by certified mail.

Section 15. There is a new R.C.M. section numbered 17-1315 that reads as follows:

17-1315. Maintenance of records. The director shall maintain

HeinOnline -- 1977 vol. II 1417 1977

records of all proceedings before the panel which must include the nature of the act or omissions complained of, a brief summary of the evidence expressed, the decision of the panel, and any majority or dissenting opinions filed. Any records which may identify any party to the proceedings may not be made public and are not subject to subpoena, but are to be used solely for the purpose of compiling statistical data and facilitating ongoing studies of medical malpractice in Montana.

Section 16. **Saving clause.** This act does not apply to acts of malpractice occurring prior to its effective date.

Section 17. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 18. **Effective date.** This act is effective upon its passage and approval.

Approved April 19, 1977.

CHAPTER NO. 450

AN ACT RELATING TO THE PAYMENTS FOR CARE OF RESIDENTS OF INSTITUTIONS, DISTRICT YOUTH GUIDANCE HOMES, AND CUSTODIAL AGENCIES; AMENDING SECTIONS 10-1238, 10-1249, AND 80-1601 THROUGH 80-1606, R.C.M. 1947; REPEALING SECTION 38-210; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 80-1601, R.C.M. 1947, is amended to read as follows:

"**80-1601. Institutions subject to per diem and ancillary charges.** The department of institutions shall collect and process per diem *and ancillary* payments for the care of residents in the following institutions:

(1) Warm Springs state hospital;

(2) Boulder river school and hospital;

(3) Galen state hospital;

(4) Montana veterans' home;

(5) Montana center for the aged; *and*

(6) Eastmont training center."

Section 2. Section 80-1602, R.C.M. 1947, is amended to read as follows:

"**80-1602. Definition of terms.** As used in this chapter, unless the context requires otherwise *the following definitions apply*:

(1) "Ancillary charge" means identifiable, direct, *resident* service expenses, *as budgeted,* including, but not limited to, operating room, anesthesia, x-ray, laboratory, blood bank, oxygen therapy, physical therapy, medical supply, drug, and specialized medical equipment, expenses.

(2) "Full-time equivalent resident load" means the total daily resident count for the fiscal year divided by the number of days in the year.

(3) "Per diem" means the gross daily cost of operating an institution, *as budgeted,* excluding the cost of educational programs and ancillary charges, divided by the full-time equivalent resident load. *However, a schedule of differing per diem charges may be computed, including a schedule of charges for residents treated on an outpatient basis, for each program established or funded by the legislature and assigned to an institution listed in 80-1601.*

(4) "Resident" means any person who is receiving care from, or who is a resident of, an institution listed in 80-1601.

(5) "*Financially responsible* person" means a *spouse of a resident, the natural or adoptive parents of a resident under 18 years of age, or a guardian or conservator to the extent of the guardian's or conservator's responsibility for the financial affairs of the person who is a resident under applicable Montana law establishing the duties and limitations of guardianships or conservatorships.*

(6) "Long-term resident" means a resident in an institution listed in 80-1601 for a continuous period in excess of 120 days. No absence of a resident from the institution due to a temporary or trial visit may be counted as interrupting the accrual of the 120 days required to attain the status of a long-term resident.

(7) "Care" means the care, treatment, support, maintenance, and other services rendered by the department to a resident.

(8) "Department" means the department of institutions provided for in Title 82A, chapter 8."

Section 3. Section 80-1603, R.C.M. 1947, is amended to read as follows:

"80-1603. Monthly assessment of charges — annual computation of rate — investigation — ability to pay — review — liability. (1) The department shall assess monthly against each resident or *financially* responsible person, the full per diem charge, a proportionate share of the per diem charge, or no per diem charge, plus full ancillary charge, a proportionate share of the ancillary charge, or no ancillary charge, based upon financial information given to the department during its investigation *conducted according to the rules of the department.* The per diem shall be computed on July 1 of each year by the department.

(2) An assessment made by the department under this section shall be based on the resident's or *financially* responsible person's ability to pay. *The department shall prescribe rules which establish criteria and a procedure for determining ability to pay.* The department *may* not make

HeinOnline -- 1977 vol. II 1419 1977

an assessment which would place an undue financial burden on the resident or the *financially* responsible person.

(3) *(a) Each* agency of the state *shall give* all reasonable assistance to the department in obtaining all information necessary for the proper *financial* investigation *of residents or financially responsible persons.*

(b) Upon request of the department, the resident or financially responsible person shall make available to the department any financial information which the department considers essential for the purpose of determining ability to pay and which, under federal law, the department is not prohibited from seeking or obtaining from the resident or financially responsible person. Willful failure to provide the financial information requested by the department may result in a determination of ability to pay up to the full per diem and full ancillary charges until such time as the requested information is provided and the department makes a new determination of ability to pay.

(c) (i) A representative of the department authorized by the director may administer oaths, take testimony, and subpoena and compel the attendance of witnesses and the production of books, papers, records, and documents in connection with the duty of securing payments for care as provided by this chapter.

(ii) A person who fails to obey the subpoena, upon petition of the department to any judge of a district court of the state, may be ordered by the judge to appear and show cause for his disobedience of the subpoena. The judge, after a hearing, may order that the subpoena be obeyed or, if it appears that the subpoena was inappropriately issued, may dismiss the petition. A person who fails to obey the subpoena when so ordered by the judge may be punished for contempt of court on application of the department to the district court.

(4) *If a resident or financially responsible person disagrees with the determination of the department as to his ability to pay any part of the per diem or ancillary charge, an appeal may be filed within 30 days of the date of the department's determination with the board of institutions, according to the procedure established by rules of the department. If the resident or financially responsible person disagrees with the determination of the appeal by the board of institutions, an appeal may be filed in any court of record in Montana having jurisdiction of the resident or financially responsible person liable for payment.*

(5) *At appropriate intervals, the department shall review each determination of ability to pay and, if there has been a significant change in a resident's or financially responsible person's ability to pay, shall make a new determination. However, a new determination of ability to pay may not be applied retroactively unless the new determination results in a monthly assessment which is less than the previous monthly assessment or unless the resident or financially responsible person has materially misrepresented any financial information. The department shall make rules to implement the provisions of this subsection, including but not limited to rules for credit or refund of any overpayment resulting from an assessment retroactively reduced because of a new determination of ability to pay.*

HeinOnline -- 1977 vol. II 1420 1977

(6) *The resident or financially responsible person is liable only for the per diem and ancillary charges which the department has assessed and billed the resident or financially responsible person. If amounts assessed and billed are retroactively reduced because of a new determination of ability to pay, the resident or financially responsible person is liable only for the reduced amount for the period of time covered by the retroactive reduction.*

(7) *No resident or financially responsible person is financially liable for care provided to a resident under any provision of a criminal statute.*

(8) *A resident of an institution listed in 80-1601 may not be released by reason of the nonpayment of the per diem or the ancillary charge unless, by certification of a physician consulted by the superintendent of the institution, the release is medically advisable.*"

Section 4. Section 80-1604, R.C.M. 1947, is amended to read as follows:

"**80-1604. Collection of per diem and ancillary charges — claims against estates — deposit of receipts.** *(1)* If a resident or *financially* responsible person liable for *payment of per diem and ancillary charges* due under this *chapter* refuses or fails to make *the payment, it is* collectible *by the department of revenue in the manner set forth in Title 84, chapter 71, for the collection of debts owing to the state or* by a civil suit brought *by the department of revenue* in the name of the state of Montana.

(2) The state has a claim against the estate of a resident or against the estate of a financially responsible person for an amount due to the state at the death of the resident or financially responsible person. The attorney general shall collect any claim which the state may have against the estate. However, the claim may be enforced only to the extent that enforcement does not deprive a surviving spouse, child, or parent of the resident or financially responsible person of:

(a) an amount necessary for reasonable living expenses or educational expenses; or

(b) real estate while it is occupied as a home by the surviving spouse, child, or parent of the resident or financially responsible person.

(3) The department shall deposit payments of per diem and ancillary charges in the state treasury to the credit of the general fund."

Section 5. Section 80-1605, R.C.M. 1947, is amended to read as follows:

"**80-1605. Parental liability for costs incurred by resident of institutions.** (1) The natural or adoptive parents of long-term residents *are* liable *only for* the charges made by *the department* for care *in* an amount not to exceed the cost of caring for a normal child at home as determined from standard sources by the department.

(2) *Natural* or adoptive parents of a long-term resident *are* not liable for any charges made by *the department* for care of a *long-term* resident incurred or accrued subsequent to *the* resident attaining age 18."

HeinOnline -- 1977 vol. II 1421 1977

Section 6. Section 80-1606, R.C.M. 1947, is amended to read as follows:

"**80-1606. Rules of the department.** *In addition to the specific provisions of this chapter which require the department to make rules, the department may make rules for the administration of this chapter. All rules made by the department under the provisions of this chapter shall be made pursuant to the provisions of the Montana Administrative Procedure Act.*"

Section 7. There is a new R.C.M. section numbered 80-1607 that reads as follows:

80-1607. Responsibility under prior law. No determination of ability to pay or assessment made under prior law is affected by the provisions of this act until the department has reviewed the determination and assessment in accordance with the provisions of this act. The department shall make the review within 1 year from the effective date of rules made under this act for ability to pay determinations and assessments.

Section 8. Section 10-1238, R.C.M. 1947, is amended to read as follows:

"**10-1238. Support of youth committed to a custodial agency.** When a youth under this act is committed by the court to custody other than that of its parents, and no provision is otherwise made by law for the support of such youth, compensation for the care of such youth, when approved by order of the court, shall be a charge upon the county, or the appropriate division thereof. But the court may, after giving the parent a reasonable opportunity to be heard, adjudge and order that such parent shall pay in such manner as the court may direct, such sum as will cover, in whole or in part, the support of such youth. *In determining the amount the parents must pay, the court shall use the standards set out in Title 80, chapter 16, and the department of institution's rules governing payment for care of residents of institutions, as those provisions and rules apply to the youth and parents before the court. If* such parent shall willfully fail or refuse to pay such sum, he may be proceeded against as provided by law for cases of desertion or failure to provide subsistence, or said cost may be collected in a civil action against the parent or parents."

Section 9. Section 15, Chapter 100, Laws of 1977, is amended to read as follows:

"Section 15. Section 10-1249, R.C.M. 1947, is amended to read as follows:

"**10-1249. Per diem charge to financially able parents.** A youth court judge placing a delinquent youth or a youth in need of supervision in a district youth guidance home may require the parents or parent to pay to the district youth guidance home *a* per diem charge *under the standards set out in Title 80, chapter 16, and the department of institution's rules governing payments for care of residents of institutions, as those provisions and rules apply to the youth and parent or parents before the court.*"

HeinOnline -- 1977 vol. II 1422 1977

Section 10. **Saving clause.** This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 12. **Repealer.** Section 38-210, R.C.M. 1947, is repealed.

Section 13. **Effective date.** This act is effective on its passage and approval.

Approved April 19, 1977.

CHAPTER NO. 451

AN ACT TO PROVIDE THAT MUNICIPALITIES OF THE FIRST OR SECOND CLASS SHALL CONTINUE TO PAY THE SALARIES OF POLICE OFFICERS INJURED IN THE PERFORMANCE OF THEIR DUTIES AND TO PROVIDE FOR ASSIGNMENT OF SUCH AN OFFICER TO LIGHT DUTY OR, WITH HIS CONSENT, TO ANOTHER AGENCY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-1822.1 that reads as follows:

11-1822.1. Continuation of salary of officer injured in performance of duty. (1) A member of a municipal law enforcement agency of a first or second class municipality who is injured in the performance of his duties so as to necessitate medical or other remedial treatment and render him unable to perform his duties shall be paid by the municipality by which he is employed the full amount of his regular salary, less any amount he may receive from workers' compensation, until his disability has ceased or for a period not to exceed one year whichever shall first occur.

Section 2. There is a new R.C.M. section numbered 11-1822.2 that reads as follows:

11-1822.2. Determination of eligibility for continued salary. (1) The determination of whether an injury was incurred during or resulted from the performance of duty shall be made by the municipality. The injured officer may appeal the decision to the municipal law enforcement board available to him.

(2) The determination of whether the injury resulted in a disability shall be made by the municipality, with the advice of medical opinion. The injured officer may appeal the decision to the municipal law enforcement board available to him.

HeinOnline -- 1977 vol. II 1423 1977

Section 3. There is a new R.C.M. section numbered 11-1822.3 that reads as follows:

11-1822.3. Periodic medical examinations — waiver of right to salary. (1) The municipality may appoint a physician to examine the officer from time to time. If the injured officer has recovered and is physically able to perform light duty or his regular duties, the physician shall certify that fact.

(2) An injured officer who unreasonably refuses to accept medical treatment or hospital care or to permit medical examination as authorized by subsection (1) waives his right under 11-1822.1 to receive his regular salary during his absence from service.

Section 4. There is a new R.C.M. section numbered 11-1822.4 that reads as follows:

11-1822.4. Discontinuation of salary when retirement allowance granted. Payment of a regular salary under 11-1822.1 shall be discontinued if the officer is disabled for an undetermined duration and is granted a disability retirement allowance under Title 11, chapter 18. If an application for such a retirement allowance is not made by the officer, application therefor may be made by the chief executive officer of the municipality by which such officer is employed.

Section 5. There is a new R.C.M. section numbered 11-1822.5 that reads as follows:

11-1822.5. Assignment to light duty or another agency. (1) Whenever, in the opinion of the municipality supported by a physician's opinion, the officer is able to perform specified types of light police duty, payment of his regular salary under 11-1822.1 shall be discontinued if he refuses to perform such light police duty when it is available and offered to him. Such light duty shall be consistent with the officer's status as a law enforcement officer.

(2) With his consent, the officer may be transferred to another department or agency within the municipality.

Section 6. There is a new R.C.M. section numbered 11-1822.6 that reads as follows:

11-1822.6. Effect on probationary status. If the injured officer is on probationary status at the time he becomes injured, the balance of his probationary time shall be suspended until he returns to regular duty or is discharged for cause.

Section 7. There is a new R.C.M. section numbered 11-1822.7 that reads as follows:

11-1822.7. Subrogation. The municipality has a cause of action for reimbursement of sums it has paid to an officer as salary and for medical treatment against any third party against whom the officer has a cause of action for the injury which necessitated the payments by the municipality.

Approved April 19, 1977.

HeinOnline -- 1977 vol. II 1424 1977

CHAPTER NO. 452

AN ACT REVISING DEFINITIONS AND DUTIES UNDER THE CITIZEN PARTICIPATION LAW; AMENDING SECTIONS 82-4227 AND 82-4228, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4227, R.C.M. 1947, is amended to read as follows:

"**82-4227. Definitions.** As used in this act:

(1) "Agency" means any board, bureau, commission, department, authority, or officer of the state or local government authorized by law to make rules except:

(a) the legislature and any branch, committee, or officer thereof;

(b) the judicial branches and any committee or officer thereof;

(c) the governor, except that an agency is not exempt because the governor has been designated as a member thereof; or

(d) the state military establishment and agencies concerned with civil defense and recovery from hostile attack.

(2) "Rule" means any agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedures, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule, but does not include:

(a) statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(b) declaratory rulings as to the applicability of any statutory provision or of any rule; *however, the declaratory rulings of any board, bureau, commission, department, authority, agency, or officer of the state which is not subject to the Montana Administrative Procedure Act shall be published and be subject to judicial review as provided under 82-4213(2) and 82-4218;*

(c) intra-agency memoranda."

Section 2. Section 82-4228, R.C.M. 1947, is amended to read as follows:

"**82-4228. Agency requirements.** (1) Each agency shall develop procedures for permitting and encouraging the public to participate in agency decisions that are of significant interest to the public. The procedures shall assure adequate notice and assist public participation before a final decision is made on the adoption of a rule or policy, awarding a contract, granting or denying a permit, license or change of rate that is of significant interest to the public.

HeinOnline -- 1977 vol. II 1425 1977

(2) An agency shall be deemed to have complied with the notice provisions of this act if:

(a) an environmental impact statement is prepared and distributed as required by the Montana environmental policy act, title 69, chapter 65;

(b) a proceeding is held as required by the Montana administrative procedure act, title 82, chapter 42;

(c) a public hearing, after appropriate notice is given, is held pursuant to any other provision of state law or a local ordinance or resolution; or

(d) a newspaper of general circulation within the area to be affected by a decision of significant interest to the public has carried a news story or advertisement concerning the decision *sufficiently* prior to a final decision *to permit public comment on the* matter.

(3) Procedures for assisting public participation shall include a method of affording interested persons reasonable opportunity to submit data, views or arguments, orally or in written form, prior to making a final decision that is of significant interest to the public.

(4) The provisions of this act do not apply to:

(a) an agency decision that must be made to deal with an emergency situation affecting the public health, welfare or safety;

(b) an agency decision that must be made to maintain or protect the interests of the agency, including but not limited to the filing of a lawsuit in a court of law or becoming a party to an administrative proceeding; or

(c) a decision involving no more than a ministerial act.

(5) *The governor shall insure that each board, bureau, commission, department, authority, agency, or officer of the state adopts coordinated rules* for its programs, which guidelines shall provide policies and procedures to facilitate public participation in those programs, consistent with subsection (1) of this section. These guidelines shall be adopted as rules and published in a manner which may be provided to a member of the public upon request."

Approved April 19, 1977.

CHAPTER NO. 453

AN ACT TO REVISE, LIMIT, AND STANDARDIZE TRAVEL EXPENSE REIMBURSEMENTS PAID FROM PUBLIC FUNDS BY STATE GOVERNMENTAL ENTITIES, NOT INCLUDING THE LEGISLATIVE BRANCH; AMENDING SECTIONS 5-609, 16-5119, 26-108, 26-1505, 27-238, 44-128, 59-801, 59-1402, 62-503, 66-409, 66-2805, 66-3205, 66-3703, 66-3905, 68-1802, 69-3414, 75-8408, 79-1016, 82-301, 82-1208, 82-4402, 82A-210, 82A-507, 82A-1602.30, 84-601, 84-702, 84-6704, 92-116.1, 93-716, 93-721, AND 95-3124.1, R.C.M. 1947.

HeinOnline -- 1977 vol. II 1426 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-801, R.C.M. 1947, is amended to read as follows:

"**59-801. Mileage.** (1) Members of the legislature, state officers *and employees,* jurors, witnesses, county agents, and all other persons who may be entitled to mileage *paid from public funds,* when using their own automobiles in the performance of official duties, *are* entitled to collect mileage for the distance actually traveled by automobile and no more, unless otherwise specifically provided by law.

(2) *When* the individual is authorized to operate a privately owned vehicle even though a government-owned or leased vehicle is available, a rate of *3* cents less per mile than the mileage rate allowed by the United States internal revenue service for the preceding year shall be paid.

(3) *When* a privately owned vehicle is used because a government-owned or leased vehicle is not available or *because such use* is in the best interest of the governmental entity, a rate equal to the mileage allotment allowed by the United States internal revenue service for the preceding year shall be paid for the first 1,000 miles and *3* cents per mile less for all miles thereafter traveled within a given calendar month.

(4) Members of the legislature, state officers *and employees,* jurors, witnesses, county agents, and all other persons who may be entitled to mileage *paid from public funds,* when using their own airplanes in the performance of official duties, are entitled to collect mileage for the distance actually traveled at a rate of *20* cents per statute mile and no more, unless specifically provided by law.

(5) This section does not alter 43-310.

(6) The department of administration shall prescribe rules necessary *for the effective administration of* this section for state government."

Section 2. Section 5-609, R.C.M. 1947, is amended to read as follows:

"**5-609. State banking board — secretary — meetings — per diem.** *(1)* The *state banking board created in 82A-407* shall elect *a secretary* from its members to serve at the pleasure of the board.

(2) In performing its functions, the board shall have use of the offices, equipment, and personnel of the department of business regulation as it requires.

(3) The board shall hold regular meetings each quarter at a fixed date and time at the office of the department. Special meetings may be called by the chairman *at any time* upon 3 days' notice to the members.

(4) A quorum for all meetings shall be a majority of the board members, and a majority of the quorum present at any meeting *may take action.*

(5) The chairman shall have a voice but no vote in all meetings except to break a tie.

HeinOnline -- 1977 vol. II 1427 1977

(6) Any board member except the chairman may be removed by the governor without cause in any case.

(7) The board members, except the chairman, shall be paid $25 *a* day or any part thereof devoted to the performance of their duties and *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* incurred in the performance of their duties. The costs and expenses of the board shall be legitimate charges of the department."

Section 3. Section 16-5119, R.C.M. 1947, is amended to read as follows:

"**16-5119. Commission organization and procedure.** (1) The commission *may* adopt rules for its own organization and procedure.

(2) The commission shall select from its membership any additional officers it considers necessary.

(3) The commission may employ and fix the compensation and duties of necessary staff.

(4) Commission members shall be reimbursed for *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* incurred as commission members and shall be paid compensation as provided by law for interim standing committees.

(5) A majority of the members of the commission shall constitute a quorum for the transaction of business, and *to be effective a* recommendation of the commission *must be* adopted by a majority of *all* of the *commission* members.

(6) Open meetings — hearings. All meetings of the commission shall be open to the public. The commission shall hold public hearings and may use other suitable means to disseminate information and stimulate public discussion of its purposes, progress, conclusions, and recommendations.

(7) The chairperson shall schedule meetings of the commission as *considered* necessary. The chairperson shall give due notice of the time and place of the meetings to members of the commission.

(8) The commission shall maintain a written record of its proceedings and its finances, which shall be open to inspection by any person at the office of the commission during regular office hours.

(9) Upon request, state agencies and units of local government shall cooperate with the commission by furnishing assistance and data to the extent possible.

(10) State, municipal, and county officers and employees, at the request of the commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the commission. If leave with pay is granted, they shall receive no other compensation, except *travel expenses,* from the commission *as provided for in 59-538, 59-539, and 59-801, as amended.*

(11) The commission may establish advisory boards and committees, *which may include* persons who are not members of the study commission.

HeinOnline -- 1977 vol. II 1428 1977

(12) The commission may do all things consistent with and reasonably required to perform its function under this act."

Section 4. Section 26-108, R.C.M. 1947, is amended to read as follows:

"**26-108. Employees of the commission — removal — rating — salaries — expenses.** The director *may* suspend without pay, reduce in rank, or remove any employee at any time for cause, providing that any person who has been continuously employed for 1 year or more immediately preceding any suspension or discharge may demand and receive a hearing before the commission *on charges filed.* The action of the commission resulting from such a hearing shall be final. The director shall rate all employees on the basis of merit and efficiency in accordance with such rules as the commission may adopt to secure a proper rating of each person employed. The salaries of employees shall be fixed by the commission, and *travel* expenses, as provided *for in 59-538, 59-539, and 59-801, as amended,* shall be allowed *employees* while upon official business away from designated headquarters."

Section 5. Section 26-1505, R.C.M. 1947, is amended to read as follows:

"**26-1505. Refusal by applicant to modify plans — arbitration of disputes.** (1) If the commission notifies the applicant that the construction will adversely affect fish or game habitat, the applicant, within 15 days after receiving the recommendations and alternatives of the commission, shall notify the commission if it refuses to modify its plans in accordance with *the* recommendations or alternatives. In the event of refusal, the disagreement shall be arbitrated as provided in subsection (2) of this section.

(2) Upon receipt of *a* notice of refusal, the commission shall determine if it wants the disagreement arbitrated. Within 10 days after an affirmative determination and after notice to the applicant, the commission shall notify, in writing, all district judges of the judicial district or districts in which the project is located that an arbitration board is needed. Within 5 days of receipt of notification, *the* judges shall appoint three people from the county or counties in which the project is located to an arbitration committee. Within 10 days after the committee is appointed, it shall meet, hear testimony from all the parties concerned, and issue a decision signed by at least two members of the committee. The decision shall be binding on all parties concerned. *Travel* expenses of the arbitrators, *shall be allowed as in 59-538, 59-539, and 59-801, as amended, and* shall be divided equally among the agencies involved."

Section 6. Section 27-238, R.C.M. 1947, is amended to read as follows:

"**27-238. Subpoena power of department of agriculture.** (1) The department of agriculture *may* subpoena witnesses, administer oaths, and require the production of records, books, *or* documents for examination at any hearing or investigation conducted by it. Subpoenaed witnesses shall be paid *travel expenses* as *provided for in 59-538, 59-539, and 59-801, as amended.*

(2) *If a person fails or refuses* to comply with the subpoena issued by

HeinOnline -- 1977 vol. II 1429 1977

the department of agriculture or *if a* witness *refuses* to testify *on* any material matter regarding which he may be interrogated, any district court in the state, upon good cause shown by the application of the department of agriculture, may issue a warrant of attachment for such person. *If,* after *a* hearing, the court finds his failure or refusal to be unjustified, ~~it~~ *may* compel him to comply with *the* subpoena, to attend before the department of agriculture and produce any subpoenaed records, books, *or* documents for examination, and to give his testimony. *The* court *may* punish for contempt as in the case of disobedience to a like subpoena issued by the court or for refusal to testify therein."

Section 7. Section 44-128, R.C.M. 1947, is amended to read as follows:

"**44-128. Librarian and assistants.** The commission shall employ as its executive officer a librarian, who *is* a graduate of an accredited library school and *is not* a member of the commission, for such compensation as the commission *considers* adequate. *The executive officer* shall perform the duties assigned by the commission *and* serve at the will of the commission. The commission may also employ such other assistants as *are* required for the performance of the commission's work. In addition to their salaries, *while on commission business* the librarian and assistants shall be allowed their *travel expenses, as provided for in 59-538, 59-539, and 59-801, as amended.*"

Section 8. Section 59-1402, R.C.M. 1947, is amended to read as follows:

"**59-1402. Meetings of commission — quorum — compensation.** (1) The commission shall hold at least two meetings before submitting a report to the *legislature* as provided in 59-1404.

(2) All meetings shall be called by the chairman of the commission, and notice of the meeting dates shall be given by mail to each commission member at least 20 days before the day scheduled for the meeting.

(3) A majority of members present at any meeting is sufficient to transact any business to come before the meeting; however, a majority of all commission members is necessary to ratify the commission's recommendations to the legislature.

(4) Commission members shall be reimbursed from the appropriation to the office of the legislative council for their *travel* expenses incurred, *as provided for in 59-538, 59-539, and 59-801, as amended,* and $25 per day while attending meetings of the commission.

(5) The commission shall choose one of its members as chairman at its initial meeting, and the executive director of the legislative council or his delegate shall serve as secretary to the commission and shall record and transcribe all minutes of commission meetings and prepare all correspondence, notices, and formal recommendations as directed by the chairman."

Section 9. ~~Section~~ 62-503, R.C.M. ~~1947~~, is amended to read as follows:

"**62-503. Chairman — quorum — costs — salary.** (1) The board shall organize by electing one of its members chairman. Three members

HeinOnline -- 1977 vol. II 1430 1977

of the board shall constitute a quorum for the transaction of business by the board.

(2) The board may incur costs, charges, and expenses reasonably necessary to carry out this act.

(3) Each member may be paid $25 for each day in which he is actually and necessarily engaged in the performance of board duties and shall be reimbursed for *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* incurred in his official service."

Section 10. Section 66-409, R.C.M. 1947, is amended to read as follows:

"**66-409. Powers and duties.** (1) The department shall, subject to 82A-1603, conduct practical examinations of applicants for apprentice cards and for certificates of registration to practice as registered barbers, not less than four times *a* year at times and places the board determines. The examinations shall cover the fundamentals of barbering, dermatology, and sanitation. The department shall issue apprentice cards and certificates of registration.

(2) The board may approve price agreements establishing minimum prices for barber work, *which are* signed and submitted to the board by an organized group or groups of at least 75% of the barbers in a city or town, if the board, after ascertaining by investigations and proofs as the situation permits and requires, finds that the price agreement is just and will best protect the public health and safety by affording a sufficient minimum price for barber work to enable the barbers to furnish modern and healthful services and appliances to minimize the danger to the public health incident to this work. Under this chapter, a city or town includes the territory within its legal limits *and* the territory adjacent to it and lying within 3 miles of its legal limits. In determining whether a price agreement is just and will best protect the public health and safety, the board shall *consider* all conditions affecting the barber business in its relation to the public health and safety.

(3) In determining reasonable minimum prices, the board shall *consider* the necessary cost incurred in the city or town to maintain a barbershop in a clean, healthful, and sanitary condition.

(4) *After* making an investigation, *the board* shall *by order* fix the minimum price for work usually performed in a barbershop in the city or town in which the price agreement has been signed. The board may, on the petition of 50% of the barbers of the city or town, readjust the minimum prices, and the new prices must be approved by 75% of the barbers in the city or town. This section does not apply to students who have been enrolled less than 9 months in a barber college in this state or *who are not* apprentice barbers.

(5) The board may adopt rules for the administration of this chapter.

(6) A person hired by the department to make an inspection of a barbershop, school, or college shall be recommended by the board. He shall receive $30 per day plus *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended.*"

HeinOnline -- 1977 vol. II 1431 1977

Section 11. Section 66-2805, R.C.M. 1947, is amended to read as follows:

"**66-2805. Meetings — powers — compensation.** (1) *Each July the* board shall elect from its membership a president, vice-president, and secretary-treasurer. The board shall meet quarterly and at such other times it considers necessary.

(2) The board may:

(a) *adopt* rules for the administration of this act and for the licensing of electrical contractors and the examination and licensing of master and journeymen electricians;

(b) *adopt* a seal;

(c) *cause* the prosecution and enjoinder of persons violating this act;

(d) *suspend* or revoke a license granted under this act for any of the following reasons:

(i) *violation* of this act, the national electrical code, or the rules of the board;

(ii) *any* cause for which issuance of the license could have been denied had it existed and been known to the board;

(iii) *commission* of any act of gross negligence, incompetency, or misconduct as may be determined by the board in the practice of a master or journeyman electrician or the business of an electrical contractor; or

(iv) *making* a material misstatement, misrepresentation, or fraud in obtaining a license.

(3) Each member of the board shall receive *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* incurred in the performance of his duties."

Section 12. Section 66-3205, R.C.M. 1947, is amended to read as follows:

"**66-3205. Duties of board.** (1) The board shall hold a regular annual meeting in which it shall select from its members a chairman and a secretary. The department shall keep a record of the board's proceedings. Other regular meetings shall be held at such times as the rules of the board provide. Special meetings may be held at times considered necessary or advisable by the chairman and the majority of its members or on the request of the governor. Reasonable notice of meetings shall be given in the manner prescribed by the board. The quorum of the board consists of the majority of its members.

(2) Each board member shall receive *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* incidental to board meetings.

(3) The board may make reasonable and necessary rules for the proper performance of its duties and for the regulation of proceedings before it.

(4) The attorney general shall act as attorney for the board. He or his

HeinOnline -- 1977 vol. II 1432 1977

representative may sit as an ex officio member of the board in an advisory capacity only.

(5) The board shall adopt an official seal."

Section 13. Section 66-3703, R.C.M. 1947, is amended to read as follows:

"**66-3703. Board — compensation — meetings — quorum.** (1) Board members may be compensated as determined by the board, but not to exceed $25 *a* day, for official business. Board members shall be reimbursed for their *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* incurred while on official business of the board.

(2) The board shall meet at least twice a year and elect a chairman at the first meeting of each calendar year.

(3) Four members of the board constitute a quorum for the purpose of transacting business."

Section 14. Section 66-3905, R.C.M. 1947, is amended to read as follows:

"**66-3905. Function of the board and department.** (1) The board shall meet at least once *a* year at a place, day, and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the chairman or a majority of the members of the board. A quorum of the board shall consist of the majority of its members, but in no instance *may* a meeting of three board members who are exclusively speech pathologists or exclusively audiologists be considered a quorum.

(2) Each board member shall receive *travel* expenses incidental to board meetings and business, *as provided for in 59-538, 59-539, and 59-801, as amended.*

(3) The department may employ persons it *considers* necessary to carry out the provisions of this act.

(4) All meetings of the board for the consideration of and action on matters coming before the board are open to the public, except:

(a) matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade, or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure.

(5) The board may make rules which are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(6) The department shall prepare a report to the governor as required by law.

HeinOnline -- 1977 vol. II 1433 1977

(7) The board shall:

(a) administer, coordinate, and enforce the provisions of this act;

(b) evaluate the qualifications of each applicant for a license as issued under this act and supervise the examination of such applicants;

(c) investigate persons engaging in practices which allegedly violate the provisions of this act;

(d) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(e) adopt rules including but not limited to those governing ethical standards of practice under this act;

(f) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech pathology or audiology which could be beneficial to the citizens of the state of Montana;

(g) cause the prosecution and enjoinder of all persons violating this act, by the complaints of its secretary filed with the county attorney in the county where the violation took place, and incur necessary expenses therefor;

(h) adopt a seal by which the board shall authenticate its proceedings. Copies of the proceedings, records, and acts of the board, signed by the chairman or secretary of the board and stamped with the seal, shall be prima facie evidence of the validity of such documents."

Section 15. Section 68-1802, R.C.M. 1947, is amended to read as follows:

"**68-1802. Compensation and expenses of board members.** The *travel* expenses of members of the board shall be *as allowed in 59-538, 59-539, and 59-801, as amended, and* reimbursed by the retirement system. Those members of the board who are not members of the retirement system shall be entitled to receive, in addition to *travel* expenses, compensation at the rate of $25 *a* day. All expenses of the administration of this act in excess of the amounts provided by the membership fees contributed pursuant to 68-1904 shall be a charge on the appropriation made from the general fund of the state."

Section 16. Section 69-3414, R.C.M. 1947, is amended to read as follows:

"**69-3414. Compensation of members.** (1) Members of the board shall receive compensation of $25 *a* day plus *travel* expenses, as provided *for* in *59-538, 59-539, and* 59-801, *as amended,* while engaged in business of the board.

(2) The board shall appoint one of its members chairman. The board shall meet at least once annually and at such other times as agreed upon. The board shall not meet more than four times *a* year."

Section 17. Section 75-8408, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1434 1977

"**75-8408. Bureau of mines and geology — purpose.** The bureau of mines and geology shall:

(1) *compile* and publish statistics relative to Montana geology, mining, milling, and metallurgy;

(2) *collect*:

(a) typical geological and mineral specimens;

(b) samples of products;

(c) photographs, models, and drawings of appliances used in the mines, mills, and smelters of Montana; and

(d) a library and a bibliography of literature relative to the progress of geology, mining, milling, and smelting in Montana;

(3) *study* the geological formations of Montana, with special reference to their economic mineral resources and ground water;

(4) *examine* the topography and physical features of Montana relative to their bearing upon the occupation of the people;

(5) *study* the mining, milling, and smelting in Montana relative to their improvement;

(6) *publish* bulletins and reports of a general and detailed description of the natural resources, geology, mines, mills, and reduction plants of Montana;

(7) *make* qualitative examinations of rocks and mineral samples;

(8) *consider* scientific and economic problems the regents *consider* valuable to the people of Montana;

(9) *communicate* special information of Montana geology, mining, and metallurgy;

(10) *cooperate* with:

(a) departments of the system;

(b) the state mine inspector;

(c) departments of the state;

(d) the United States geological survey; and

(e) the United States bureau of mines;

(11) *make* examinations of state land regarding *its* geology and mineral value at the request of the department of state lands and *make* investments. These services are limited to the time available for such work after all other duties of the bureau of mines and geology are served. Written reports shall be made. Travel expenses incurred by the examiner shall be paid *as provided for in 59-538, 59-539, and 59-801, as amended,* by the agency requesting the examination upon the presentation of claims in the ordinary form.

HeinOnline -- 1977 vol. II 1435 1977

(12) *deposit* all material collected in the state museums or in the Montana college of mineral science and technology after completed use by the bureau of mines and geology;

(13) *distribute* duplicates of representative material to the units of the university system to their best educational advantage; *and*

(14) *print* the regular and special reports with illustrations and maps and distribute them on direction of the regents."

Section 18. Section 79-1016, R.C.M. 1947, is amended to read as follows:

"**79-1016. Inquiries and investigations by budget director.** The budget director or his designated representative shall make such further inquiries and investigations as he *considers* necessary as to any item included in the report and estimates furnished by any department, agency, or institution. In making such investigations, he shall be allowed his *travel* expenses as provided *for in 59-538, 59-539, and 59-801, as amended,* in visiting any institution or department in the state. The budget director may appoint a chief assistant and may employ such other personnel as may be necessary to carry out the provisions of this chapter."

Section 19. Section 82-301, R.C.M. 1947, is amended to read as follows:

"**82-301. Board of athletics.** The members of the board of athletics shall serve without compensation but shall be allowed *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* to be paid by the state treasurer on warrant properly drawn, out of the proceeds of the tax collected under this act. *Before* April 1 of each year *the board shall* elect one of its number chairman, shall adopt a seal for the board, and may adopt rules for the administration of its office. Two of the members of the board constitute a quorum to do business, and the concurrence of at least two members is necessary to render a choice or decision by the board."

Section 20. Section 82-1208, R.C.M. 1947, is amended to read as follows:

"**82-1208. Special deputy fire marshals — acting fire marshal — fire marshal's employees.** (1) In an emergency or during the absence or disability of the state fire marshal, the attorney general may appoint an acting fire marshal, who shall perform the duties of the office or any duty which may be assigned to him, such appointment to cease when the necessity therefor has been relieved.

(2) The state fire marshal may appoint special deputy state fire marshals throughout the state and define their duties. When performing these duties or attending a training course conducted by the state fire marshal, special deputy fire marshals may be paid at a rate not to exceed $40 *a* day plus *travel* expenses *as provided for in 59-538, 59-539, and 59-801, as amended.*

(3) The fire marshal may appoint assistants and clerical employees to

HeinOnline -- 1977 vol. II 1436 1977

perform duties as specified by the marshal to assist in carrying out the duties assigned him by law."

Section 21. Section 82-4402, R.C.M. 1947, is amended to read as follows:

"**82-4402. Board member appointed by governor — compensation.** The governor shall appoint the board member. He shall report directly to the governor. *The* member, with the approval of the governor, may designate an alternate to represent the state when he is unable to do so. The member or his alternate *may* receive no compensation in addition to salary for his services as a member of the board but shall be reimbursed for *travel* expenses *as provided for in 59-538, 59-539, and 59-801, as amended,* incurred in the performance of his duties."

Section 22. Section 82A-210, R.C.M. 1947, is amended to read as follows:

"**82A-210. Board of administration — composition — terms — allocated.** (1) There is a board of administration.

(2) The board consists of five members appointed by the governor. The members are:

(a) *three* public employees who *are* members of a public retirement system *(not* more than one of these members may be an employee of the same department*); and*

(b) *two* members at large.

(3) The term of office for each member is 5 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 82A-108.

(5) Members of the board shall be paid their *travel* expenses *as provided for in 59-538, 59-539, and 59-801, as amended,* and members of the board who are not members of the public retirement system shall be entitled, in addition to *travel* expenses, *to* compensation as established for *a* quasi-judicial board in 82A-112."

Section 23. Section 82A-507, R.C.M. 1947, is amended to read as follows:

"**82A-507. Board of trustees of state historical society — continued.** (1) The board of trustees of the state historical society, created in Title 44, chapter 5, R.C.M. 1947, is continued.

(2) The composition, method of appointment, terms of office, and qualifications of board members remain as prescribed by law.

(3) Each member is entitled to be paid an amount to be determined by the department head, not to exceed $25 for each day in which he is actually and necessarily engaged in the performance of board duties, and he is also entitled to be reimbursed for *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* incurred while in the performance of board duties. Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are

HeinOnline -- 1977 vol. II 1437 1977

not entitled to be compensated for their service as members but are entitled to be reimbursed for their *travel* expenses."

Section 24. Section 82A-1602.30, R.C.M. 1947, is amended to read as follows:

"**82A-1602.30. Board created.** (1) There is a board of landscape architects. The board consists of five members of which at least three must be landscape architects. Members of the board shall be appointed by the governor and must be residents of this state. At least three shall have the qualifications of landscape architects required by this act and, except for the first appointed members, three members must be licensed landscape architects. The board is allocated to the department of professional and occupational licensing for administrative purposes only as prescribed in 82A-108.

(2) The terms of the members of the board first appointed are as follows:

(a) one member for 1 year;

(b) two members for 2 years; *and*

(c) two members for 3 years.

(3) Future terms are for 4 years. Each member shall hold office until the appointment and qualification of his successor. Vacancies occurring prior to the expiration of the term shall be filled in the same manner as original appointments. No member may serve more than 8 consecutive years.

(4) The board may promulgate such rules, including setting of fees, as are necessary in the performance of its duties and may hear contested cases arising under this act.

(5) At its first meeting of every calendar year, the board shall elect from its members a president who may appoint a secretary. The secretary may or may not be a member of the board. In carrying out the provisions of this act, *the only reimbursement* members of the board *may* receive *is* for travel expenses *allowed as in 59-538, 59-539, and 59-801, as amended,* incurred in the performance of board duties."

Section 25. Section 84-601, R.C.M. 1947, is amended to read as follows:

"**84-601. County tax appeal board — meetings and compensation.** The board of county commissioners of each county shall appoint a *three*-member county tax appeal board. The members of each tax appeal board shall be residents of the county in which they serve. *They* shall serve *4*-year terms and shall receive compensation of $25 *a* day and travel expenses *as provided for in 59-538, 59-539, and 59-801, as amended,* only when the county tax appeal board is in session to hear taxpayers' appeals from property tax assessments or *when they are* attending meetings called by the state tax appeal board. Travel expenses and compensation shall be paid from the appropriation to the state tax appeal board. Office space and equipment for the county tax appeal boards shall be furnished by

HeinOnline -- 1977 vol. II 1438 1977

the county. All other incidental expenses *shall* be paid from the appropriation of the state tax appeal board. The county tax appeal board must meet on the third Monday of June in each year to hear protests concerning assessments made by the department of revenue. It must continue in session for that purpose from time to time until the business of hearing protests is disposed of, but not later than the second Monday in August. In connection with any such appeal, the county tax appeal board *may* change any assessment or fix the assessment at some other level. *The* county clerk *shall* publish a notice to taxpayers, *giving* the time the county tax appeal board will meet to hear protests concerning assessments and the latest date the county tax appeal board may take applications for such hearings. *The notice shall be published* in a newspaper if any is printed in the county, *or* if none, then in such manner as the board may direct. The notice shall be published at least 7 days prior to the first meeting of the county tax appeal board."

Section 26. Section 84-702, R.C.M. 1947, is amended to read as follows:

"**84-702. Qualification and compensation.** *To* be appointed *a member* of the state tax appeal board, *a person must* possess knowledge of the subject of taxation and skill in matters pertaining thereto. No person so appointed *may* hold any other office under the laws of this state *or* any other state, *or* any office under *the* government of the United States or *under the government* of any other state. He shall devote his entire time to the duties of the office and shall not hold any *other* position of trust or profit *or* engage in any occupation or business interfering or inconsistent with his duties. The state tax appeal board is transferred to the department of administration for administrative purposes only as is specified in 82A-108. However, the board may hire its own personnel, and 82A-108(2)(d) does not apply. The member designated chairman as provided for in 84-703 shall receive additional compensation of not more than $500 *a year,* payable in the same manner as the salary. The state tax appeal board shall be paid travel expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* when away from the capital on official business."

Section 27. Section 84-6704, R.C.M. 1947, is amended to read as follows:

"**84-6704. Advisory committee — members — reimbursement — meetings.** There is hereby established the multistate tax compact advisory committee composed of the member of the multistate tax commission representing this state or any alternate designated by him, the attorney general or his designee, and two members of the senate, one from each of the two major political parties appointed by the senate committee on committees, and two members of the house of representatives, one from each of the two major political parties, appointed by the speaker of the house. The chairman shall be the member of the commission representing this state. Members of the commission who are members of the *legislature* shall be reimbursed for *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* incurred on commission business from any funds appropriated to implement this compact. The committee shall meet on the call of its chairman or at the request of a majority of its members, but

HeinOnline -- 1977 vol. II 1439 1977

in any event it shall meet not less than three times in each year. The committee may consider all matters relating to recommendations of the multistate tax commission and the activities of the members in representing this state thereon."

Section 28. Section 92-116.1, R.C.M. 1947, is amended to read as follows:

"**92-116.1. Administration fund.** (1) *A workers'* compensation administration fund *is established,* out of which all costs of administering the *Workers'* Compensation and Occupational Disease Acts and the various occupational safety acts the division must administer are to be paid upon lawful appropriation. The following moneys collected by the *workers'* compensation division shall be deposited in the state treasury to the credit of the *workers'* compensation administrative fund and shall be used for the administrative expenses of the division:

(a) all fees and fines provided in 92-119, 92-820, and 92-1358;

(b) all fees paid for inspection of boilers and issuance of licenses to operating engineers as required by law;

(c) all fees paid from an assessment on each plan No. 1 employer, plan No. 2 insurer, and plan No. 3, the state insurance fund. The assessments shall be levied against the preceding calendar year's gross annual payroll of the plan No. 1 employers and the gross annual direct premiums collected in Montana on the policies of the plan No. 2 insurers, insuring employers covered under the act, during the preceding calendar year. However, no assessment of the plan No. 1 employer or plan No. 2 insurer shall be less than $200. The assessments shall be sufficient to fund the direct costs identified to the three plans and an equitable portion of the indirect costs based on the ratio of the preceding fiscal year's indirect costs distributed to the plans using proper accounting and cost allocation procedures. Plan No. 3 shall be assessed an amount sufficient to fund its direct costs and an equitable portion of the indirect costs as referred to above. Other sources of revenue including unexpended funds from the preceding fiscal year shall be used to reduce the costs before levying the assessments.

(2) The administration fund shall be debited with expenses incurred by the division in the general administration of the provisions of this act, including the salaries of its members, officers, and employees, and the *travel* expenses of *the* members, officers, and employees, *as provided for in 59-538, 59-539, and 59-801, as amended,* incurred while on the business of the division either within or without the state.

(3) Disbursements from the administration moneys shall be made after being approved by the division upon claim therefor."

Section 29. Section 93-716, R.C.M. 1947, is amended to read as follows:

"**93-716. No compensation — travel expenses.** The members of the commission are not entitled to compensation for their services, but they are entitled to *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* while actually engaged in the discharge of their official duties."

HeinOnline -- 1977 vol. II 1440 1977

Section 30. Section 93-721, R.C.M. 1947, is amended to read as follows:

"**93-721. No compensation — travel expenses.** A commission member is not entitled to compensation for his services but is entitled to *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* incurred in the performance of his duties."

Section 31. Section 95-3124.1, R.C.M. 1947, is amended to read as follows:

"**95-3124.1. Expenses for returning fugitives.** An agent of this state authorized to return a fugitive from justice to this state may utilize commercial transportation, aircraft, or motor vehicle to return the fugitive. The agent shall be paid *travel* expenses, *as provided for in 59-538, 59-539, and 59-801, as amended,* incurred in returning the fugitive to this state."

Approved April 19, 1977.

CHAPTER NO. 454

AN ACT TO PROVIDE FOR THE PROTECTION OF PERSONS DEALING WITH CEMETERY OR MAUSOLEUM-COLUMBARIUM CORPORATIONS AND TO INSURE THE PERFORMANCE OF CONTRACTUAL OBLIGATIONS BY THOSE CORPORATIONS; AMENDING SECTION 86-701, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 86-701, R.C.M. 1947, is amended to read as follows:

"**86-701. Contract for prearranged funeral plan or related services — trust created.** In all cases when, prior to his death, a person, or someone in his behalf, makes a contract for the final disposition of his body, under which contract, pursuant to a prearranged funeral plan, personal property will be delivered upon his death or the professional services of a funeral director, embalmer, *cemetery firm, or mausoleum-columbarium corporation* will then be furnished, all money paid under such contract shall be held in trust for the purpose for which it was paid until the obligation is fulfilled according to its terms or, by mutual consent of both parties to the contract, said money is refunded to the proper party. Accruals of interest upon this money are subject to this same trust. *Such a trust is not necessary for that part of the contract that involves the sale of a cemetery lot if title is passed at the time the cemetery firm receives payment for the cemetery lot.*"

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved April 19, 1977.

HeinOnline -- 1977 vol. II 1441 1977

CHAPTER NO. 455

AN ACT TO AUTHORIZE THE SECRETARY OF STATE TO ORDER THE INVOLUNTARY DISSOLUTION OF CORPORATIONS WITHOUT COURT DECREE; AMENDING SECTIONS 15-2287, 15-2290, AND 15-2354, R.C.M. 1947; AND REPEALING SECTIONS 15-2288, 15-2289, 15-2351, 15-2352, AND 15-2353, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 15-2287, R.C.M. 1947, is renumbered 15-2701 and is amended to read as follows:

"**15-2701. Involuntary dissolution.** *(1) Any domestic* corporation, *whether for profit or not for profit,* may be dissolved involuntarily by *order of the secretary of state* when:

(a) *the* corporation has failed to file its annual report within the time required by *law or failed to remit any fees required by law;*

(b) *the* corporation procured its certificate of incorporation through fraud;

(c) *the* corporation has exceeded or abused the authority conferred upon it by law and such excesses or abuses have continued after a written notice specifying the manner in which the corporation has exceeded or abused such authority has been received by the registered agent of the corporation from the *secretary of state;*

(d) *the* corporation has failed for *60* days to appoint and maintain a registered agent in this state; or

(e) *the* corporation has failed for *60* days after change of its registered office or registered agent to file in the office of the secretary of state a statement of such change.

(2) If dissolution is sought under subsection (1)(b) or (1)(c) of this section, the secretary of state may so dissolve only when such fact is established by an order of the district court. In addition to other persons so authorized by law, the secretary of state or the attorney general may maintain an action in the district court to implement the provisions of this section."

Section 2. There is a new R.C.M. section numbered 15-2702 that reads as follows:

15-2702. Defaulting corporations — penalties and forfeitures. A corporation which is guilty of any of the actions or omissions described in 15-2701(1) is in default. The defaulting corporation may, by reason of such default, be dissolved involuntarily by an order of the secretary of state in accordance with the provisions of this chapter and thereby forfeit its right to transact any business within the state.

Section 3. There is a new R.C.M. section numbered 15-2703 that reads as follows:

HeinOnline -- 1977 vol. II 1442 1977

15-2703. Revocations of charters of defaulting corporations — duties of secretary of state — distribution of corporate assets. (1) On or before October 1 of each year, the secretary of state shall compile a complete list of all defaulting corporations, together with the amount of any filing fee, penalty, or costs remaining unpaid.

(2) The secretary of state shall give notice to the defaulting corporations by causing such list to be posted in the state capitol for a period of at least 90 days and:

(a) by mailing a letter addressed to the corporation in care of its registered agent or any director or officer; or

(b) by publication of a general notice to all Montana corporations once a month for 3 consecutive months in a newspaper of general circulation in Lewis and Clark County.

(3) The notice referred to in subsection (2) shall specify the fact of the proposed dissolution and state that unless the grounds for dissolution described in 15-2701 no longer exist on the following first Monday in March:

(a) the secretary of state will dissolve such defaulting corporations;

(b) such corporations will forfeit the amount of any tax, penalty, or costs to the state of Montana; and

(c) such corporations will forfeit their rights to carry on business within the state.

(4) Immediately after the first Monday in March, the secretary of state may, by order, dissolve all corporations which have not satisfied the requirements of applicable law and compile a full and complete list containing the names of all corporations that have been so dissolved. The secretary of state shall immediately give notice to the dissolved corporation as specified in subsection (2) of this section.

(5) In the case of involuntary dissolution, all the property and assets of the dissolved corporation shall be held in trust by the directors of such corporation and 15-2290 or 15-2354, whichever is appropriate, is applicable to liquidate such property and assets if necessary.

Section 4. There is a new R.C.M. section numbered 15-2704 that reads as follows:

15-2704. Reinstatement of defaulting corporations — duties of secretary of state — application and fees. (1) The secretary of state may:

(a) reinstate any corporation which has been dissolved under the provisions of this chapter; and

(b) restore to such corporation its right to carry on business in this state and to exercise all its corporate privileges and immunities.

(2) A corporation applying for reinstatement shall submit to the secretary of state in duplicate an application signed by its authorized representative setting forth:

HeinOnline -- 1977 vol. II 1443 1977

(a) the name of the corporation;

(b) a statement that the assets of the corporation have not been liquidated pursuant to 15-2290 or 15-2354;

(c) a statement that not less than a majority of its directors have authorized the application for reinstatement; and

(d) if its corporate name has been legally acquired by another corporation prior to its application for reinstatement, the corporate name under which the corporation desires to be reinstated.

(3) The corporation shall submit with its application for reinstatement:

(a) a certificate from the department of revenue stating that all taxes imposed pursuant to Title 84 have been paid; and

(b) a filing fee in an amount equal to one-half of the filing and license fees which the corporation would be required to pay if the corporation were filing its articles of incorporation.

(4) When all requirements are met and the secretary of state reinstates the corporation to its former rights, he shall:

(a) conform and file in his office reports, statements, and other instruments submitted for reinstatement; and

(b) immediately issue and deliver to the corporation so reinstated a certificate of reinstatement authorizing it to transact business; and

(c) upon demand, issue to the corporation one or more certified copies of such certificate of reinstatement.

(5) Any restoration of corporate rights pursuant to this act relate back to the date the corporation was involuntarily dissolved and the corporation shall be considered to have been an existing legal entity from the date of its original incorporation.

(6) The secretary of state may not order a reinstatement if 5 years have elapsed since the dissolution.

Section 5. There is a new R.C.M. section numbered 15-2705 that reads as follows:

15-2705. Acquisition of new name by defaulting corporation upon reinstatement. In all cases where a corporation is dissolved under the provisions of this chapter or has, prior to July 1, 1977, been dissolved under other law and the corporate name of that corporation has been legally acquired by another corporation prior to the application for reinstatement of such dissolved corporation, such dissolved corporation shall in its application for reinstatement submit to the secretary of state some other name under which it desires its corporate existence to be reinstated. If that name is sufficiently distinctive and different from all existing corporations, the secretary of state shall issue to such reinstated corporation a certificate of reinstatement under the new name.

Section 6. There is a new R.C.M. section numbered 15-2706 that reads as follows:

HeinOnline -- 1977 vol. II 1444 1977

15-2706. Applicability to corporations presently in default. The secretary of state may initiate procedures consistent with this act to dissolve corporations that have been in default prior to July 1, 1977.

Section 7. Section 15-2290, R.C.M. 1947, is amended to read as follows:

"**15-2290. Jurisdiction of court to liquidate assets and business of corporation.** The district courts shall have full power to liquidate the assets and business of a corporation:

(a) In an action by a shareholder when it is established:

(1) That the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof; or

(2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(3) That the shareholders are deadlocked in voting power, and have failed for a period which includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(4) That the corporate assets are being misapplied or wasted.

(b) In an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon returned unsatisfied and it is established that the corporation is insolvent; or

(2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation which has filed a statement of intent to dissolve, as provided in this act, to have its liquidation continued under the supervision of the court.

(d) When *a corporation has been dissolved by the secretary of state* and it is established that liquidation of its business and affairs *is necessary.*

(e) Upon filing a verified petition and/or application by a stockholder, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 300, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or shareholders legally entitled to the same.

Proceedings under this section shall be brought in the county in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally."

HeinOnline -- 1977 vol. II 1445 1977

Section 8. Section 15-2354, R.C.M. 1947, is amended to read as follows:

"15-2354. Jurisdiction of court to liquidate assets and affairs of corporation. Courts of equity shall have full power to liquidate the assets and affairs of a corporation:

(a) In an action by a member or director when it is made to appear:

(1) That the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(2) That the acts of the directors or those in control of the corporation are illegal, oppressive or fraudulent; or

(3) That the members entitled to vote in the election of directors are deadlocked in voting power and have failed for at least two (2) years to elect successors to directors whose terms have expired or would have expired upon the election of their successors;

(4) That the corporate assets are being misapplied or wasted; or

(5) That the corporation is unable to carry out its purposes.

(b) In an action by a creditor:

(1) When the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(2) When the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent.

(c) Upon application by a corporation to have its dissolution continued under the supervision of the court.

(d) When a corporation *has been dissolved by the secretary of state* and it is established that liquidation of its affairs *is necessary.*

(e) Upon filing a verified petition and/or application by a member, director or creditor of any corporation which was dissolved under any corporation laws, which were in effect prior to the effective date of chapter 198, Laws of Montana 1967, if such dissolved corporation has, or may hereafter be found to have, any property, property rights or other assets, including money, which have not been distributed to creditors and/or members legally entitled to the same.

Proceedings under this section shall be brought in the district court in which the registered office or the principal office of the corporation is situated.

It shall not be necessary to make directors or members parties to any such action or proceedings unless relief is sought against them personally."

HeinOnline -- 1977 vol. II 1446 1977

Section 9. **Repealer.** Sections 15-2288, 15-2289, 15-2351, 15-2352, and 15-2353, R.C.M. 1947, are repealed.

Approved April 19, 1977.

CHAPTER NO. 456

AN ACT CREATING A MUNICIPAL POLICE OFFICERS' RETIREMENT SYSTEM AND PROVIDING FOR ITS ADMINISTRATION; AMENDING SECTIONS 11-1823, 11-1825, 11-1826, 11-1834, 11-1836, AND 11-1844, R.C.M. 1947; AND REPEALING SECTIONS 11-1821.1, 11-1824, 11-1838, 11-1839, 11-1840, 11-1841, 11-1842, 11-1848, 11-1850, 82A-222, AND 82A-223, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-1860 that reads as follows:

11-1860. Short title. This act may be cited as the "Municipal Police Officers' Retirement Act".

Section 2. There is a new R.C.M. section numbered 11-1861 that reads as follows:

11-1861. Definitions. Unless the context requires otherwise, the following definitions apply in 11-1860 through 11-1892:

(1) "Plan" means the municipal police officers' retirement system created by this act.

(2) "Prior plan" means the local police reserve or retirement fund of a city which elects to join the plan under 11-1885 or the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974.

(3) "Employer" means any city which participated in a prior plan or which elects to join this plan under 11-1885.

(4) "Administrator" means the public employees' retirement division of the department of administration.

(5) "Board" means the retirement board described in 82A-210.

(6) "Member" means a person who is employed by an employer as a police officer or who is entitled to a retirement allowance by virtue of his service to an employer as a police officer.

(7) "Member contributions" means the total of the deductions from the compensation of a member, either made during a period of active membership hereunder or made under a prior plan and transferred to this plan, standing to his credit, together with the interest thereon.

(8) "Monthly compensation" means the wage, excluding overtime,

HeinOnline -- 1977 vol. II 1447 1977

holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, a member receives as an active police officer.

(9) "Final average salary" means the monthly compensation of a member, averaged over the last 36 months of his active service or, in the event he has not been a member that long, over the period of his membership.

(10) "Prior service" means a period of employment as a police officer for which credit was granted to a member under a prior plan and has been transferred to this plan.

(11) "Membership service" means a period of employment with an employer occurring after June 30, 1977, during which the withholdings required by this act have been made from a member's monthly compensation and credited to his member contributions account. Pro rata credit shall be granted for employment on a part-time basis or for employment over a period of less than a complete fiscal year.

(12) "Credited service" means the aggregate of a member's prior service and membership service.

(13) "Member's annuity" means monthly payments for life derived from member contributions.

(14) "Employer annuity" means monthly payments for life derived from employer and state contributions.

(15) "Retirement allowance" means the employer annuity plus the member's annuity.

(16) "Minimum retirement date" or "normal retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member becomes both age 50 or older and completes 20 or more years of credited service.

(17) "Mandatory retirement date" means the first day of the month coinciding with or immediately following, if none coincides, the date on which a member attains age 65.

(18) "Retirement date" means the date on which the first payment of the retirement, disability, or survivor benefits of a member or a beneficiary is payable.

(19) "Totally and permanently disabled" means that the board, upon certification by a licensed and practicing physician, has determined that a member's disability is of such a nature as to permanently impair his ability to discharge his normal duties as a police officer.

(20) "Police officer" means a law enforcement officer employed by an employer.

(21) "Fund" means the agency account in the treasury system designated for the use of the plan.

Section 3. There is a new R.C.M. section numbered 11-1862 that reads as follows:

HeinOnline -- 1977 vol. II 1448 1977

11-1862. Municipal police officers' retirement system established. A municipal police officers' retirement system is established and shall be governed by the provisions of 11-1860 through 11-1892.

Section 4. There is a new R.C.M. section numbered 11-1863 that reads as follows:

11-1863. Active membership. (1) A police officer becomes an active member under the plan:

(a) on the date his employment by an employer commences;

(b) on July 1, 1977, if he is employed by an employer on that date; or

(c) in the case of an employer which elects to join the plan as provided in 11-1885, on the effective date of such election if he is employed by the employer on that date.

(2) Upon becoming eligible for membership, he shall complete such forms and furnish such proof as may be required by the board.

(3) No active member is eligible to be covered under any other mandatory retirement plan for police service to which an employer is required to contribute on his behalf, except the Social Security Act, while he is eligible to be covered by this plan.

(4) A member is entitled to benefits based upon the entire period of his credited service and final average salary without regard to the number of employers by whom he was employed or the number of periods of his employment so that no duplication of credited service occurs.

Section 5. There is a new R.C.M. section numbered 11-1864 that reads as follows:

11-1864. Inactive membership. (1) An active member becomes an inactive member upon the occurrence of the earlier of the following:

(a) the date he ceases to be employed by an employer and becomes entitled to a retirement allowance;

(b) the date of commencement of an approved absence from active duty with an employer of a substantial duration.

(2) An inactive member becomes an active member on the day he returns to active duty with an employer. Upon again becoming an active member, his retirement allowance, if any, shall cease being paid to him until he again becomes an inactive member.

Section 6. There is a new R.C.M. section numbered 11-1865 that reads as follows:

11-1865. Cessation of membership. A member shall cease to be a member upon the occurrence of the earlier of the following:

(1) the date he withdraws his member contributions in lieu of all other benefits under the plan;

HeinOnline -- 1977 vol. II 1449 1977

(2) the date of his death.

Section 7. There is a new R.C.M. section numbered 11-1866 that reads as follows:

11-1866. Employer and state contributions and funding sources. (1) Employer and state contributions shall be paid to the administrator who shall, as soon as practicable after their receipt, deposit them with the state treasurer.

(2) The state of Montana shall make its contributions through the state auditor out of the premium tax on motor vehicle property and casualty insurance policies. Such payments shall be made annually from the gross premium tax after deduction for cancellations and returned premiums. The administrator shall notify the auditor of the annual compensation paid to all active members during the preceding year and the state's contribution shall be 12% of such compensation.

(3) Each employer shall make its contribution on behalf of members through the city treasurer or other appropriate official out of moneys available to the city for such purpose. The employer's contribution shall be 12% of the total monthly compensation paid to all active members during the preceding month and shall be payable monthly to the administrator.

(4) (a) It is found and declared by the legislature that many cities operating under prior plans have excess and unfunded liabilities under such prior plans, which liabilities cannot be amortized by the percentage contributions set forth in subsections (2) and (3).

(b) The administrator shall, on or before October 1, 1977, determine the excess and unfunded liability of each city which participates in the plan created by this act. The determination of the administrator, in the absence of fraud, abuse of discretion, or arithmetic error, is final and binding on each city. Each city found by the administrator to have an excess and unfunded liability under a prior plan, which as of July 1, 1977, is not funded by sums on deposit or funds available for deposit with the administrator, shall pay an additional sum over a period of time to amortize its excess liability as determined by the administrator. If any city and the administrator are unable by January 1, 1978, to negotiate and reduce to writing the terms of an agreement satisfactory to both of them for the city to amortize its excess liability, the administrator shall require such city to pay an additional sum to amortize its excess liability on July 1, 1977, over a period of not more than 40 years.

(c) Each city found by the administrator to be paying an amount in excess of the amount necessary to amortize its liabilities under the prior plan and under this act shall receive a credit in the accounts of the administrator for any such excess payments.

Section 8. There is a new R.C.M. section numbered 11-1867 that reads as follows:

11-1867. Member contributions. (1) The treasurer or other appropriate official of each employer shall retain from the monthly compensation of each active member a sum equal to 6% of his monthly compensation,

HeinOnline -- 1977 vol. II 1450 1977

excluding overtime, holiday payments, shift differential payments, compensation time payments, and payments in lieu of sick leave and annual leave, for his services as a police officer. The monthly deduction from the salaries of police officers shall be paid to the administrator for the purpose of paying the retirement allowances of retired police officers.

(2) A member is at all times fully vested in the deductions made from his compensation as a member or as a member of a prior plan standing to his credit and may, at his discretion, withdraw the full amount of these deductions upon his termination of employment in accordance with 11-1873 and forfeit all rights and interest with respect to any benefits which would otherwise become payable under the plan.

Section 9. There is a new R.C.M. section numbered 11-1868 that reads as follows:

11-1868. Reinstatement after withdrawal of member contributions — redeposit of amounts withdrawn. (1) Upon reinstatement to active membership, a member may redeposit in the fund, in one lump sum or in installments not to exceed 12 monthly or 24 semimonthly installments, an amount equal to the member contributions which he withdrew plus an amount equal to the interest which would have been credited to his account had he not withdrawn his member contributions. If a member makes such a redeposit, his credited service shall be reinstated.

(2) If an active member does not elect to make the redeposit provided for in subsection (1), he forfeits his credited service for the period attributable to the withdrawn member contributions.

Section 10. There is a new R.C.M. section numbered 11-1869 that reads as follows:

11-1869. Other moneys credited as employer contributions. All gifts, bequests, or emoluments given to an employer or member for the benefit of the plan or because of any member's service as a police officer, except when specifically allowed to be retained by the member by his employer, and all moneys withheld from the monthly compensation of a member for violation of the rules of his employer shall be paid to the administrator. The administrator shall credit them to the fund and, as soon as practicable after their receipt, deposit them with the state treasurer. Such amounts are employer contributions but are in addition to the amounts required by 11-1866.

Section 11. There is a new R.C.M. section numbered 11-1870 that reads as follows:

11-1870. Application for service retirement. On or after a member's minimum retirement date and prior to his mandatory retirement date, he may retire on a service retirement allowance by making written application to the employer. The employer shall forward the application to the board not less than 30 days or more than 90 days before the elected retirement date. The application shall state the elected retirement date.

Section 12. There is a new R.C.M. section numbered 11-1871 that reads as follows:

HeinOnline -- 1977 vol. II 1451 1977

11-1871. Eligibility for disability retirement. If a member is determined by the board to be totally and permanently disabled, he is entitled to a disability retirement allowance, regardless of the length of his service, commencing as of the first day of the month coinciding with or immediately following, if none coincides, the date on which he became totally and permanently disabled.

Section 13. There is a new R.C.M. section numbered 11-1872 that reads as follows:

11-1872. Procedure upon recovery from total and permanent disability. (1) If an inactive member is determined by the board to be no longer totally and permanently disabled, his disability retirement allowance shall cease as of the date of such determination and he shall be notified of the determination by the board. The board may review the status of any inactive member at any time.

(2) Any inactive member whose disability retirement allowance is so cancelled shall be reinstated to the position held by him immediately before his retirement or to a position in the same classification with duties within his capacity. The board shall advise the employer that the disability retirement allowance has been cancelled and that the inactive member is eligible for reinstatement to duty. The fact that he was retired for disability may not prejudice any right to reinstatement to duty which the inactive member may have or claim to have.

(3) If the inactive member again becomes an active member by returning to active work for an employer within 30 days following his receipt of notice under subsection (1), he shall be considered to have been continuously employed during the term of his disability. If the inactive member fails to become an active member by returning to active work for an employer within 30 days following receipt of such notice, his termination of employment shall be considered to have occurred as of his disability retirement date and the retirement allowance, if any, to which he becomes entitled on his service retirement shall be determined accordingly.

Section 14. There is a new R.C.M. section numbered 11-1873 that reads as follows:

11-1873. Termination of employment prior to retirement. (1) Upon termination of the employment of an active member prior to his retirement date, he shall withdraw the amount of his member contributions in lieu of all other benefits under the plan. If he has 10 years or more of service, the amount paid shall include regular interest, at a rate to be determined by the board, on such amounts. If he has less than 10 years of service, he shall receive only the amount paid through salary deductions, without interest. If an active member's employment terminates by reason of his death, his beneficiaries are entitled to the benefits prescribed in 11-1875.

Section 15. There is a new R.C.M. section numbered 11-1874 that reads as follows:

11-1874. Retirement allowances to be monthly and fixed. The retirement allowances granted under the provisions of 11-1860 through

HeinOnline -- 1977 vol. II 1452 1977

11-1892 shall be paid in monthly installments. They may not be increased or decreased, except as specifically provided herein, or repealed or revoked except by an act of the Montana legislature.

Section 16. There is a new R.C.M. section numbered 11-1875 that reads as follows:

11-1875. Death benefits. (1) A member's retirement allowance shall be paid first to the member during his lifetime and, upon his death, in the manner and to the persons designated in subsection (2).

(2) Upon the death of a police officer before or after retirement, his surviving spouse, if there is one, shall, as long as such spouse remains the surviving spouse, be paid from the fund a sum equal to one-half of the officer's final average salary. If the officer leaves one or more dependent minor children, then, upon his death if he leaves no surviving spouse or upon the death or remarriage of the surviving spouse, his surviving dependent minor children, collectively if there is more than one, shall receive the same monthly payments a surviving spouse would receive, until they reach the age of 18 years or are married. The payments shall be made to their duly appointed, qualified, and acting guardian for their use. If there is more than one such child, upon each child reaching the age of 18 years or marrying, the pro rata payments to that child shall cease and shall be made to the remaining children until all the children have reached the age of 18 years or are married.

Section 17. There is a new R.C.M. section numbered 11-1876 that reads as follows:

11-1876. Retirement benefits exempt from state or municipal tax. Any money received as a retirement allowance in accordance with the provisions of 11-1860 through 11-1892 is exempt from any state or municipal tax.

Section 18. There is a new R.C.M. section numbered 11-1877 that reads as follows:

11-1877. Rights to benefits unassignable — protection from legal process. The benefits payable hereunder are not subject to the claims of any creditor of a member, beneficiary, or survivor or to attachment, garnishment, or other legal or equitable process. No member, beneficiary, or survivor may alienate, anticipate, commute, pledge, encumber, assign, or sell any of such benefits.

Section 19. There is a new R.C.M. section numbered 11-1878 that reads as follows:

11-1878. Retirement board — powers and duties. (1) The board is authorized to administer, interpret, and enforce the provisions of 11-1860 through 11-1892.

(2) The board shall establish such uniform rules as are necessary to administer the provisions of 11-1860 through 11-1892. The board is the sole authority under 11-1860 through 11-1892 as to the conditions under which persons may become members of and receive benefits under the retirement system. The board shall determine and may modify allowances for retirement and disability under 11-1860 through 11-1892.

HeinOnline -- 1977 vol. II 1453 1977

(3) The board shall determine whether a member has become totally and permanently disabled and whether the disability is duty-related. In the discharge of its duties regarding such determination, the board, any member thereof, or any duly authorized representative of the board may order medical examinations, conduct hearings, administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and documents considered necessary as evidence in connection with the claim for disability retirement. The board shall secure medical service and advice necessary to carry out the purposes of this section.

(4) Except as otherwise provided in 11-1860 through 11-1892, the department of administration, through the administrator and the board of investments, shall administer, invest, account for, and treat the funds deposited with it under 11-1860 through 11-1892 in accordance with the rules dealing with the public employees' retirement system, insofar as such rules are not inconsistent with those promulgated and adopted by the board. The contributions of the state, employers, and members paid to the administrator under 11-1860 through 11-1892 may be commingled for investment purposes.

Section 20. There is a new R.C.M. section numbered 11-1879 that reads as follows:

11-1879. Retirement account. On July 1, 1977, there will be an account in the agency fund to be maintained on behalf of the plan. The state treasurer is the custodian of the account subject to the exclusive administrative control of the board.

Section 21. There is a new R.C.M. section numbered 11-1880 that reads as follows:

11-1880. Transfer of assets and liabilities from prior plans. All funds and obligations constituting the assets and liabilities of prior plans, regardless of their form or who holds them, shall be transferred to the account provided for in 11-1879. The board shall ascertain the amounts to be apportioned to each account upon the passage of this act, and the state treasurer shall transfer such amounts to the appropriate accounts on July 1, 1977.

Section 22. There is a new R.C.M. section numbered 11-1881 that reads as follows:

11-1881. Benefits to members of prior plans. (1) All provisions of this plan are effective as to a member whose retirement date occurred prior to July 1, 1977, except the amount and mode of payment of such member's retirement allowance will remain unchanged.

(2) This act may not decrease the benefits of a member under a prior plan.

Section 23. There is a new R.C.M. section numbered 11-1882 that reads as follows:

HeinOnline -- 1977 vol. II 1454 1977

11-1882. Actuarial valuation. The board shall engage the services of a qualified actuary to conduct an actuarial valuation of the plan in each even-numbered year. It shall include the actuary's determination of the financial condition of the plan, the level of annual contributions required to maintain the plan on an actuarially sound basis, and, if applicable, the level of annual contributions required to amortize the excess and unfunded liabilities described in 11-1866(4). A qualified actuary is one who is a member of the American academy of actuaries or of any organization considered by the board to have similar standards.

Section 24. There is a new R.C.M. section numbered 11-1883 that reads as follows:

11-1883. Administrative expenses. The expense of administration of 11-1860 through 11-1892, exclusive of amounts required to be paid as benefits to or on behalf of a member, shall be borne by the state and shall be in addition to the amounts required of it as contributions.

Section 25. There is a new R.C.M. section numbered 11-1884 that reads as follows:

11-1884. Taxing authority of employers. (1) For the purpose of making contributions required of a city under 11-1860 through 11-1892, when the demand for deposits of such contributions cannot be met within the general taxing authority and other revenues available to the city for that purpose, the appropriate authority of the city may levy any additional tax authorized by law until the general taxing authority and other revenue available for that purpose is sufficient to meet the demand.

(2) "General taxing authority", as used in this section, means that levy which the city may make under the all-purpose levy or under multiple-purpose levies, if the city is using multiple-purpose levies.

(3) No provision of any statute relating to the all-purpose levy may be so construed as to limit the additional taxing authority created by this section.

Section 26. There is a new R.C.M. section numbered 11-1885 that reads as follows:

11-1885. Election to join plan — transfer of assets. (1) Cities other than those participating in the statewide police reserve fund administered by the department of administration in accordance with Chapter 335, Laws of 1974, as of June 30, 1977, may elect to join the plan by passing an ordinance stating the election and the consent of the city to be bound by the provisions of 11-1860 through 11-1892. Upon the enactment of such an ordinance, the provisions of 11-1860 through 11-1892 become applicable to the city. Any city enacting such an ordinance shall send a certified copy thereof to the board and shall, as soon as possible thereafter, deposit with the board all cash and securities held by it in its local police reserve or retirement fund. The value of the securities shall be determined by the board.

(2) The trustees or other administrative head of the local system as of the effective date of the election shall certify the proportion, if any, of the funds of the system that represents the accumulated contributions

HeinOnline -- 1977 vol. II 1455 1977

of the active members and the relative shares of the members as of that date. Such shares shall be charged to the employer and credited to the respective individual accounts of the members in the plan and administered as if the contributions had been made during membership in the plan. Any excess of employer credits over charges under this section will be offset, with interest, against future required employer contributions. Any excess of employer charges over credits under this section are payable by the employer, with interest, on a basis determined by the procedure described in subsections (4)(b) and (4)(c) of 11-1866.

Section 27. There is a new R.C.M. section numbered 11-1886 that reads as follows:

11-1886. Penalty for false statements or falsification of records. (1) No person may knowingly make any false statement or permit to be falsified any records of the plan in an attempt to defraud the plan.

(2) If any change in records fraudulently made or any mistake in records inadvertently made results in any member, survivor, or beneficiary receiving more or less than he was entitled to, then, on the discovery of the error, the board shall correct the error and adjust the payments to the member, survivor, or beneficiary in an equitable manner.

(3) A person who violates any of the provisions of subsection (1) is guilty of a misdemeanor and, upon conviction, shall be punished by a fine not exceeding $500 or imprisonment in the county jail for a term not exceeding 6 months, or both.

Section 28. There is a new R.C.M. section numbered 11-1887 that reads as follows:

11-1887. Board's authority to refuse to make payments. The board may revoke, refuse to grant, or suspend a member's annuity for disability or death caused by wrongful conduct. If the disability causing a member to retire or the death of a member is directly and proximately caused by the member's immoral or intemperate conduct or gross negligence, the board may refuse to grant, revoke, or suspend the employer annuity.

Section 29. There is a new R.C.M. section numbered 11-1888 that reads as follows:

11-1888. Transfer of dormant member contributions to employer's account. The board may, in its discretion, transfer member contributions to the employer's account if the member's contribution account has been dormant for a period of 10 years. No right of the member may be jeopardized by such a transfer, and the member contributions shall be transferred back to the member's name upon his subsequent reinstatement as a member.

Section 30. There is a new R.C.M. section numbered 11-1889 that reads as follows:

11-1889. Eligibility for service retirement. (1) Members are eligible for retirement and shall retire as provided in this section:

(a) A member who was employed by an employer as a police officer

HeinOnline -- 1977 vol. II 1456 1977

on July 1, 1975, is eligible to receive a service retirement allowance when he has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank. A police officer serving in the United States military in time of war or national emergency shall be given credit in his police record for such service in the same manner as though he were on active police duty.

(b) A member who was or is first employed by an employer as a police officer after July 1, 1975, is eligible to receive a service retirement allowance when he has reached the age of 50 and has completed 20 years or more in the aggregate as a probationary officer, a regular officer, or a special officer, in any capacity or rank. He shall receive credit for military service as prescribed in subsection (1)(a).

(c) Police officers, whether first employed before or after July 1, 1975, who reach the age of 65 while in active service shall retire.

(2) A police officer who is eligible for service retirement under subsection (1)(a) or (1)(b) may retire as of the time he becomes eligible or may elect to serve an additional 1 to 10 years as an active police officer, except that he may not elect to serve past his 65th birthday, the mandatory retirement date.

Section 31. There is a new R.C.M. section numbered 11-1890 that reads as follows:

11-1890. Determination of retirement allowance. Retirement allowances under 11-1860 through 11-1892 shall be paid out of the fund and shall be determined as follows:

(1) A police officer who is eligible under subsection (1)(a) or (1)(b) of 11-1889 and does not elect to serve any additional years as an active police officer or who is retired under 11-1889(1)(c) prior to reaching 20 years of service shall receive a service retirement allowance equal to one-half his final average salary.

(2) A police officer who is eligible for service retirement after 20 years of service and who elects to serve additional years shall receive the allowance provided for in subsection (1) plus an additional 1% of such allowance per year of additional service, up to a maximum of 60% of the final average salary. A police officer whose eligibility depends on 11-1889(1)(b) and who completes 20 years of service before reaching the age of 50 is considered to have elected to serve an additional year for each year between the completion of his 20th year of service and his 50th birthday and shall be paid the additional 1% for each such year.

(3) A police officer who is retired under 11-1889(1)(c) and who was theretofore eligible at his option to be retired under subsection (1)(a) or (1)(b) of 11-1889 but elected to serve additional years shall be paid for the additional years over his original eligibility at the rate prescribed in subsection (2).

(4) A police officer who is eligible under 11-1871 before completing 20 years of service shall receive a disability retirement allowance equal to one-half his average final salary.

HeinOnline -- 1977 vol. II 1457 1977

(5) A police officer who is retired under 11-1871 and who, at the time of his injury or disability, was eligible at his option to be retired under subsection (1)(a) or (1)(b) of 11-1889 but had elected to serve additional years and was then serving such additional years shall be paid for the additional years at the rate prescribed in subsection (2).

Section 32. There is a new R.C.M. section numbered 11-1891 that reads as follows:

11-1891. Department to provide forms — information from employers. The department of administration shall prepare such forms as it finds necessary for the employers to complete to provide all the information necessary to administer 11-1860 through 11-1892, and the cities shall give the department of administration all data necessary to carry out the purpose and intent hereof.

Section 33. There is a new R.C.M. section numbered 11-1892 that reads as follows:

11-1892. Application of reserve and retirement provisions of prior law. (1) As cities other than those participating in the statewide police reserve fund provided for in Chapter 335, Laws of 1974, currently have local police reserve funds, the legislature finds and declares that the law regarding such funds, although in conflict with 11-1860 through 11-1892, cannot be repealed. It is the express intention of the legislature to allow two separate and distinct retirement systems to exist. The first, which includes local police reserve funds, applies to such cities, other than those of the first and second class, which wish to adopt it. The second, created by this act, applies to first and second class cities, those other cities which wish to adopt it, and any city which has adopted the above-mentioned statewide police reserve fund.

(2) The following sections may not be applied in any way to a city operating under the plan created by this act: 11-1809, 11-1819, 11-1822, 11-1823, 11-1825, 11-1826, 11-1827, 11-1828, 11-1829, 11-1830, 11-1834, 11-1835, 11-1836, 11-1837, 11-1843, 11-1844, 11-1845, and 11-1847.

Section 34. There is a new R.C.M. section numbered 82A-225 that reads as follows:

82A-225. Board of trustees abolished — functions transferred. The board of trustees of the police reserve fund of a city which elects to participate in the municipal police officers' retirement system under 11-1885 is abolished as of the time that the transfer of the cash and securities and the certification required by that section is completed. The functions of the board are transferred as of the date of the election to the department of administration and the board, as provided in the Municipal Police Officers' Retirement Act.

Section 35. Section 11-1823, R.C.M. 1947, is amended to read as follows:

"11-1823. Fund for payment of officers on reserve lists — tax levy. Cities having *police reserve* funds, not cities of the first or second class, *which did not elect to join the statewide police reserve fund provided for in Chapter 335, Laws of 1974, and which have not elected to participate*

in the plan under 11-1855 shall deposit in the fund of that city monthly an amount equal to eleven percent (11%) of the total salaries, exclusive of overtime and payments in lieu of sick leave and annual leave, for the preceding month, paid to active police officers of that city. In case the demand against the city for its deposits in such fund shall be such that it cannot be met within the general taxing authority of that city, then and in such case an additional levy of not to exceed three (3) mills may be made until the general taxing authority be sufficient to meet the demand."

Section 36. Section 11-1825, R.C.M. 1947, is amended to read as follows:

"**11-1825. Salary deduction for payment of reserve officers.** The treasurer of any incorporated city which has a police reserve fund, shall retain from the monthly salary of all police officers upon the active list, a sum equal to six percent (6%) of the monthly compensation paid each officer for his services as such police officer, exclusive of overtime and payments made in lieu of sick leave and annual leave, the said monthly deduction from the salaries of such police officers, shall be paid into the city's police reserve fund for the purpose of paying the salaries of police officers upon the reserve list."

Section 37. Section 11-1826, R.C.M. 1947, is amended to read as follows:

"**11-1826. Gifts and moneys to be applied to fund.** All moneys withheld from salaries of police officers for the violation of rules and regulations of such police departments, all bequests, gifts or emoluments, paid or given on account of any extraordinary service of any member of such police department, except when specifically allowed to be retained by such officer by the mayor, commissioners and chief of police, and all moneys derived from the provisions of this act, shall be placed in the police reserve fund, and transmitted promptly to the board of trustees."

Section 38. Section 11-1834, R.C.M. 1947, is amended to read as follows:

"**11-1834. Annual state payments to municipality with police department.** At the end of each fiscal year the state auditor shall issue and deliver to the treasurer of each city and town in Montana *which has* a police department *and which is not a participant in the municipal police officers' retirement system* his warrant for an amount computed in the same manner as the amount paid (or that would be paid if an existing relief association met the legal requirements for payment) to cities and towns for fire department relief associations pursuant to section 11-1919, R.C.M. 1947."

Section 39. Section 11-1836, R.C.M. 1947, is amended to read as follows:

"**11-1836. Credit of payments to police reserve fund — annual report of board.** Every city or town having a police reserve fund shall deposit said payment to the credit of the police reserve fund of such city or town. *The funds deposited in the police reserve fund of a city or town*

HeinOnline -- 1977 vol. II 1459 1977

after July 1, 1977, are limited to the investments in 79-310 except that the funds may not be invested in common stocks. However, these funds may be invested under the provisions of 79-311. The board of trustees of each police officer's reserve fund shall on or before the first day of April of each year report to the state auditor as to the financial condition of their fund. Payments provided for in this section and the preceding two (2) sections (11-1834, 11-1835) are in addition to those provided for in section 11-1823."

Section 40. Section 11-1844, R.C.M. 1947, is amended to read as follows:

"**11-1844. Payment of police reserves.** (1) Whenever any policeman or officer shall become transferred from the active list of police officers of any city to the reserve list of that city, he shall thereafter be paid in monthly payments from the *city's police reserve fund*, as follows:

(a) For a police officer eligible for the reserve list after twenty (20) years of service under subsection (1) of section 13 [11-1843] of this act, and who does not elect to serve any additional years as an active police officer; or for a police officer eligible for the reserve list after twenty (20) years of service under subsection (2) of section 13 [11-1843] of this act, who has reached his fiftieth year, and who does not elect to serve any additional years as an active police officer; or a police officer who becomes eligible by reason of injury or disability under subsection (4) of section 13 [11-1843] of this act, before reaching twenty (20) years of service; or for a police officer placed upon the reserve list by reason of reaching his sixty-fifth birthday prior to reaching twenty (20) years of service: a sum equal to one-half (½) the base salary, excluding overtime and payments in lieu of sick leave and annual leave he was receiving as an active officer computed on the highest salary received in any one month during the last year of active service.

(b) For a police officer eligible for the reserve list after twenty (20) years who elects to serve additional years, the payment provided in subsection (a) of subsection (1) of this section, to which shall be added an additional one percent (1%) of such sum per year of additional service, up to a maximum of sixty percent (60%) of the base salary, excluding overtime and payment in lieu of sick leave and annual leave, he was receiving as an active officer computed on the highest salary received in any one (1) month during the last year of active service. For the purposes of this act, a police officer whose eligibility depends upon subsection (2) of section 13 [11-1843] of this act, and who completes twenty (20) years of service before reaching the age of fifty (50) years, shall be deemed to have elected to serve additional years for each year between the completion of his twentieth year of service and his fiftieth birthday, and he shall be paid the additional one percent (1%) for each such year.

(c) A policeman who is placed upon the reserve list by reason of reaching his sixty-fifth birthday, but who was theretofore eligible at his option to be placed upon such reserve list under subsections (1) or (2) of section 13 [11-1843] of this act, but elected to serve additional years after such earlier eligibility shall be paid for such additional years over his original eligibility at the same rate as is provided in subsection (a) of subsection (1) of this section.

HeinOnline -- 1977 vol. II 1460 1977

(d) A police officer placed on the reserve list by reason of injury or disability under subsection 4 of section 13 [11-1843] of this act, and who, at the time of such injury or disability was eligible at his option to be placed on the reserve list under subsections (1) or (2) of section 13 [11-1843] of this act, but had elected to serve additional years, and was then serving such additional years shall be paid for such additional years over his original eligibility at the same rate as is provided in subsection (a) of subsection (1) of this section.

(2) Upon the death of any police officer on the active list or reserve list of any city, his surviving spouse, if there be one, shall, as long as such spouse remains the surviving spouse, be paid from the police reserve fund, a sum equal to one-half (½) the base salary, excluding overtime and payments in lieu of sick leave or annual leave he was receiving as an active officer computed on the highest salary received in any one (1) month during the last year of active service prior to the date of his demise or prior to the date he passed to the reserve list. If the officer leaves dependent minor child or children, then upon his death if he leaves no surviving spouse, or upon the death or remarriage of the surviving spouse, then his surviving dependent minor child or children, collectively if there be more than one (1) dependent minor child surviving, shall be paid the same monthly payments as are herein provided to be paid to the surviving spouse, until the minor child or children reach the age of eighteen (18) years or shall have married. Payments to be made to such minor child or children shall be paid to the duly appointed, qualified and acting guardian of the child or children for the use of such minor or minors, until such minor shall have reached the age of eighteen (18) years or shall have married and in case there is more than one (1) minor child, upon each child reaching the age of eighteen (18) years the pro rata payments to that child shall cease and shall be made to the remaining minor child or children until the youngest child reaches the age of eighteen (18) years or is married."

Section 41. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 42. **Repealer.** Sections 11-1821.1, 11-1824, 11-1838, 11-1839, 11-1840, 11-1841, 11-1842, 11-1848, 11-1850, 82A-222, and 82A-223, R.C.M. 1947, are repealed.

Approved April 19, 1977.

CHAPTER NO. 457

AN ACT TO AMEND THE STATE FUNDED HOMESTEAD TAX RELIEF ACT AND TO PROVIDE FOR AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. The "state funded homestead relief act" (Initiative No. 72, passed November 2, 1976) is amended to read as follows:

HeinOnline -- 1977 vol. II 1461 1977

"Section 1. **Short Title.** This act shall be known and may be referred to as the "state funded homestead tax relief act".

Section 2. **Definitions:** (1) "Homestead" means a dwelling *and appurtenant* land, *not to exceed 1 acre,* used as the principal *residence* of the *household of the* owner.

(2) "Dwelling" means a structure intended for human habitation; mobile homes, as defined in 84-6601, are specifically included.

(3) "Household" means a person or persons who live in the same dwelling sharing its furnishings, facilities, accommodations, and expense. The term does not include bona fide lessees, tenants, or roomers and boarders on contract.

(4) "Total taxable value" means the taxable value of a homestead.

(5) "*State's* share *of the* taxable value" means a taxable value equivalent to $5,000 of the appraised value of a homestead or the total taxable value of a homestead, whichever amount is *less.*

(6) "State supported mill levies" means all property tax levies which apply to habitable property except *levies for single purpose districts,* voted elementary and secondary school levies, the university 6 mill *levy* for the retirement of bonded indebtedness, and voted levies for special improvement district reserve funds which are not *countywide* or which are supported by a fee or charge rather than an ad valorem tax levy.

(7) "Single purpose district" means a taxing jurisdiction created by resolution of the local governing body or petition of the residents to perform one governmental function, such as, but not limited to, fire, cemetery and lighting districts and weed, rodent, or mosquito control districts.

(8) "*State's* share *of the* tax liability" means the state share *of the* taxable value for each homestead in each taxing jurisdiction times the state supported mill levies in that taxing jurisdiction *times the fraction obtained by dividing the fiscal year appropriation provided by the legislature less administrative costs by the statewide value of the state's share of the taxable value.*

Section 3. **Exclusions.** *No homestead owner may apply for relief on a homestead which is leased or rented to another by its owner for more than 3 months during the year-long period preceding the due date for applications for relief under this act.*

Section 4. **Homestead owner's tax liability.** The tax liability of a homestead owner shall be computed by deducting the *state's* share *of the* tax liability from the tax liability on the total taxable value. Each tax statement sent to *an eligible applicant* in whose name the property is assessed shall set forth separately the total tax due, the *state's* share *of the* tax liability and the homestead owner's tax liability and shall label the amounts *accordingly.*

Section 5. **Duties of the department of revenue.** (1) *The department of revenue shall provide application forms for relief under this act available to all owners of homestead property. In order to be eligible for relief*

HeinOnline -- 1977 vol. II 1462 1977

under this act, an owner must file with the agent of the department of revenue a completed application on or before June 30 of the year for which relief is sought, or within 30 days of distribution of the forms by the department, whichever is later.

(2) The department shall determine the eligibility of each applicant for relief.

(3) The department shall compute the *state's* share *of the* tax liability *for each eligible homestead owner* according to this act and shall certify *the total* amount *of the state's share of the liability for each* county.

(4) The department may adopt rules necessary for the administration of this act.

Section 6. **Remission of state share to counties.** *The state shall remit the amount of the state's share of the tax liability to the county treasurer of each county in two equal payments; the first no later than November 30 of each year and the second no later than the following May 31.*

Section 7. **Duties of the county treasurer.** The county treasurer shall credit each expenditure account with the amount received from the *state treasurer* in accordance with the mill levy for that account no later than December 31 for the first payment and June 30 for the second payment."

Section 2. **Applicable tax years.** This act applies only to tax years 1977 and 1978.

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved April 20, 1977.

CHAPTER NO. 458

AN ACT TO CREATE A LEGISLATIVE REVENUE OVERSIGHT COMMITTEE AND PRESCRIBING ITS FUNCTIONS; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Revenue oversight committee — manner of appointment.** (1) There is created a legislative revenue oversight committee as a joint committee of the legislature, until adjournment of the 46th legislature. The committee consists of four members of the senate taxation committee, appointed by the chairman of that committee, four members of the house of representatives taxation committee, appointed by the chairman of that committee, two senators appointed by the committee on committees, and two representatives appointed by the speaker. No more than three members from each house may be of the same political party.

(2) Appointments shall be made before the 90th legislative day of a regular session for terms ending on the day the next regular session adjourns. A vacancy shall be filled as the original appointment was made.

HeinOnline -- 1977 vol. II 1463 1977

Section 2. **Vacancy.** (1) A vacancy on the committee occurring when the legislature is not in session shall be filled by the selection of a member of the appropriate political party and appropriate committee by the remaining members of the committee as provided in (section 1 of this act) to complete the unexpired term. Appointments are for 2 years and a member of the committee shall serve until his term of office as a legislator is ended or his successor is appointed, whichever occurs first.

(2) A vacancy on the committee occurring during a legislative session shall be filled as the original appointment was made.

Section 3. **Chairman — meetings — compensation.** (1) The committee shall elect one of its members as chairman and such other officers as it considers necessary.

(2) The committee shall meet as often as necessary, upon the call of the chair. Members of the committee shall be compensated and reimbursed for attending committee meetings, as provided under 43-310, from the general appropriation to the legislative council.

Section 4. **Committee duties.** (1) The committee shall make interim studies of the statewide reappraisal of real property and its property tax consequences, the taxation of financial institutions by methods which could replace the bank shares tax, and the appropriate level of taxation of the gross proceeds of metal mines. The committee may also exercise continuing legislative oversight of the department of revenue, including without limitation the review of:

(a) proposed and adopted rules;

(b) proposed budgets;

(c) proposed legislation;

(d) pending litigation; and

(e) major contracts and personnel actions of the department.

(2) The committee shall prepare a biennial critique of the department's activities, which shall be published by the department as an appendix to the biennial report of the department.

Section 5. **Effective date.** This act is effective upon passage and approval.

Approved April 20, 1977.

CHAPTER NO. 459

AN ACT TO SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 14, OF THE MONTANA CONSTITUTION TO ALLOW THE LEGISLATURE OR THE PEOPLE BY INITIATIVE TO ESTABLISH THE LEGAL AGE FOR CONSUMING OR POSSESSING ALCOHOLIC BEVERAGES.

HeinOnline -- 1977 vol. II 1464 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Article II, section 14, of the Montana constitution is amended to read as follows:

"Section 14. **Adult rights.** A person 18 years of age or older is an adult for all purposes, *except that the legislature or the people by initiative may establish an age of not more than 19 as the legal age for consuming or possessing alcoholic beverages.*"

Section 2. **Effective date.** If approved by the electorate, this amendment shall be effective January 1, 1979.

Section 3. **Submission to electors.** This amendment shall be submitted to the electors of the state of Montana at the general election to be held November 7, 1978, by printing on the ballot the full title, and the following:

☐ FOR *allowing the legislature or the people to establish* the legal drinking age.

☐ AGAINST *allowing the legislature or the people to establish* the legal drinking age.

Approved (Constitutional Amendment).

CHAPTER NO. 460

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO WATER USE; REPEALING SECTIONS 89-128, 89-1901, AND 89-2818, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-105, R.C.M. 1947, is amended to read as follows:

"**89-105. Construction of works by department.** (1) Subject to the approval of the board, the department may construct works, the cost of the construction to be paid wholly by means of or with the proceeds of revenue bonds hereinafter authorized or of a grant to aid in financing the construction from the United States or any instrumentality or agency thereof and other funds provided *for the construction.* Before constructing a project, the department shall estimate the cost of the project, the cost of maintaining, repairing, and operating it, and the revenues to be derived therefrom, and a project may not be constructed unless, according to the estimates, the revenues to be derived will be sufficient to pay the cost of maintaining, repairing, and operating it and to pay the principal and interest of revenue bonds which may be issued for the cost of the project; however, in connection with the issuance of revenue bonds, the failure of the department to make the estimates required by this section or to make them in proper form does not affect the validity or enforceability of those bonds or of the trust indenture, resolution, or other security therefor.

HeinOnline -- 1977 vol. II 1465 1977

(2) *Should* the bid of the lowest responsible bidder on any capital improvement associated with public works exceed the department estimates of the cost of the improvements by more than 5%, the department shall obtain approval from the water user association, *whenever an association is involved,* before the bid is accepted; however, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require such approval.

(3) *A* purpose of this act is to meet, so far as possible, a *statewide* need for the conservation and use of water through the construction and operation of projects designed for those purposes. The projects to be finally constructed shall qualify as parts of the *statewide* program and shall be approved by the board upon the showing of their prospective ability to meet, through the sale of water or other services, the cost of operation, maintenance, and repair and the amortization of the cost of the construction. *The* failure of the board to determine the prospective ability of a project does not affect the validity or enforceability of the bonds or of the trust indenture, resolution, or other security therefor.

(4) The department may exercise any of its powers:

(a) *in* an adjoining state, unless the exercise of that power is not permitted under the laws of that state or of the United States;

(b) *in* a national forest or public domain of the United States adjoining or located in the state of Montana, unless the exercise of those powers is not permitted under the laws of the United States;

(c) *in* an adjoining country, unless the exercise of those powers is not permitted under the laws of that country or of the United States or under the treaties between that country and the United States."

Section 2. Section 89-115, R.C.M. 1947, is amended to read as follows:

"**89-115. Management of property — water contracts.** (1) Subject to this act and 89-103.2, the department may fix and establish the prices, rates, and charges at which the resources and facilities made available under this act may be sold and disposed of; enter into contracts and agreements, and do those things which in its judgment are necessary, convenient, or expedient for the accomplishment of the purposes and objects of this act, under such general *rules* and upon such terms, limitations, and conditions as it prescribes. *The* department shall enter into the contracts and fix and establish the prices, rates, and charges so as to provide at all times funds which will be sufficient to pay all costs of operation and maintenance of the works authorized by this act, together with necessary repairs thereto, and which will provide at all times sufficient funds to meet and pay the principal and interest of all bonds or loans as they severally become due and payable. *This* act does not authorize any change, alteration, or revision of those rates, prices, or charges as established by any contract entered into under this act except as provided by the contract.

(2) An incorporated water users' association that is sustaining and responsible for the operations of a works is solely liable for any court action which may be brought against it or the state of Montana for any injury or damages occurring on the works caused by a failure to maintain safe working and operating conditions.

HeinOnline -- 1977 vol. II 1466 1977

(3) A contract made by the department for the sale of water, use of water, water storage, or other service or for the sale of any property or facilities shall provide that, in the event of a failure or default in the payment of moneys specified in the contract to be paid to the department, the department may, upon notice as is prescribed in the contract, terminate the contract and all obligations thereunder. The act of the department in ceasing on default to furnish or deliver water, use of water, water storage, or other service under the contract does not deprive the department of or limit any remedy provided by the contract or by law for the recovery of moneys due or which may become due under the contract.

(4) (a) A person aggrieved by a decision of the department to terminate any contract under subsection (3) may appeal to the board and be heard thereon by filing written notice of the appeal with the department within 10 days after receiving notice of termination of the contract from the department. The termination of the contract shall be stayed if an appeal is taken.

(b) If a dispute arises between the department and another party regarding amounts owing or the terms and conditions under a water marketing or water purchase contract or under a contract for the construction or repair of works, that party may appeal to the board for a hearing thereon and a resolution of the dispute by filing written notice of the appeal with the department within 30 days after the final decision of the department regarding the dispute.

(5) Subject to the approval of the board under 89-103.2, the department may sell, transfer to water user associations, abandon, or otherwise dispose of any *rights-of-way*, easements, or property when it determines that they are no longer needed for the purposes of this act or lease or rent the same or otherwise take and receive the income or profit and revenue therefrom. A determination shall be made by the department as to the market value of *rights-of-way*, easements, or property to be sold, transferred, abandoned, or otherwise disposed of."

Section 3. Section 89-401, R.C.M. 1947, is amended to read as follows:

"**89-401. Disposition of moneys collected.** *(1)* For the purpose of carrying out the provisions of *chapter 1 of Title 89* and such other water resource authority, powers, and duties as are conferred upon the department of natural resources and conservation by law, the following moneys shall be deposited in the earmarked revenue fund for the use of the department:

(a) all sums of money donated or contributed by the federal government or any department or agencies thereof;

(b) all gifts, donations, bequests, and devises made to the state therefor and proceeds of the sale thereof; *and* the proceeds of the sale or redemption of and the interest earned by the securities purchased or acquired *with money received under this subsection*;

(c) all reimbursements for money advanced for the payment of the assessments upon state, *school-granted*, and other public lands for the improvement thereof as provided by law;

HeinOnline -- 1977 vol. II 1467 1977

(d) all reimbursements for money advanced for the investigation and survey of reclamation, electrification, and rehabilitation systems or projects proposed to be financed in whole or in part by the reclamation of lands and dyking, drainage, and dyking and drainage dams for conservation of water to be used in reclamation of land or stock reservoirs or for the construction, maintenance, and operation of plants or projects for the manufacture or distribution of electric current;

(e) all reimbursements for costs of surveys and investigations for moneys advanced to counties, cities or towns or their proportion of the cost thereof or from any other sources.

(2) The following shall be deposited in the state general fund:

(a) all income or profit and revenue of the works and all money received from the sale or disposal of water, use of water, water storage, or other service and from the operation, lease, sale, or other disposition of the works, property, and facilities acquired under chapter 1 of Title 89; and

(b) all sums received by the department for the use of electricity in excess of the maintenance and operation of the electrification system or project."

Section 4. Section 89-125, R.C.M. 1947, is amended to read as follows:

"**89-125. Department powers over state waters.** (1) The authority of the department conferred by this *chapter* extends and applies to rights to the natural flow of the waters of this state which it may acquire, with the approval of the board, by condemnation, purchase, exchange, appropriation, or agreement.

(2) For the purpose of regulating the diversion of those waters, the department may enter upon the means and place of use of all appropriators for making surveys of respective rights and seasonal needs.

(3) The department may take into consideration the decrees of the courts of this state having jurisdiction, which purport to adjudicate the waters of a stream or its tributaries, and a fair, reasonable, *and* equitable reconciliation shall be made between the claimants asserting rights under different decrees and between decreed rights and asserted rights of appropriation not adjudicated by any court.

(4) The department, at its discretion, may hold hearings relating to the rights of respective claimants after first giving such notice as it *considers* appropriate and make findings of the date and quantity of appropriation and use of all claimants which the department will recognize and observe in diverting the waters which it owns. The department may police and distribute to the owner of the recognized appropriation the waters due him upon request and under terms agreed upon.

(5) The department, when engaged in controlling and dividing the natural flow of a stream under the authority granted by this *chapter*, is exercising a police power of the state, and water commissioners appointed by any court may not deprive the department of any of the waters owned or administered under agreement with respective owners, but the owner

HeinOnline -- 1977 vol. II 1468 1977

of a prior right contending that the department is not recognizing and respecting the appropriation may resort to a court for the purpose of determining whether or not the rights of the claimant have been invaded, and the department shall observe the terms of the final decree.

(6) When the department impounds or acquires the right of appropriation of the waters of a stream it may divert or authorize the diversion at any point on the stream or any portion thereof when it is done without injury to a prior appropriator.

(7) The department may acquire water by purchase option or agreement with the federal government from the Fort Peck Reservoir for the purpose of sale, rent, or distribution for industrial use. In such cases, the department is not required to construct any diversion or appropriation facilities or works, and it may sell, rent, or distribute such water at such rates and under such terms and conditions as it considers appropriate."

Section 5. Section 89-319, R.C.M. 1947, is amended to read as follows:

"**89-319. Separate permit for each operation.** *(1) Separate permits shall be issued for each operation.*

(2) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval not exceeding 1 year."

Section 6. Section 89-823, R.C.M. 1947, is amended to read as follows:

"**89-823. Owners of water to sell surplus.** Any person having the right to use, sell, or dispose of water and engage in using, selling, or disposing of the same who has a surplus of water not used or sold or any person having a surplus of water and the right to sell and dispose of the same is required, upon the payment or tender to the person entitled thereto of an amount equal to the usual and customary rates per inch *or cubic foot of water per second,* to convey and deliver to the person *the* surplus of unsold water or so much thereof for which *the* payment or tender *has been* made and shall continue to convey and deliver the same weekly so long as *the* surplus of unused or unsold water exists and *the* payment or tender *is* made as aforesaid."

Section 7. Section 89-867, R.C.M. 1947, is amended to read as follows:

"**89-867. Definitions.** Unless the context requires otherwise, in this chapter *the following definitions apply:*

(1) "Water" means all water of the state, surface and subsurface, regardless of its character or manner of occurrence, including geothermal water.

(2) "Beneficial use" means a use of water for the benefit of the appropriator, other persons, or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal power, and recreational uses. *A* use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter.

HeinOnline -- 1977 vol. II 1469 1977

(3) "Appropriate" means to divert, impound, or withdraw (including by stock for stock water) a quantity of water or, in the case of a public agency, to reserve water in accordance with 89-890.

(4) "Existing right" means a right to the use of water which would be protected under the law as it existed prior to July 1, 1973.

(5) "Groundwater" means any water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and which is not a part of that surface water.

(6) "Well" means any artificial opening or excavation in the ground, however made, by which groundwater is sought *or can be obtained* or through which it flows under natural pressures or is artificially withdrawn.

(7) "Permit" means the permit to appropriate issued by the department under 89-880 through 89-887.

(8) "Certificate" means the certificate of water right issued by the department under 89-879, 89-880(5), and 89-888.

(9) "Declaration" means the declaration of an existing right filed with the department under 89-872.

(10) "Waste" means the unreasonable loss of water through the design or negligent operation of an appropriation or water distribution facility or the application of water to anything but a beneficial use.

(11) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water, but not a private corporation, association, or group.

(12) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, *or* the United States or any agency thereof.

(13) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(14) "Board" means the board of natural resources and conservation provided for in 82A-1509."

Section 8. Section 89-2911, R.C.M. 1947, is amended to read as follows:

"89-2911. Definitions. Unless the context requires otherwise, in this chapter *the following definitions apply*:

(1) "*Groundwater*" means any fresh water beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and which is not a part of that surface water. Fresh water shall be *considered* to be water fit for domestic, livestock, or agricultural use. The department, after notice and hearing, may fix definite standards for determining fresh water in any controlled *groundwater* area or subarea of the state.

HeinOnline -- 1977 vol. II 1470 1977

(2) "Aquifer" means any underground geological structure or formation which is capable of yielding water or is capable of recharge.

(3) "Well" means any artificial opening or excavation in the ground, however made, by which *groundwater is sought or* can be obtained or through which it flows under natural pressures or is artificially withdrawn.

(4) "Beneficial use" means a use of water for the benefit of the appropriator, other persons or the public, including but not limited to agricultural (including stock water), domestic, fish and wildlife, industrial, irrigation, mining, municipal, power, and recreational uses. *A use of water for slurry to export coal from Montana is not a beneficial use. Slurry is a mixture of water and insoluble matter.*

(5) "Person" means an individual, association, partnership, corporation, state agency, political subdivision, *or* the United States or any agency thereof.

(6) "Department" means the department of natural resources and conservation provided for in Title 82A, chapter 15.

(7) "*Groundwater* area" means an area which, as nearly as known facts permit, may be designated so as to *enclose* a single and distinct body of *groundwater*, which shall be described horizontally by surface description in all cases and which may be limited vertically by describing known geological formations should conditions dictate this to be desirable. For purposes of administration, large *groundwater* areas may be divided into convenient administrative units known as "subareas".

(8) "Board" means the board of natural resources and conservation provided for in 82A-1509.

(9) "Political subdivision" means any county, incorporated city or town, public corporation, or district created pursuant to state law or other public body of the state empowered to appropriate water, but not a private corporation, association, or group."

Section 9. Section 89-899, R.C.M. 1947, is amended to read as follows:

"89-899. Legal assistance. (1) When requested by the department, the attorney general and the county attorneys within their respective counties shall perform legal services and conduct legal proceedings necessary to carry out the purposes of this *chapter.* The department may also employ legal counsel to enforce this *chapter* and to conduct proceedings under it.

(2) If an appropriator who is a citizen of Montana becomes involved in a controversy to which any agency of the federal government or another state is a party, the department may in its discretion intervene as a party or provide necessary legal assistance to the citizen of Montana."

Section 10. Section 89-2930, R.C.M. 1947, is amended to read as follows:

"89-2930. Duty of county attorneys and attorney general. The

HeinOnline -- 1977 vol. II 1471 1977

county attorneys and the attorney general of the state shall perform such legal services and bring such legal proceedings in carrying out the purpose of this *chapter* within their respective counties as the department *may* request. *The department may also employ legal counsel to enforce this chapter and to conduct proceedings under it.*"

Section 11. Section 89-907, R.C.M. 1947, is amended to read as follows:

"**89-907. Filing written statement with department.** (1) Any person claiming an appropriative right to the use of any water of any interstate tributary which right was acquired after January 1, 1950, shall, within *60* days after *February 25, 1953*, or before he diverts any water, file with the department at its office in Helena, Montana, a written statement containing the following information:

(a) *the* name of the claimant and his address;

(b) *date* of appropriation or the date when the water was first applied to a beneficial use;

(c) *the* quantity of water claimed;

(d) *the* name of the stream, river, or other source of water from which the diversion is made, if it has a name, and if it does not, a description *identifying* the same;

(e) *the* purpose for which the water is claimed and the place of intended use;

(f) *the* means of diversion;

(g) *whether* or not a weir or other device for measuring the water intended to be diverted has been installed in his ditch or other means of diversion;

(h) *if* a notice of appropriation was filed with the county clerk and recorder, the name of the county where it was filed;

(i) *whether* the appropriation was made from an adjudicated or nonadjudicated stream, river, or other source of water.

(2) The written statement shall be verified by the affidavit of the claimant or someone in his behalf, which affidavit must state that the matters and facts contained in the written statement are true."

Section 12. Section 89-911, R.C.M. 1947, is amended to read as follows:

"**89-911. Domestic and stock uses exempted.** Any appropriation of water from any interstate tributary of the Yellowstone River made for domestic or stock water uses *will* not come within the provisions of this *chapter whenever* the capacity of *a* reservoir for stock water *does* not exceed *20* acre-feet."

Section 13. Section 89-1015, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1472 1977

"**89-1015. Complaint by dissatisfied user.** *A* person owning or using any of the waters of *the* stream or ditch or extension of *the* ditch who is dissatisfied with the method of distribution of the waters of *the* stream or ditch by *the* water commissioner or water commissioners and who claims to be entitled to more water than he is receiving or to a right prior to that allowed him by *the* water commissioner or water commissioners may file his written complaint, duly verified, setting forth the facts of *the* claim. Thereupon the judge shall fix a time for the hearing of such petition and shall direct that such notice be given to the parties interested in *the* hearing as the judge *considers* necessary. At the time fixed for *the* hearing, the judge must hear and examine the complainant and other parties as may appear to support or resist such claim and examine *the* water commissioner or water commissioners and witnesses as to the charges contained in *the* complaint. Upon the determination of the hearing, the judge shall make such findings and order as he *considers* just and proper. If it *appears* to the judge that the water commissioner or water commissioners have not properly distributed the water according to the provisions of the decree, the judge shall give the proper instructions for such distribution. The judge may remove *any* water commissioner and appoint some other person in his stead if he *considers* that the interests of the parties in the waters mentioned in *the* decree will be best subserved thereby, and if it *appears* to the judge that the water commissioner *has* willfully failed to perform *his* duties, *he* may be proceeded against for contempt of court, as provided in contempt cases. The judge shall make such order as to the payment of costs of *the* hearing as *appears* to him to be just and proper."

Section 14. Section 89-1202, R.C.M. 1947, is amended to read as follows:

"**89-1202. Petition for organization.** *(1)* For the purpose of establishing and organizing an irrigation district hereunder, a petition signed by the required number of holders of title or evidence of title to lands within *the* proposed district mentioned in the preceding section shall be filed with the clerk of the district court of the county in which *the greatest portion of the lands of the proposed district are located. The* petition shall set forth:

(a) the name suggested for the proposed district;

(b) a general description of the lands to be included in the proposed district;

(c) the names of the holders of title or evidence of title to the lands in the proposed district, ascertained in the manner mentioned in the preceding section, and if *a* holder is a nonresident of the county or counties in which the proposed district lies, the post-office address of *the* nonresident owner, if known;

(d) generally, the source from which the lands in the proposed district are to be irrigated *and* the character of the works, water rights, canals, and other property proposed to be acquired or constructed for irrigation purposes in the proposed district;

(e) a prayer that the lands embraced within the proposed district be

HeinOnline -- 1977 vol. II 1473 1977

organized as an irrigation district according to the *applicable* provisions of *chapters 12 through 21 of Title 89.*

(2) The petition shall be accompanied by·

(a) a map or plat of the proposed district; and

(b) a good and sufficient bond or undertaking, to be approved by the district court or judge thereof of the county in which the petition is required to be filed under the provisions of *subsection (1),* to pay all costs in and about the proceedings preliminary to the organization of the district in the event that *the* organization *is* not effected.

(3) Mere error or omission in the description of any lands or in the names of any of the holders of title or evidence of title to lands *does not* render invalid any proceedings hereunder or deprive the district court of jurisdiction of the subject matter. *Such* misdescribed lands or misnamed persons *may* not be included in *the* district."

Section 15. Section 89-1204, R.C.M. 1947, is amended to read as follows:

"**89-1204. Hearing on petition and appointment of commissioners.** (1) At the time specified in the notice mentioned in the preceding section, the district court in which the petition is filed shall hear the petition but may adjourn such hearing from time to time, not exceeding *3* weeks in all, and may continue the hearing for want of sufficient notice or other good cause. The court, upon application of the petitioners or any *interested* person or persons, shall permit the petition to be amended and may order further or additional notice to be given. Upon such hearing all *interested* persons whose lands or rights may be damaged or benefited by the organization of the district or *by* the irrigation works or improvements therein or to be acquired or constructed may appear and contest the necessity or utility of the proposed district or any part thereof, and the contestants and petitioners may offer any competent evidence in regard thereto.

(2) *The* court *shall* hear and determine whether the requirements of 89-1201, 89-1202, and 89-1203 have been complied with and for that purpose shall hear all competent and relevant testimony that may be offered.

(3) *(a)* The court may make such changes in the proposed district as may be *considered* advisable or as fact, right, and justice may require. *Land* which is susceptible of irrigation from the same general source and by the same general system of works applicable to the other lands of *the* proposed district *may not be excluded from the proposed district* if the owner or owners of *the* lands file in *the* district court a written request that *the* lands be included.

(b) Lands which will not, in the judgment of the court, be benefited by irrigation from the works of the proposed district; which are already under irrigation; which have appurtenant water rights; or which can be irrigated from sources more feasible than the proposed district may not be included in the district unless the owner of such lands consents in writing to the inclusion.

HeinOnline -- 1977 vol. II 1474 1977

(c) Notwithstanding the provisions of subsection (3)(b), whenever a district is formed to cooperate with the United States, lands previously irrigated and having appurtenant water rights may be included within the district boundaries if it appears to the court that the lands will be benefited by inclusion.

(d) All lands having appurtenant water rights, served by an irrigation works system supplying more than 10,000 acres, may, in the discretion of the court, be included in the proposed district upon petition by at least a majority, both in number and acreage, of the holders of title or evidence of title to the lands served by the irrigation system and having appurtenant water rights.

(e) Lands of the district need not be contiguous. The location of a particular tract in the proposed district is not a bar to exclusion.

(4) For purposes of including or excluding land from a proposed district, the court may subdivide any tract into 40-acre or smaller parcels.

(5) If, on final hearing, it is found by the court that the petition does not substantially comply with the requirements of this act or that the facts stated are not sustained by the evidence, the court shall dismiss the petition at the cost of the petitioners and make and enter an order to that effect. *If* it is found that *the* petition substantially complies with *the* requirements and that the facts stated are sustained by the evidence, the court shall make and enter an order:

(a) setting forth findings and allowing *the* petition;

(b) establishing the proposed district;

(c) giving accurate descriptions of the lands included within the proposed district;

(d) dividing the proposed district into three, five, or seven divisions, as may be advisable in view of the size of the district;

(e) appointing as commissioner one competent person for each division of the district, having the qualifications as provided by 89-1205.

(6) The finding and order *are* conclusive upon all the owners of lands within the district that they have assented to and accepted the *applicable* provisions of *chapters 12 through 21 of Title 89* and *are* final unless appealed from to the supreme court within *60* days from the day of entry of *the* order. A copy of *the* order, duly certified to by the clerk of *the district* court, shall be filed for record within *30* days after *the* order is made and entered with the county clerk and recorder of the county *where* the lands included within *the* district are situated. *Lands* not situated in the county in which *the* copy is filed *shall be omitted from the copy.*

(7) Every irrigation district so established is a public corporation for the promotion of the public welfare, and the lands included therein shall constitute all the taxable and assessable property of such district for the purposes of *chapters 12 through 21 of Title 89.*"

Section 16. Section 89-1205, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1475 1977

"**89-1205. Qualifications of commissioners and term of office.** *(1)* No person *may be a* commissioner unless he *is* an owner of land within the district and *is* a resident of the county in which the division of the district or some portion thereof, for which *the commissioner is* elected, is situated.

(2) The commissioners appointed shall hold their respective offices until the second Saturday in April following their appointment and until their respective successors are elected and qualified. Each of *the* commissioners shall qualify in the same manner as justices of the peace. *The* bond *for a commissioner* shall be approved by the district court or judge thereof and filed in the office of the clerk of *the* court. *In* case any district *established* under this *chapter* is appointed fiscal agent of the United States or *is authorized* by the United States to make collections of moneys for and on behalf of the United States in connection with any federal reclamation project, each commissioner shall execute a further and additional official bond in such sum as the secretary of the interior may require, conditioned for the faithful discharge of the duties of his office and the faithful discharge by the district of its duties as fiscal or other agent of the United States under any such appointment or authorization, and any such bond may be sued upon by the United States or *by* any person injured by the failure of *the* commissioner or the district to fully, promptly, and completely perform their respective duties."

Section 17. Section 89-1208, R.C.M. 1947, is amended to read as follows:

"**89-1208. Compensation and expenses of commissioners.** *(1)* The commissioners, when sitting as a board or when engaged in the business of the district, shall each receive *an amount* not to exceed $20 *a* day for services and, in addition thereto, their necessary expenses in attending meetings or when otherwise engaged on district business, including premiums on qualifying bonds and any other bonds required of them in connection with their office, provided such expenses and per diem *are* approved by a unanimous vote of *the* board, and a mileage allowance of *12* cents *a* mile in attending board meetings or when engaged in the business of the irrigation district.

(2) No commissioner or any other officer named in this act *may* in any manner be interested, directly or indirectly, in any contract awarded or to be awarded by the board or in the profits derived therefrom. *For* any violation of this provision, such officer *is* guilty of a misdemeanor and his conviction thereof shall work forfeiture of his office and he shall be punished *as provided in 94-7-401.*

(3) The commissioners of *an* irrigation district shall each furnish a bond in the penal sum of $2,500, with corporate surety conditioned for the faithful performance of their duties under this act. *The* secretary shall furnish bond, with corporate surety, in the sum of $1,000, conditioned for the faithful performance of his duties pursuant to this act and for the proper safekeeping of the records and documents of *the* district, in all cases where the obligations of *the* district, either existing or proposed, total $250,000 or over. In all other cases the bond for *the* commissioners shall be in the sum of $1,000."

HeinOnline -- 1977 vol. II 1476 1977

Section 18. Section 89-1220, R.C.M. 1947, is amended to read as follows:

"**89-1220. Purpose.** This act is not intended to conflict in any way with statutes governing irrigation districts but is for the sole purpose of making it possible for one or more irrigation districts to function jointly through a central control agency for the purpose of efficiency, simplicity, and economy."

Section 19. Section 89-1311, R.C.M. 1947, is amended to read as follows:

"**89-1311. Qualification of electors and nature of voting rights, how determined.** *(1)* At all elections held under the provisions of this act, except as otherwise expressly provided, the following holders of title or evidence of title to lands within the district, herein designated electors, *are* entitled to vote:

(a) all persons having the qualifications of electors under the constitution and general and school laws of the state;

(b) guardians, executors, administrators, and trustees residing in the state;

(c) domestic corporations, by their duly *authorized* agents.

(2) In all elections held under this act, each elector *is* permitted to cast one vote for each *40* acres of irrigable land or major fraction thereof owned by *the* elector within the district, irrespective of the location of *the* irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within congressional subdivisions, platted lots or blocks (except as hereinafter provided for), election precincts, or district divisions, but any elector owning any less than *40* acres of irrigable land *is* entitled to one vote. Until the irrigable area under the *proposed* plan of reclamation is *determined*, all land included within the boundaries of the district shall be *considered* irrigable land for election purposes.

(3) Whenever land is owned by co-owners, *the* owners may designate one of their number or an agent to cast the vote for *the* owners, and one vote only for each *40* acres of irrigable land or major fraction thereof *may* be cast by *the voting* co-owner or agent. *Whenever* land is under contract of sale to a purchaser residing within the state, *the* purchaser may vote on behalf of the owner of *the* land. When voting, the agent of a corporation or co-owners, the co-owner designated for purpose of voting, or the purchaser of land under contract of sale, as the case may be, shall file with the secretary of the district or with the election officials a written instrument of his authority, executed and acknowledged by the proper officers of *the* corporation, by *the* co-owners, or by the owner of land under contract of sale, as the case may be, and thereupon *the* agent or co-owner or purchaser, as the case may be, *is* an elector within the meaning of this act. *Whenever* the total irrigable acreage within any one district has been platted or subdivided into lots or blocks to the extent of 5% or more of the total acreage of the district, each elector *is* permitted to cast one vote for each acre of irrigable land or major fraction thereof owned by *the* elec-

HeinOnline -- 1977 vol. II 1477 1977

tor within the district, irrespective of the location of such irrigable lands within the tracts designated by the commissioners for assessment and taxation purposes or within the congressional subdivisions, but any elector owning any less than *1* acre of irrigable land within *the* district *is* entitled to one vote. The balloting shall take place in the following manner: 10 votes or less, separate ballots will be used; more than 10 votes, the elector shall vote in blocks of *10* using one ballot for each *10* votes and separate ballots for odd votes over multiples of *10.* The election shall otherwise conform with the provisions *of* 89-1308. *The* chairman of the commissioners or such commissioner as he may delegate *shall* determine before each election whether the provisions of this *subsection* are in force or whether the provisions heretofore set out shall apply."

Section 20. Section 89-1319, R.C.M. 1947, is amended to read as follows:

"**89-1319. Application of act.** This act shall apply only when *20* or more owners of land with water rights appurtenant thereto *are* being served by one stream and its branches or from one source of water supply and in which the rights to the use of water shall have been determined by decree of a court of competent jurisdiction *and at least 2,000 acres of land, contiguous in location or of reasonably compact area, are being served by the single stream or source.*"

Section 21. Section 89-1320, R.C.M. 1947, is amended to read as follows:

"**89-1320. Petition, hearing, and order.** Whenever the owners of land and water rights, as described in 89-1319, desire to organize for the purposes mentioned in this act, a petition to that effect, signed by not less than *60%* of the individual landowners who represent not less than *51%* of the irrigable acres to be affected by *the proposed* district and *51%* of the *cubic feet* of water *per second* decreed or adjudicated in the stream *from* which *the* irrigation district is to operate, shall be filed with the clerk of the district court of the county or counties in which *the* district is to be created. *For* the *purpose* of determining whether the *requirements* of acreage and *cubic feet of* water *per second have* been met by the petition, water diverted from the adjudicated stream and distributed under irrigation districts *other* than the one to be created under this act *may* not be considered; however, such water and acreage shall be required to pay all assessments the same as other water and acreage affected by irrigation districts created under this act. Upon filing of *the* petition, the court shall set a date for a hearing on the petition and a written notice not less than *5* days prior to *the* hearing shall be mailed to each landowner or water right owner affected by the proposed district. If the court finds from such hearing that an irrigation district, as prayed for in the petition, is feasible and practical, the court shall issue an order creating *the* irrigation district, which shall constitute the authority for the district to function for the purposes and intent as outlined in this act. The court shall appoint five commissioners, who *are* landowners or water right owners, affected by such district to act until the first annual meeting."

Section 22. Section 89-1322, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1478 1977

"**89-1322. Duty of trustees, levy, and indebtedness.** The board of trustees *may* develop the source of supply; clean, improve, and develop the channel of the stream; and do and perform other work on the main distributing system as will be beneficial to the better distribution of the waters of *the* decreed water right stream, but in no case *may* the board, to cover the expenses of such work, levy to exceed *25* cents per acre in any one year. *Whenever* waters of the stream under the irrigation district created by this act are commingled with other waters or it is difficult to determine how many acres are irrigable by the water rights held in *the* stream, the acre basis of levy shall be determined by the number of *cubic feet of water per second* owned by such party or parties at the rate of *.025 cubic feet of water per second* to the acre. *The* board *may not* issue bonds or incur any indebtedness other than warrant indebtedness under the limitations *imposed* by law."

Section 23. Section 89-1411, R.C.M. 1947, is amended to read as follows:

"**89-1411. Notice of hearing.** On such petition being filed, the district court or judge thereof shall make an order fixing the time and place *for a* hearing and directing that notice be given. Thereupon the clerk of *the* court shall cause to be published at least once a week for *2* successive calendar weeks in *a* newspaper of *general circulation in* the county where *the* petition is filed, *with preference given to a newspaper published in the county,* a notice stating the time and place *fixed* by the district court when and where the hearing on *the* petition will be had and containing a brief statement of the matters set forth in *the* petition and the object thereof. *If* any portion of the lands sought to be excluded from the district *lies* within any other county or counties, *the* notice shall also be published as *provided* above in *a* newspaper of *general circulation in the* other county or counties, *with preference given to a newspaper published in the other county or counties.* The first publication of *the* notice *may* not *be* less than *30* days prior to the time mentioned in *the* notice for *the* hearing."

Section 24. Section 89-1616, R.C.M. 1947, is amended to read as follows:

"**89-1616. Interference with commissioners or distribution system — penalty.** Any person who in any manner *interferes* with the commissioners of an irrigation district or their lawful agent or employee in the carrying out of the powers conferred by this act or who *changes* or *tampers* with any lock box, head gate, or other device for the apportionment or distribution of water installed by or under the authority of *the* commissioners or who in any manner *obstructs* or *changes* the flow of water in the distribution system of any irrigation district without authority of the commissioners of the district shall, in the discretion of the commissioners, be subject to a forfeiture of his right to the delivery of water through the distribution system of the district so long as such acts continue and *is* guilty of *obstructing a public officer or criminal mischief, as appropriate, and is punishable as provided by 94-7-302 or 94-6-102, as applicable.*"

HeinOnline -- 1977 vol. II 1479 1977

Section 25. Section 89-1701, R.C.M. 1947, is amended to read as follows:

"**89-1701. Limitations on debt-incurring power.** *(1)* The board of commissioners or other officers of the district *may not* incur any debt or liability, either by issuing bonds or otherwise, except as provided in this act. *No irrigation district may become indebted, in any manner or for any purpose in any one year, in an amount exceeding 15% of the assessed valuation of the district, except as provided in subsection (2).*

(2) (a) For the purpose of organization; for any of the immediate purposes of this chapter; to make or purchase surveys, plans, and specifications; for stream gauging and gathering data; or to make any repairs occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur the indebtedness of as many dollars as there are acres in the district and may cause warrants of the district to issue therefor.

(b) For the purpose of organization, for any of the immediate purposes of this chapter, or to meet the expenses occasioned by any calamity or other unforeseen contingency, the board of commissioners may, in any one year, incur (in addition to the 15% limitation of subsection (1)) an additional indebtedness not exceeding 10% of the assessed valuation of the district and may cause warrants of the district to issue therefor.

(c) The limitation of subsection (1) does not apply to warrants issued for unpaid interest on the valid bonds of any irrigation district.

(d) The limitation of subsection (1) does not apply to any bonds issued under this chapter pursuant to a provision which expressly supersedes the limitation.

(3) Any debt or liability incurred in excess of the limitations provided by the irrigation district laws is void."

Section 26. Section 89-1703, R.C.M. 1947, is amended to read as follows:

"**89-1703. Petition for bonds and issuance of bonds.** (1) *The board of commissioners of a district established under the provisions of chapter 12 of Title 89 may authorize and issue negotiable coupon bonds for the district for the purpose of providing the necessary funds:*

(a) for constructing the necessary irrigation canals and works, including drainage works, and constructing works for the generation and distribution of electricity within the district and for acquiring the property and rights necessary therefor;

(b) for acquiring, by purchase or otherwise, waters, water rights, canals, reservoirs, reservoir sites, irrigation works, drainage works, and works for the generation and distribution of electricity, whether such works are constructed or partially constructed;

(c) for meeting the expense incurred incident to the construction or acquisition of such works and property, including administrative, engineering, and legal expenses;

HeinOnline -- 1977 vol. II 1480 1977

(d) for assuming, as principal or guarantor, indebtedness to the United States on account of district lands;

(e) for providing a sufficient amount of money to pay the interest on all negotiable coupon bonds of the district for a period not exceeding 5 years;

(f) for redeeming or paying all or any portion of the existing indebtedness of the district, evidenced by outstanding bonds; delinquent interest coupons and accrued interest; or warrants, together with all delinquent and accrued interest, whether such indebtedness has or may hereafter become payable at the option of the district, by consent of the bondholders or by any lawful means; or

(g) for otherwise carrying out the provisions of the irrigation district laws.

(2) No bonds provided for in this section *may* be authorized or issued by or on behalf of any irrigation district organized hereunder and no contract *may* be made with the United States as *provided* in 89-1301 except upon a petition signed by at least 60%, in number and acreage, of the holders of title or evidence of title to lands included within *the* district or by *at least* 75%, in number and acreage, of the holders of title or evidence of title to such lands who are residents of the county or counties in which lands of the district are situated. *The* petition shall be addressed to the board of commissioners, set forth the aggregate amount of bonds to be issued and the purpose or purposes thereof, have attached thereto an affidavit verifying the signatures to *the* petition, and be filed with the secretary of the board of commissioners. When bonds are issued for the sole purpose of redeeming or paying the existing and outstanding bonds or warrants, or both, including delinquent and accrued interest, of such district, such bonds may be authorized and issued in the manner provided for by 89-1712 and 89-1713.

(3) Upon the filing of *the* petition, the board of commissioners shall, by appropriate order or resolution, authorize and direct the issuance of the bonds of the district to the amount and for the purpose or purposes specified in the petition; fix the numbers, denominations, and maturity or maturities of *the* bonds; specify the rate of interest thereon and whether payable annually or semiannually; designate the place of payment of *the* bonds and the interest coupons, within or without the state of Montana; prescribe the form of *the* bonds and interest coupons to be attached thereto; and provide for the levy of a special tax or assessment as *provided* in this act on all the lands in the district for the irrigation and benefit of which *the* district was organized and *the* bonds are issued or *the* contract is to be made, sufficient in amount to pay the interest on and principal of *the* bonds when due and all amounts to be paid to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as *provided* in 89-1301.

(4) If contract is to be made with the United States as *provided* in 89-1301 and bonds are not to be deposited with the United States in connection with *the* contract, the board of commissioners need not author-

HeinOnline -- 1977 vol. II 1481 1977

ize the issuance of bonds, or if bonds are required in addition to *the* contract, *the commissioners* may authorize bonds only for the amount needed in addition to *the* contract. Such order or resolution shall also provide for the confirmation proceedings in the district court *as provided in 89-1704.*"

Section 27. Section 89-1704, R.C.M. 1947, is amended to read as follows:

"**89-1704. Confirmation by district court.** (1) Within 10 days after the adoption of the order or resolution mentioned in the preceding section, the board of commissioners shall file a petition in the district court of the judicial district *where* the office of *the* board *is located* to determine the validity of the proceedings relative to the issuance of *the* bonds and the levy of *the* special tax or assessment.

(2) Such action shall be in the nature of a proceeding in rem, and jurisdiction of all parties interested shall be had by *giving* notice. *The* petition shall set forth*:*

(a) generally, the establishment and organization of the district;

(b) a certified copy of the petition mentioned in the preceding section;

(c) a certified copy of the order or resolution mentioned in the preceding section;

(d) a prayer for the confirmation of the proceedings of the board stated in the petition and for the confirmation of the bond issue and the special tax or assessment levied to pay the bonds and interest thereon.

(3) Upon the filing of *this* petition in the district court, the court shall fix the time for the hearing of *the* petition, which *may* not be less than 15 days from the date of filing the petition in *the* court, and shall order the clerk of the court to give notice of the filing of *the* petition and the date of the hearing thereon by publication at least once a week for *2* calendar weeks in a newspaper published or of general circulation in the county where the office of the board of commissioners of the district is situated and also by posting a written or printed copy of such notice in at least three public places in each division of the district, the first of such publications and such posting to be not less than 15 days prior to the date fixed for *the* hearing.

(4) The notice shall state the substance of the petition and the time and place fixed for the hearing thereon and that any person interested in or whose rights may be affected by the issuance or sale of *the* bonds, the levy of *the* special tax or assessment, or the proceedings had or to be had by the board of commissioners with respect to *such* matters may, on or before the day fixed for the hearing of *the* petition, answer *the* petition and may appear at *the* hearing and contest the granting of the prayer of *the* petition and the entry of any order of confirmation.

(5) Any person interested in or whose rights may be affected by the issuance or sale of *the* bonds, the levy of *the* special tax or assessment, or the proceedings had or to be had by the board of commissioners of the district in connection with *such* matters and the entry of any order of confirmation may enter his appearance in such proceedings and answer *the* petition and contest the granting of the prayer of *the* petition.

HeinOnline -- 1977 vol. II 1482 1977

(6) The provisions of Title 93 respecting the answer to a verified complaint *are* applicable to *an* answer to *the* petition. The persons so answering *the* petition *are* the defendants in the proceeding, and the board of commissioners *is* the plaintiff. Every material statement of the petition not specifically controverted by the answer shall be taken as true, and every holder of title or evidence of title to lands included in the district failing to answer the petition shall be *considered* to admit as true all the material statements *thereof.* The procedure in such action shall be determined by Title 93.

(7) Upon the hearing, the district court shall find and determine whether the provisions and requirements of the preceding section have been complied with and *whether* notice of the filing of the petition in the district court and of the time and place of the hearing has been given for the time and in the manner prescribed and *may* examine and determine the regularity, legality, and validity of the proceedings preliminary and relative to the issuance of the bonds and the levy of the special tax or assessment in the petition mentioned and the legality and validity of *the* bonds and special tax or assessment and all actions taken by the board of commissioners in connection with *such* matters and shall hear all objections filed to *the* proceedings or any part thereof or to the issuance of *the* bonds or the levy of the special tax or assessment or any portion thereof. The court, in inquiring into the regularity, legality, and validity of *the* proceedings, shall disregard any error, omission, or other irregularity which does not affect the substantial rights of the parties to *the* proceedings. The court may ratify, approve, and confirm *the* proceedings in whole or in part and may ratify, approve, and confirm *the* bonds and special tax or assessment and enter its judgment accordingly.

(8) From any such judgment an appeal may be taken to the supreme court at any time within 10 days from the entry of *the* judgment. *The* appeal shall be taken, perfected, and heard in the manner prescribed by Title 93 covering appeals from district courts to the supreme court. If no appeal *is* taken *in* time or if taken and the judgment of the district court *is* affirmed by the supreme court, *the* judgment *is final.* The costs of *the* proceedings shall be allowed or apportioned between the parties in the discretion of the court."

Section 28. Section 89-1705, R.C.M. 1947, is amended to read as follows:

"**89-1705. Details relating to bonds.** (1) All bonds issued under the provisions of this act shall run for a period not longer than 40 years from their date but may contain a clause providing for their prior redemption and payment, at the option of the board of commissioners of the district, on any interest payment date after 5 years from their date. Instead of straight maturity bonds, bonds may be issued to mature serially at such times and in such amounts as the board of commissioners shall determine, but no bonds so issued *may* run for a longer period than 40 years from the date of issue. *The* bonds shall bear interest from their date until paid, payable annually or semiannually *with* the installments of interest to date of maturity of principal to be evidenced by appropriate coupons attached to each bond. *The* bonds and interest coupons shall be payable at such

HeinOnline -- 1977 vol. II 1483 1977

place or places within or without the state of Montana as the board of commissioners shall prescribe.

(2) *The* bonds shall be of such denomination or denominations and in such form as the board of commissioners shall prescribe. An issue of bonds is defined to be all the bonds issued in accordance with a resolution or order of the board of commissioners. Each issue of the bonds of a district shall be numbered consecutively as authorized, and the bonds of each issue shall be numbered consecutively. The board of commissioners shall fix the date of *the* bonds, or *they* may divide any issue into two or more divisions and fix different dates for the bonds of each division. The date of any bond must be subsequent to the order or resolution authorizing it and prior to its delivery to a purchaser from the district.

(3) All bonds issued hereunder shall be signed by the president and attested by the secretary of the board under the corporate seal of the district, and each of the interest coupons to be attached to *the* bonds shall be executed by the signatures of *the* president and secretary. Each bond shall be signed and each interest coupon shall be executed by the president and secretary of the board of commissioners who may be in office at the date of *the* bond and coupons or at any time thereafter prior to the delivery of *the* bond to the purchaser from the district.

(4) The board of commissioners may provide for the registration of bonds in their discretion. The secretary of the board of commissioners and county treasurer shall *each* keep a record of the bonds sold or otherwise disposed of; their date, number, amount, maturity, or maturities; to whom sold; rate of interest; and the place or places of payment."

Section 29. Section 89-1713, R.C.M. 1947, is amended to read as follows:

"**89-1713. Purpose of bonds — petition, requirements, and contents of.** *(1) An* irrigation district may issue refunding bonds for the purpose of redeeming or paying the indebtedness or any portion thereof of the district, whether represented by existing and outstanding bonds, interest coupons thereof, or warrants, including accrued and unpaid interest on *the* bonds, coupons, and warrants, and whether such indebtedness *is* due or not due or has or may become payable at the option of the district, by consent of *the* bondholders or warrant holders, or by any legal means and whether such indebtedness *is* now existing or may be created, and funds in the treasury of *the* district *are not* available for the payment of the same. *The* refunding bonds may be issued in one or more series. The petition for *the* refunding bonds, signed as required by law by at least 60% in number and acreage of the holders of title or evidence of title to the lands included within *the* district *and* addressed to the board of directors or commissioners of the district, may contain the following specifications, in addition to the matters now required by law:

(a) *how* many series of bonds shall be issued; and

(b) *the* terms, conditions, and liens of the bonds and the terms and conditions upon which each of *the* series of bonds shall be exchanged for outstanding bonds of *the* district if the same are to be exchanged and not sold.

HeinOnline -- 1977 vol. II 1484 1977

(2) The specifications provided for in subsection (1), when set forth in the petition, are controlling upon the board of directors or commissioners. The petitioners shall in the specifications set forth the contract of exchange to be made, with particularity. The contract may include any term, requirement, grant, transfer of property or rights, covenant, or condition considered by the petitioners to be in the best interest of the district. The petition shall state that the board of directors or commissioners of the district may authorize and direct the issuance of bonds according to the specifications of the petition, make any such contract, and bind the irrigation district under the contract."

Section 30. Section 89-1801, R.C.M. 1947, is amended to read as follows:

"**89-1801. Tax or assessment to pay bonds and interest.** (1) All bonds and the interest thereon issued hereunder and all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as *provided* in 89-1301, shall be paid by revenue derived from a special tax or assessment levied upon all the lands included in the district, except upon *those* lands *that* have been included in *the* district on account of the exchange or substitution of water under the provisions of 89-1611, if there *are any. All* lands in the district at the time *the* bonds are issued and all lands subsequently included which are so chargeable under the provisions of this act shall be and remain liable to be taxed and assessed for the payment of *the* bonds and interest and all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as *provided* in 89-1301.

(2) *The* board of commissioners of the district, in the order or resolution authorizing and directing the issuance of bonds of the district mentioned in 89-1703, *shall* provide for the annual levy and collection of a special tax or assessment upon all the lands included in the district and subject to taxation and assessment, sufficient in amount to meet the interest on *the* bonds promptly when and as the same accrues and to discharge the principal thereof at their maturity or respective maturities and to meet all payments due or to become due to the United States under any contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as *provided* in 89-1301, at the times such payments by such contract become due and payable. *When* straight maturity bonds are issued, the board of commissioners of the district *shall* create and maintain a sinking fund sufficient to pay and discharge *the* bonds at maturity. If *the* bonds *are* issued for 20 years or less, there shall be annually levied for *the* sinking fund a special tax or assessment sufficient to produce a net amount represented by the quotient found by dividing the aggregate amount of the principal of the bonds by the number of years the bonds have to run; but if *the* bonds are issued for more than 20 years, it *is* not necessary to levy a special tax or assessment for sinking fund until the *20th* year prior to the maturity of the bonds, at which time and each year thereafter there shall be levied and collected a special tax or assessment sufficient

HeinOnline -- 1977 vol. II 1485 1977

to produce a net sum equal to one-twentieth part of the aggregate amount of the principal of the bonds.

(3) A certified copy of such resolution shall be filed with the clerk of the board of county commissioners of each county in which the lands of the irrigation district lie, and the special tax or assessment therein provided for shall be levied and collected as prescribed and when so collected shall, by the county treasurer having custody of the funds of the district, be placed in a special fund and used solely for the payment of all *bonds issued under the provisions of this chapter and interest thereon, so long as any of the bonds or interest coupons remain outstanding and unpaid. Whenever the payments are made for amounts due or to become due to the United States, under a contract between the district and the United States, accompanying which bonds of the district have not been deposited with the United States as provided in 89-1301, the special fund shall be known as the United States contract fund.*

(4) In the event that for any reason *a* special tax or assessment provided for cannot or *may* not be levied and collected in time to meet any interest falling due on any bonds issued, the board of commissioners shall provide for and pay such interest when due, either out of any of the funds in hand in the treasury of the district not otherwise appropriated or by warrants drawn against the next district tax or assessment levied or to be levied. *These* warrants shall be in addition to those mentioned in 89-1701.

(5) The board of commissioners shall direct the investment of the funds in any bond sinking fund in interest-bearing securities whenever in their judgment the *investment* may be to the best interest of the district. *All* such securities shall be converted into cash in time to meet the principal on the bonds payable from such sinking fund promptly at their maturity."

Section 31. Section 89-1803, R.C.M. 1947, is amended to read as follows:

"**89-1803. All irrigable lands chargeable alike.** *(1)* All irrigable lands in each irrigation district, except such lands *that are* included within *the* district *because* of the exchange or substitution of water under the provisions of 89-1611, shall pay at the same rate for all purposes for which *the* lands are charged, *except as otherwise provided by law. There* may be a minimum charge of $5 against each separately owned tract of land regardless of its size, as provided in 89-1804. *Whenever* water used for the irrigation of any lands within an irrigation district *is* obtained by pumping to different elevations, the cost of maintenance, operation, and pumping to each separate elevation shall be apportioned and levied upon the lands lying under the ditch or ditches running from that particular elevation, in such manner as may be determined fair and equitable by the board of commissioners after considering the facts in each case. *This* apportionment shall be made by the board of commissioners and included each year in the assessment provided for by 89-1804.

(2) The amount of *the* assessment for maintenance, operation, and pumping of water to each separate elevation, whenever there are different

HeinOnline -- 1977 vol. II 1486 1977

elevations, shall be determined by the board of commissioners in such manner and upon such notice to the persons interested in *the* district as *the* board in its rules may provide. *Whenever a* contract *has* been made with the United States, the lands within the district, whether originally included or later annexed to the district, shall pay in accordance with the federal reclamation laws and the public notices, orders, and regulations issued thereunder and in compliance with any contracts made by the United States with the owners of *the* lands and in compliance with the contract between the districts and the United States. *Whenever* the works necessary for the completed project *are* constructed progressively over a period of years and *whenever* a portion of the lands within the district are or can be irrigated *1* year or more before the completion of the entire project, *those* lands, so irrigated or that can be so irrigated through the built portion of the project, shall pay for the cost of operating that portion of the project serving them with irrigation water and also shall pay such portion of the interest charges as its irrigable area bears to the irrigable area of the entire project. *Whenever* lands *have* appurtenant thereto a partial water right or partial rights in a system of irrigation other than that of the districts, the amounts payable shall be equitably apportioned."

Section 32. Section 89-1805, R.C.M. 1947, is amended to read as follows:

"**89-1805. Procedure for the determination of irrigable area.** (1) For the purpose of determining the number of acres of irrigable lands in each *40-acre* tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or *whenever* land *is* owned in less than *40-acre* tracts or in less than the platted lot, then *in* each such tract) of land in the district, the board of commissioners of any irrigation district *established under the provisions of chapter 12 of Title 89,* whenever *considered* advisable and at any time except as otherwise provided, may cause a careful topographical survey and map of *the* lands to be made, as well as a specific examination of the character of the soil of each tract. Upon completion of *the* survey and maps and examination, the board shall give notice that at a meeting of *the* board, to be held at the office of the board on a day to be fixed in *the* notice, *the* board will determine the irrigable area of each tract of land in the district and that it will hear and consider any objection on the part of any landowner in the district to *the* determination and to adjustment of the irrigable area of *the* district or of any lands within any tract or subdivision thereof. It *is not* necessary to describe *the* tracts in *the* notice. *The* notice shall be given by publication once a week for *2* successive calendar weeks in a newspaper of general circulation in the county where the office of the board is located, and *whenever* lands of any irrigation district lie in more than one county, *the* notice shall also be published in a newspaper or newspapers of general circulation in each county. The last publication of *the* notice shall be at least *5* days prior to the date fixed for *the* meeting.

(2) At *the* meeting, the board shall proceed to determine and fix the number of acres in each tract or subdivision irrigable from the works or proposed works of the district and shall hear all persons interested who may appear and shall continue in session from day to day (exclusive of

HeinOnline -- 1977 vol. II 1487 1977

Sundays and legal holidays) as long as may be necessary and until *the* determination of irrigable area *is* completed. The board shall hear *and receive* all evidence offered, including maps and surveys caused to be prepared by it as well as maps and surveys prepared by any owner of lands. Upon such determination, the irrigable area so fixed shall become and thereafter be the acreage upon which any special tax or assessment shall be levied, and each irrigable acre shall pay at the same rate as every other acre of irrigable land in *the* district, *except as otherwise provided by law. Any* special tax or assessment levied for any purpose *is* a lien upon the entire *40-acre* tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or *whenever* land *is* owned in less than *40-acre* tracts or in less than the platted lot, then against each such tract) of land in the district of which *the* irrigable area forms a part, and *the* lien shall attach to *the* entire tract as of January *1* in the year in which *the* special tax or assessment is levied.

(3) Upon completing *the* determination, the board shall fix, by appropriate resolution or order, the total acreage and the irrigable acreage of each tract or subdivision and shall cause to be prepared a list of all lands in *the* district, which list shall contain an accurate description of each *40-acre* tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or *whenever* land *is* owned in less than *40-acre* tracts or in less than the platted lot, then *of* each such tract) of land in *the* district, the total acreage and the number of irrigable acres therein as so fixed and determined, and the name of the owner or holder of title or evidence of title thereof, ascertained as provided in 89-1201. *This* list, when completed and adopted, shall be filed in the office of the board of commissioners and shall remain there for public inspection. A certified copy of *the* resolution and list shall be filed with the county clerk and recorder of each county in which any portion of the lands in *the* district are situated. *The* lands not situated in the county in which such copy is filed *shall be omitted from the copy.*

(4) No special tax or assessment *may* be levied against any *40-acre* tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or *whenever* lands *are* owned in less than *40-acre* tracts or in less than the platted lot, then against each such tract) found by *the* board to contain no irrigable land; nor *may* any lien created after the order of determination attach to any such tract, nor *may* the owner or owners of any tract or tracts have any vote or votes in any proceeding or election under the provisions of Chapter 146 of the Laws of 1909 or any amendment thereof or act supplementary thereto, after the making of such order, unless *their* land or a portion thereof *is* found by *the* board to contain an area irrigable from the works or proposed works of *the* district.

(5) Upon the determination provided for in this section, the board of commissioners *may* refund any taxes paid or cancel any unpaid taxes or assessments levied upon an acreage in excess of that so fixed by *the* order of determination and *whenever* necessary, may issue warrants therefor.

(6) Within *60* days after *the* resolution adopting *the* list, the board of commissioners may petition the district court for confirmation of their

HeinOnline -- 1977 vol. II 1488 1977

acts in determining the irrigable area and in refunding or canceling any taxes or assessments. The majority in number and acreage of the holders of title or evidence of title to lands in *the* district, ascertained as *provided* in this act, may likewise within such *60-day* period petition the district court for review of the actions of the board of commissioners. *However,* one of *these* proceedings, if prosecuted to determination, *is* exclusive of the other. Upon such proceeding, the court may order any assessment of taxes upon any land or lands to be reduced or raised according to the irrigable area as found by the court or taxes previously levied upon any area shown to be excessive to be refunded or canceled.

(7) The provisions of 89-1402 regarding the procedure as well as the right and time to appeal apply to any proceeding instituted *pursuant to* this section; provided nothing in this section *affects or impairs* the lien of any bonds issued by the district. *If* confirmation proceedings are held and a certified copy of the order of confirmation *is* filed with the county clerk and recorder of the county in which any portion of *the* lands is situated, it *is not* necessary to file in *the* office the certified copy of the resolution and order of the board or of the list provided for *in this section.*

(8) *Whenever* districts have been established in order to *cooperate* with the United States under the federal reclamation laws or under any act of *congress* which *permits* the performance by the United States of work in this state, for the purposes of construction of irrigation works, including drainage works, or for purchase, extension, operation, or maintenance of construction works or for the assumption as principal or guarantor of indebtedness to the United States on account of district *lands,* the determination of the irrigable area of the lands in *the* district may be made by the board of commissioners in the manner *provided* in this section or by the United States at the option of the latter, and, if the United States determines the irrigable area, the proceeding for the apportionment and distribution of the costs of the proposed works or improvements provided for in 89-1806 *may* not be had."

Section 33. Section 89-1806, R.C.M. 1947, is amended to read as follows:

"**89-1806. Apportionment of costs when bonds issued.** (1) Whenever a petition for the issuance of bonds of any irrigation district *established under the provisions of chapter 12 of Title 89 has* been filed as *provided* in 89-1703, the board of commissioners of *the* district shall examine or cause to be examined each *40-acre* tract or fractional lot as designated by the United States public survey or platted lot, if land is subdivided in lots and blocks (or *whenever* land *is* owned in less than *40-acre* tracts or in less than the platted lot, then each such tract) of land in *the* district and cause a careful topographical survey and map to be made in the manner provided for in 89-1805. Upon such examination, the board shall determine the number of irrigable acres in each such tract and shall apportion and distribute the cost of the works or improvements for which *the* bonds are to be issued over the tracts within *the* district according to the irrigable area in each of *the* tracts or subdivisions, so that each such irrigable acre *is* required to bear the same burden of such costs as each other irrigable acre in *the* district, *except as otherwise provided by law. The* special tax or assessment levied to meet the principal of and

HeinOnline -- 1977 vol. II 1489 1977

interest on *the* bonds so authorized *is* a lien upon the entire tract of which such irrigable area forms a part or portion as of January *1* of the year in which *the* special tax or assessment is levied, and the number of irrigable acres in each such tract as so determined *may* not be diminished but may be increased during the term for which any such bonds *are* issued or until the bonds *are* liquidated in full.

(2) *Whenever* a proceeding for the determination, in whole or in part, of the irrigable area of the lands in *the* district has already been had or a topographical survey or maps thereof prepared or a court confirmation of prior proceedings had, in part or in full, the board may, in its discretion, adopt all or such portions of *the* prior proceedings and *need not* cause an additional survey or maps or examination of any of such tracts to be made or redetermine the irrigable area of any such tract.

(3) The board shall make such determination after *the* hearing and shall fix the total acreage and the irrigable acreage and shall cause a list of such irrigable area to be made and filed, and the proceedings of the board in connection with such determination, including *the* hearing and notice of *the* hearing and order or resolution fixing the irrigable area and the preparation and filing of *the* list, shall conform to the requirements set forth in 89-1805. At *the* hearing, the board shall also determine the amount and rate per acre necessary to be levied against each irrigable acre in the district to meet the interest on and principal of *the* authorized bond issue, and any tax levied for such purposes *is* a lien upon the entire tract of which *the* irrigable area forms a part. If any landowner in the district *appears* before the board at *that* time and *pays* in cash the amount fixed against his land as its proportion of the amount found necessary for the purposes for which *the* bonds were authorized and are to be issued, his land shall be excluded from the lien of the bond issue and the amount of bonds intended to be issued shall be reduced by the amount of such payment. Any person interested who *fails* to appear before the board at *the* meeting *may* not thereafter be permitted to contest the proceedings of *the* board or any part thereof, except upon special application to the court in the proceedings for the confirmation of *the* bonds and a showing of reasonable excuse for failure to appear before *the* board of commissioners.

(4) In case any such landowner makes objection to the proceedings of *the* board in determining the irrigable area in his own or any other tract of land or the amount or rate per acre of the special tax and assessment to be levied against each irrigable acre in the district for the purposes of the proposed bond issue and *the* objection is overruled by the board, *the* objection without further proceedings shall be regarded as appealed to the district court and shall, with the other proceedings of *the* board at *the* meeting, be heard at the proceedings to confirm *the* bonds, as provided in 89-1704, and when so confirmed, *the* order overruling such objection and confirming the order of the board determining the irrigable area of each tract of land and apportioning the cost of the improvement thereto shall become final, binding, and conclusive upon *the* landowner and upon the district, unless appealed from as *provided* in 89-1704.

(5) *Whenever* the irrigable area of the lands in any irrigation district *has* been determined and confirmed, no owner or holder of title or evi-

HeinOnline -- 1977 vol. II 1490 1977

dence of title to lands in *the* district, during the period *when* any bonds thereafter authorized *are* issued and outstanding, *may* have the taxable acreage of his lands fixed or adjudicated in the manner provided by 89-1404 *through* 89-1408 in such manner or to such extent as to reduce the acreage subject to the payment of *the* bonds or interest thereon or in such manner as to affect the security of *the* bonds or interest thereon."

Section 34. Section 89-1811, R.C.M. 1947, is amended to read as follows:

"**89-1811. County treasurer as custodian of district funds.** The county treasurer of the county *where* the office of an irrigation district is located *is* the custodian of all funds belonging to the district, and he shall pay out such funds upon the order of the board of commissioners, except payments on bonds and interest for which no order *is* necessary. *If* any portion of the funds belonging to a district *has* been collected for the purpose of establishing a reserve fund, the county treasurer shall pay such portion to the district on order of the district's board of commissioners who *may* invest the same in state or federal bonds or in savings certificates of institutions insured by the federal deposit insurance corporation. Where moneys of a district in the United States contract fund established pursuant to *89-1801(3)* are in excess of those needed to pay a district's next succeeding annual contract obligation or obligations to the United States, such excess or any part thereof may, upon order of the district's board of commissioners and with the consent of the United States officer administering the contract for which the contract fund has been established, be paid to the district for use in meeting other obligations of the district. Such orders of the board of commissioners shall be signed by the president and secretary of the board and shall bear the official seal of the district."

Section 35. Section 89-1816, R.C.M. 1947, is amended to read as follows:

"**89-1816. Proceeds of sale.** Whenever any lot, tract, piece, or parcel of land included within and forming a part of any irrigation district created under the provisions of this chapter or included within any extension of such district *is* sold by the treasurer of the county *where* such land is situated in the manner provided by law for the sale of lands for delinquent taxes for state and county purposes and taxes or assessments of *the* irrigation district form all or a part of the taxes for which such lands are sold, the county treasurer making such sale or sales *shall* place to the credit of the proper funds of such irrigation district, out of the proceeds of *the* sale or sales, the total tax or assessment of *the* irrigation district, inclusive of the interest and penalty thereon as provided for by the general laws relating to delinquent taxes for state and county purposes, and whenever any such lands are struck off at such sale to the county *where they* are *situated* pursuant to the provisions of 84-4124, the county treasurer of *the* county must, upon the issuance of the certificate of tax sale to *the* county, issue to *the* irrigation district, in its corporate name, a debenture certificate for the amount of taxes and assessments due to *the* irrigation district from *the* lands and premises so sold, inclusive of the interest and penalty thereon, which certificate *is* evidence of and conclusive of the interest and claim of *the* irrigation district in, to, against,

HeinOnline -- 1977 vol. II 1491 1977

and upon the lands and premises so struck off to *the* county at *the* tax sale, and after the issuance of *the* certificate, the sum named therein and the taxes and assessments of *the* district evidenced thereby shall bear interest at the rate of *1% a* month from the date of *the* certificate until redeemed in the manner provided for by law for the redemption of the lands sold for delinquent state and county taxes or until paid from the proceeds of the sale of the lands and premises described therein in *the* manner provided for by *law*, and duplicates of such certificates so issued to *the* irrigation district shall be filed in the office of the county clerk and county treasurer of *the* county with the certificate of tax sale of *the* lands and premises."

Section 36. Section 89-1819, R.C.M. 1947, is amended to read as follows:

"**89-1819. Sale by county commissioners when land not redeemed.** When the lands and premises so sold for taxes and upon and against which the certificates have been issued for the taxes and assessments of *the* irrigation district are not redeemed within the time provided for by 84-4132, the board of county commissioners of *the* county, within *3* months thereafter, *shall* cause *these* lands and premises to be sold as provided for by *law*, and out of the proceeds of the sale, the county treasurer of *the* county shall pay to the holder or holders of *the* certificates the sum for which the same were issued, with interest as provided for to the date of *the* sale of *the* lands by the board of county commissioners, and no lands and premises so held by any county and against which the certificates provided for by this chapter have been issued *may*, upon such sale, be struck off or sold for a less sum than the amount of taxes and assessments of *the* irrigation district represented by *the* certificate, inclusive of the interest thereon, in addition to the state and county taxes, if any, against the same."

Section 37. Section 89-2003, R.C.M. 1947, is amended to read as follows:

"**89-2003. Contents of petition.** *The* petition *of 89-2002* shall set forth the amount of the outstanding bonds, coupons, and other indebtedness, if *any*, together with the general description of *them*, showing the amount of each *described* indebtedness and the ownership, so far as known, of the *indebtedness. The* petition shall also state the assets of *the* district, including *any* irrigation *systems*, dams, reservoirs, canals, franchises, water rights, and other property; and in case any proposition has been made by the holders of *the* indebtedness to settle the *indebtedness, this* proposition, together with any plan proposed to carry the *proposition* into execution, shall be included in *the* petition."

Section 38. Section 89-2109, R.C.M. 1947, is amended to read as follows:

"**89-2109. Interpretation of title.** The object of this *title is* to promote the prosperity and welfare of the people *of Montana through the sound management of the state's water resources, and its provisions are to be given a liberal interpretation.*"

Section 39. Section 89-2126, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1492 1977

"**89-2126. United States contracts — court approval required.** The board of commissioners of any irrigation district, before the making of any contract with the United States hereunder, shall commence a special proceeding in the district court of the state, by which the proceedings of the board and of *the* district leading up to the making of any such contract and the validity of the terms thereof shall be judicially examined *and* approved and affirmed or disapproved *and* disaffirmed."

Section 40. Section 89-2203, R.C.M. 1947, is amended to read as follows:

"**89-2203. Amendment and circulation of petition — court consideration.** No petition having as many signers as are required by *89-2201 may* be declared void, but the court may at any time permit the petition to be amended in form and substance to conform to the facts, if the facts justify the organization of a drainage district. Several similar petitions for the organization of the same district may be circulated and, when filed, *together* shall be regarded as one petition having as many signers as there are separate adult signers on the several *filed* petitions who own lands within *the* proposed drainage district. All petitions for the organization of *the* district filed prior to the hearing on *the* petition shall be considered by the court the same as if filed with the first petitions placed on file, and the signatures thereon shall be counted in determining whether sufficient landowners have signed *the* petition."

Section 41. Section 89-2302, R.C.M. 1947, is amended to read as follows:

"**89-2302. Election of commissioners — regular term of office.** *(1)* The regular election of commissioners shall be held annually on the first Tuesday in April of each year; the term of office of commissioners shall commence on the first Tuesday in May following their election. At the first regular election following the organization of a district and in districts organized and in existence on *March 1, 1921,* and which, on petition, *have* been divided into divisions, at the first regular election following the date of the order making such division, there shall be elected three commissioners, one commissioner being elected from each division of which he must be an actual landowner; one of *the* commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the year following his election, another of *the* commissioners, to be determined by lot, shall hold office until the first Tuesday in May in the second year following his election, and the third of *the* commissioners shall hold office until the first Tuesday in May in the third year following his election; thereafter one commissioner shall be elected each year, who shall hold office for a term of *3* years and until his successor is elected and qualified; provided, that the person elected as a commissioner in each year to succeed the commissioner whose term is then expiring must be elected as a commissioner from the same division as the commissioner whom he is to succeed.

(2) Each commissioner must be a resident of a county where a portion of the district lands are situated."

Section 42. Section 89-2348, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1493 1977

"89-2348. **Construction assessments — annual installment.** At the time of the confirmation of *the* assessments *as provided in 89-2342,* the court *may* order the assessment for construction of new work to be paid in not more than 15 annual installments of such amounts and at such times as will be convenient for the accomplishment of the proposed work or for the payment of the principal and interest of such notes or bonds of *the* district as the court *grants* authority to issue for the construction of new work. The court shall also by such order fix a date on which the first installment of the assessments for construction shall become due, not more than 5 years after the date of the order, and each of *the* installments shall draw interest at the rate fixed by the court in accordance with law from the date of *the* order."

Section 43. Section 89-2411, R.C.M. 1947, is amended to read as follows:

"89-2411. **Correction of omissions.** Omission to assess benefits, to assess for construction, to make additional assessments, to make assessment for repairs, to award damages to any one or more tracts of land or easements in a drainage district or to assess benefits, assess for construction, assess for repairs, or make additional assessments against any corporation which should have been assessed *does not* affect the jurisdiction of the court to confirm the report *or* to render the benefits assessed, the assessments for construction, additional assessments, or assessments for repairs against other lands or assessments against any corporation voidable; but the commissioners of *the* drainage district shall thereafter, as soon as they discover the omission or as soon as *they have* notice thereof, either agree with the omitted parties upon the proper assessments and award the damages or assess such benefits, make such assessments for construction, and make such additional assessments against the omitted lands and corporations and award such damages as *are* just and report the facts, together with such assessments and awards, to the court."

Section 44. Section 89-2701, R.C.M. 1947, is amended to read as follows:

"89-2701. **Continuation of existing districts.** All drain districts of the state of Montana, organized prior to *March 1, 1921,* and continued in existence pursuant to section *100, Chapter 129, Laws 1921,* shall continue their existence as drain districts under and pursuant to all of the provisions of *drainage district laws,* and the commissioners of such drain districts shall have all the power and authority conferred by *the drainage district laws* upon the commissioners of drainage districts."

Section 45. Section 89-2711, R.C.M. 1947, is amended to read as follows:

"89-2711. **Rules of practice applicable.** The same rules relative to the filing of answers and replies relative to other causes of action affecting the title to real property shall apply in actions to exclude lands from a drainage district, and all issues arising may be tried by the court without a jury."

Section 46. Section 89-2810, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1494 1977

"**89-2810. Assessments against annexed lands.** *The* commissioners shall, after the time for appeal is past, assess against each parcel, tract, and easement of *the* annexed lands reasonable and just benefits and shall assess against *these* lands for construction and repairs such sums as *are* just. If lands similarly situated and benefited are found in *the* district, the annexed lands shall be assessed a like sum of benefits and damages as *the similar* lands in the district to which they are sought to be annexed and a sum for construction of *the* work, which shall be equal to all sums assessed, for the complete construction of the drainage system in the district to which they are sought to be annexed against lands having the same assessment of benefits in *the* district."

Section 47. Section 89-2926, R.C.M. 1947, is amended to read as follows:

"**89-2926. Waste and contamination of groundwater prohibited.** *(1)* No *groundwater may* be wasted. The department shall require all wells producing waters which contaminate other waters to be plugged or capped. It shall also require all flowing wells to be so capped or equipped with valves that the flow of water can be stopped when the water is not being put to beneficial use. Likewise, both flowing and nonflowing wells shall be so constructed and maintained as to prevent the waste, contamination, or pollution of *groundwater* through leaky casings, pipes, fittings, valves, or pumps either above or below the land surface, provided, however, in the following cases the withdrawal or use of *groundwater* shall not be construed as waste under this act:

(a) the withdrawal of reasonable quantities of *groundwater* in connection with the construction, development, testing, or repair of a well or other means of withdrawal of *groundwater*;

(b) the inadvertent loss of *groundwater* owing to breakage of a pump, valve, pipe, or fitting, if reasonable diligence is shown by the person in effecting the necessary repair;

(c) the disposal of *groundwater* without further beneficial use that must be withdrawn for the sole purpose of improving or preserving the utility of land by draining the same or that *must be* removed from a mine to permit mining operations or to preserve the mine in good condition;

(d) the disposal of *groundwater* used in connection with *producing, reducing,* smelting, and milling metallic ores and industrial minerals or that displaced from an aquifer by the storage of other mineral resources.

(2) The department at any time may hold a hearing on its own motion or upon petition signed by a representative body of users of *groundwater* in any area or subarea to determine whether the water supply within such area or subarea is used in compliance with this act."

Section 48. Section 89-2929, R.C.M. 1947, is amended to read as follows:

"**89-2929. Reports by water well drillers.** The forms, reports, and information required to be filed by this act *are* in addition to all other reports and information which the drillers of water wells in the state are required by law to file with agencies of the state."

HeinOnline -- 1977 vol. II 1495 1977

Section 49. Section 89-3425, R.C.M. 1947, is amended to read as follows:

"**89-3425. Challenging voters.** An elector may challenge any person who claims the right to vote. Before voting, any person challenged must take and sign the following oath or affirmation administered by an election judge:

"I....(name) solemnly swear (or affirm) that I am an elector of the district and have not voted today." False subscription to the oath or affirmation is *false swearing and is punishable as provided in 94-7-203.*"

Section 50. Section 89-3449, R.C.M. 1947, is amended to read as follows:

"**89-3449. Other agencies not affected.** The provisions of this act *do not* abrogate or limit *in any manner* the rights, powers, duties, and functions of the department, conservation districts, department of health and environmental sciences, or the fish and game commission but *are* supplementary thereto and in aid thereof."

Section 51. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 52. **Repealer.** Sections 89-128, 89-1901, and 89-2818, R.C.M. 1947, are repealed.

Approved April 26, 1977.

CHAPTER NO. 461

AN ACT AMENDING SECTIONS 23-4785, 25-501, AND 93-303, R.C.M. 1947, RELATING TO SALARIES OF CERTAIN STATE OFFICIALS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4785, R.C.M. 1947, is amended to read as follows:

"**23-4785. Commissioner — how appointed, qualifications, and offices.** (1) There is *a* commissioner of campaign finances and practices, who *is* appointed by a majority of a four-member selection committee which *is* comprised of the speaker of the house, the president of the senate, and the minority floor leaders of both houses of the legislature. However, if a majority of the members of the selection committee cannot agree upon the selection of a commissioner within 30 days after *a vacancy occurs*, the Montana supreme court shall appoint a fifth public member to the selection committee. The majority of the five members of the selection committee shall then select the commissioner.

(2) The individual selected to serve as the commissioner of campaign

HeinOnline -- 1977 vol. II 1496 1977

finances and practices *is* appointed for a *5-year* term, but he *is* thereafter ineligible to serve as the commissioner of campaign finances and practices and *is* precluded from being a candidate for public office as defined in this act for a period of 5 years from the time that his term as commissioner expires.

(3) If for any reason a vacancy *occurs* in the position of commissioner, a successor shall be appointed within 30 days as provided in subsection (1) to serve out the unexpired term. An individual who is selected to serve out the unexpired term of a preceding commissioner *is* entitled to be reappointed for a *5-year* term as provided in subsection (1).

(4) The commissioner may be removed from office by impeachment as provided in 95-2801 and 95-2802. He may also be prosecuted by the appropriate county attorney for official misconduct as specified in 94-7-401.

(5) The commissioner of campaign finances and practices *is entitled to receive* an annual salary of *$21,000. The* salary commission may recommend salary increases to the legislature.

(6) The office of the commissioner shall be attached to the office of the secretary of state for administrative purposes only as specified in 82A-108, except that the provisions of subsections (1)(b), (1)(c), (2)(a), (2)(b), (2)(d), (2)(e), and (3)(a) of 82A-108 do not apply."

Section 2. Section 25-501, R.C.M. 1947, is amended to read as follows:

"**25-501. Salaries of certain elected state officials.** The annual salaries paid to certain elected officials of the state of Montana *are*:

Governor	*$35,000*
Lieutenant governor	*$25,000*
Chief justice of the supreme court	*$37,000*
Justices of the supreme court, each	*$36,000*
Attorney general	*$32,500*
State auditor	*$22,500*
Superintendent of public instruction	*$27,500*
Public service commissioners	*$25,000*
Secretary of state	*$22,500*
Clerk of the supreme court	*$20,000*"

Section 3. Section 93-303, R.C.M. 1947, is amended to read as follows:

"**93-303. Salaries of district judges.** The annual salary of each district judge *is $35,000.*"

Approved April 26, 1977.

HeinOnline -- 1977 vol. II 1497 1977

CHAPTER NO. 462

AN ACT TO AMEND THE PESTICIDE LAW RELATING TO DEFINITIONS; REGISTRATION AND EMBARGO OF PRODUCTS; LICENSING OF APPLICATORS, DEALERS, AND RETAILERS; CERTIFICATION OF FARM APPLICATORS; REVOCATION OF LICENSES AND PERMITS; RULE MAKING AND ADMINISTRATIVE PROCEDURES; ADVISORY COUNCIL; AGENCY COOPERATION; ENFORCEMENT AND VIOLATIONS; AMENDING SECTIONS 27-216, 27-217, 27-220, 27-221, 27-222, 27-225, 27-227, 27-228, 27-230, 27-231, 27-232, 27-234, 27-235, 27-240, 27-242, 27-243, AND 27-245, R.C.M. 1947; REPEALING SECTIONS 27-236, 27-237, AND 27-238, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 27-216, R.C.M. 1947, is amended to read as follows:

"**27-216. Definitions.** Unless the context requires otherwise, in this act:

(1) "Active ingredient" means:

(a) *in* the case of a pesticide other than a plant regulator, defoliant, or desiccant, an ingredient which will prevent, destroy, repel, alter life processes, or mitigate insects, nematodes, fungi, rodents, weeds, or other pests;

(b) *in* the case of a plant regulator, an ingredient which acts upon the physiology to accelerate or retard the rate of growth or rate of maturation or otherwise alter the normal processes of ornamental or crop plants or their produce;

(c) *in* the case of a defoliant, an ingredient which will cause the leaves or foliage to drop from a plant;

(d) *in* the case of a desiccant, an ingredient which will artificially accelerate the drying of plant tissue.

(2) "Adulterated" applies to a pesticide if its strength of purity falls below the professed standard or quality as expressed on labeling or under which it is sold, or if any substance has been substituted wholly or in part for the pesticide, or if any valuable constituent of the pesticide has been wholly or in part abstracted.

(3) "Antidote" means the most practical immediate treatment in case of poisoning and includes *first-aid* treatment.

(4) "Applicator" means a person who applies pesticides by any method.

(5) "Commercial applicator" means a person who by contract or for hire applies by aerial, ground, or hand equipment pesticides to land, plants, seed, animals, waters, structures, or vehicles.

(6) "Commercial operator" means a person who applies pesticides under the supervision of a commercial applicator.

HeinOnline -- 1977 vol. II 1498 1977

(7) "Farm applicator" means a person applying pesticides to his own crops or land.

(8) "Public utility applicator" means a person applying pesticides to land and structures owned or leased by a public utility.

(9) "Beneficial insects" means those insects which, in the course of their life cycle, carry, transmit, or spread pollen to and from vegetation, act as parasites and predators on other insects, or are otherwise beneficial.

(10) "Crop" means a food intended for human or animal consumption or a fiber product.

(11) "Dealer" means a person who sells, wholesales, offers, or exposes for sale, exchanges, barters, or gives away within this state any pesticide except those pesticides which are to be used for home, yard, garden, home orchard, shade trees, ornamental trees, bushes, and lawn.

(12) "Defoliant" means a substance or mixture of substances for causing the leaves or foliage to drop from a plant, with or without causing abscission.

(13) "Desiccant" means a substance or mixture of substances for artificially accelerating the drying of plant tissue.

(14) "Device" means any instrument or contrivance intended for destroying, controlling, repelling, or mitigating pests but not equipment used for the application of pesticides.

(15) "Environment" means the soil, air, water, plants, and animals.

(16) "Equipment" means equipment used in the actual application of pesticides, including aircraft, ground sprayers and dusters, hand-held applicators, and water surface equipment.

(17) "Fungi" means all nonchlorophyll-bearing thallophytes (all nonchlorophyll-bearing plants of a lower order than mosses and liverworts) as, for example, rusts, smuts, mildews, molds, yeasts, and bacteria, except those resident on or in living man or other animals.

(18) "Fungicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any fungus.

(19) "Herbicide" means a substance or mixture of substances for preventing, destroying, repelling, or mitigating any weed.

(20) "Inert ingredient" means an ingredient which is not an active ingredient.

(21) "Ingredient statement" means either:

(a) a statement of the chemical name and common name and percentage of each active ingredient, together with the total percentage of the inert ingredients, in the pesticide; or

(b) a statement of the chemical name and common name of each active ingredient, together with the name of each and total percentage of the inert ingredients, if any, in the pesticide. However, subsection (21)(a) of

HeinOnline -- 1977 vol. II 1499 1977

this section applies if the preparation is highly toxic to man, determined as provided in 27-234, and if the pesticide contains arsenic in any form, the ingredient statement shall also include a statement of the percentage of total and water-soluble arsenic, each calculated as elemental arsenic.

(22) "Insect" means any of the numerous small invertebrate animals generally having the body more or less obviously segmented, for the most part belonging to the class insecta, comprising six-legged, winged and wingless forms, such as beetles, bugs, wasps, flies, and keds, and to other classes of *arthropods* whose members are wingless and usually have more than six legs, such as spiders, mites, ticks, centipedes, and wood lice.

(23) "Insecticide" means any substance or mixture of substances for preventing, destroying, repelling, or mitigating any insects present in any environment.

(24) "Label" means the written, printed, or graphic matter on or attached to the pesticide or device, or to its immediate container, and any outside container or wrapper of any retail package of the pesticide or device.

(25) "Labeling" means all labels and other written, printed, or graphic matter:

(a) *upon* the pesticide or device or any of its containers or wrappers;

(b) *accompanying* the pesticide or device at any time;

(c) *to* which reference is made on the label or in literature accompanying the pesticide or device, except when accurate, nonmisleading reference is made to current official publications of the United States environmental protection agency; departments of agriculture, interior, or health, education, and welfare; state experiment stations; state agricultural colleges; or other similar federal institutions or official agencies of this state or other states authorized by law to conduct research in the field of pesticides.

(26) "Misbranded" applies:

(a) *to* a pesticide or device if its labeling bears any statement, design, or graphic representation relative to its ingredients which is false or misleading.

(b) *to* a pesticide if:

(i) *it* is an imitation of or is offered for sale under the name of another pesticide;

(ii) *its* labeling bears any reference to registration under this act;

(iii) *the* labeling accompanying it does not contain instructions for use necessary and, if complied with, adequate for the protection of the public;

(iv) *the* label does not contain a warning or caution statement necessary and, if complied with, adequate to prevent injury to living man or undue hazard to the environment;

(v) *the* label of the retail package which is presented or displayed

HeinOnline -- 1977 vol. II 1500 1977

under customary conditions of purchase does not bear an ingredient statement on that part of the immediate container and on the outside or on a wrapper through which the ingredient statement on the immediate container cannot be clearly read;

(vi) *any* word, statement, or other information required to appear on the labeling is not prominently placed on the labeling with a conspicuousness (as compared with other words, statements, designs, or graphic matter in the labeling) and in terms rendering it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

(vii) *in* the case of an insecticide, nematocide, fungicide, or herbicide, when used as directed or in accordance with commonly recognized practice, it is injurious to living men or other vertebrate animals or vegetation, except weeds, to which it is applied, or to the person applying the pesticide;

(viii) *in* the case of a plant regulator, defoliant, or desiccant, when used as directed, it is injurious to man or other vertebrate animals or vegetation to which it is applied, or to the person applying the pesticide. Physical or physiological effects on plants or parts of plants are not injurious when this is the purpose for which the plant regulator, defoliant, or desiccant is applied in accordance with the label claims and recommendations.

(27) "Nematocide" means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating nematodes.

(28) "Nematodes", "nemas", or "eelworms" means invertebrate animals of the phylum nemathelminthes and class nematoda, that is, unsegmented round worms with elongated, fusiform, or sac-like bodies covered with cuticle, and inhabiting soil, water, animals, plants, or plant parts.

(29) "Person" means any natural person, individual, firm, partnership, association, corporation, company, joint-stock association, body politic, or organized group of persons whether incorporated or not, and any trustee, receiver, assignee, or similar representative.

(30) "Pest" includes any insect, rodent, nematode, snail, slug, weed, and any form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered a pest or which the department declares a pest.

(31) "Pesticide" means any:

(a) *substance* or mixture of substances, including any living organism or any product derived from a living organism, intended for preventing, destroying, controlling, repelling, altering life processes, or mitigating any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living man or other animals, that may infect, or be detrimental to persons, vegetation, crops, animals, structures, or households or be present in any environment or which the department declares a pest;

(b) *substance* or mixture of substances intended for use as a plant regulator, defoliant, or desiccant; and

HeinOnline -- 1977 vol. II 1501 1977

(c) *other* substances intended for that use named by the department by a rule adopted by it.

(32) "Plant regulator" means any substance or mixture of substances affecting the rate of growth or rate of maturation or for otherwise altering physiological condition of plants, but does not include substances to the extent that they are intended as plant nutrients, trace elements, nutritional chemicals, plant inoculants, and soil amendments.

(33) "Registrant" means the person registering any pesticide or device under the provisions of this act.

(34) "Restricted use pesticide" means any pesticide, including highly toxic pesticides, which the department of agriculture has found and determined, subsequent to a hearing, to be injurious when used in accordance with registration, label, directions, and cautions to persons, beneficial insects, animals, crops, or the environment other than the pests it is intended to prevent, destroy, control, or mitigate.

(35) "Retailer" means any person who sells, offers, or exposes for sale, exchanges, barters, or gives away within this state any pesticide for home, yard, lawn, and garden use, in quantities or concentrations as determined by the department of agriculture.

(36) "Weed" means any plant or part of the plant which grows where not wanted."

Section 2. Section 27-217, R.C.M. 1947, is amended to read as follows:

"**27-217. Registration.** (1) Every pesticide distributed, sold, or offered for sale within this state or delivered for transportation or transported in intrastate commerce or between points within this state, shall be registered with the department of agriculture. The registration shall be renewed annually by the manufacturer, formulator, *or distributor* of the pesticide. The department of agriculture shall register all approved pesticides and those registered are subject to registration fees and all other provisions of this act. All registrations of pesticides expire on December 31 following the date of issuance, unless otherwise terminated.

(2) The applicant for registration shall file with the department of agriculture a statement including:

(a) *the* name and address of the applicant and the name and address of the person whose name will appear on the label, if other than the registrant;

(b) *a* complete copy of the label of the pesticide, the United States environmental protection agency registration number if the pesticide is so registered, and a statement of all claims to be made for it, including directions for use;

(c) *the* trade and chemical name of the pesticide;

(d) *if* requested by the department of agriculture, a full description of tests made and the results upon which the claims are based. In the case of renewal of registration, a statement shall be required only with

HeinOnline -- 1977 vol. II 1502 1977

respect to information which is different from that furnished when the pesticide was registered or last reregistered.

(3) Any pesticide imported into this state which is subject to the provisions of any federal act providing for the registration of pesticides and has been registered under the provisions of a federal act shall be registered in the state. However, the state may restrict the use and application of the pesticide by type of applicator, time, and place and may establish special registrations of pesticides as outlined in subsection *(8)* of this section and 27-234(3). The annual registration fee must also be paid, and registration information required by the department of agriculture must be provided.

(4) The applicant shall pay an annual fee of $10 for each pesticide registered. *A registration fee is not required to register an experimental use permit.* Fees collected shall be deposited in the state treasury to the credit of the general fund.

(5) The department of agriculture may require the submission of the complete formula and certified analytical standards of any pesticide. If it appears to the department of agriculture that the composition of the article warrants the proposed claims for it and if the article and its labeling and other material required to be submitted comply with the requirements of 27-218, it shall register the article.

(6) If it does not appear to the department of agriculture that the article warrants the proposed claims for it or if the article and its labeling and other material required to be submitted do not comply with this chapter, it shall notify the applicant of the manner in which the articles, labeling, or other material required to be submitted fails to comply with the act so as to afford the applicant an opportunity to make the necessary corrections. If the applicant does not make the corrections *upon receipt of the notice,* the department of agriculture may refuse to register the article. The department of agriculture may suspend or cancel the registration of a pesticide whenever it does not appear that the article or its labeling comply with this act. When an application for registration is refused or the department of agriculture proposes to suspend or cancel a registration, the registrant may appeal the *department's decision.*

(7) Registration is not required in the case of a pesticide shipped from one plant in this state to another plant in this state by the same person.

(8) (a) The departments of health and environmental sciences, agriculture, and fish and game shall review all applications for registration of *an experimental use permit or a registration for special local needs. The departments shall utilize the same requirements and standards for reviewing registrations as established by the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, and regulations adopted thereunder.* The department of agriculture shall provide the departments of health and environmental sciences and fish and game with a complete copy of the application, related correspondence, and a statement of the department of agriculture's proposed action on the application. The departments of health and environmental sciences and fish and game shall approve or disapprove the application within *10* days after the receipt of the applica-

HeinOnline -- 1977 vol. II 1503 1977

tion. If the departments of health and environmental sciences, agriculture, and fish and game are in agreement with the proposed registration, the department of agriculture shall *issue the* registration.

(b) The department of agriculture shall establish a time and place for an interagency conference for the purposes of resolving the registration of any pesticide or device. If two of the departments approve the proposed registration, the department of agriculture shall *issue* the registration.

(c) The registrant applying for registration shall be notified as to proposed changes in registration. If the departments cannot resolve the proposed registration following the interagency conference, the registrant may request a joint administrative hearing before the departments of agriculture, health and environmental sciences, and fish and game.

(d) Following the interagency conference, and if requested, the administrative hearing, if the proposed registration of a pesticide or device has not been resolved, the department of agriculture shall appoint an advisory council as outlined in 27-240 to resolve by majority vote the registration of any pesticide. The advisory council's recommendations on the registration shall be accepted by the departments and implemented by the department of agriculture."

Section 3. Section 27-220, R.C.M. 1947, is amended to read as follows:

"**27-220. Embargo.** (1) Whenever a duly authorized agent of the department of agriculture finds or has probable cause to believe that any pesticide or device *is* adulterated or misbranded, *has* not been registered under the provisions of 27-217*(5)* of this act, *fails* to bear on its label the information required by this act, or *is* a white powder pesticide and is not colored as required under this act, he shall affix to such article a tag or other appropriate marking giving notice *thereof and that such article* has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It *is* unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise, without such permission, or to remove or alter the tag or marking.

(2) When an article detained or embargoed under *subsection* (1) has been found by such agent to be in violation, if after 30 days the violation has not been resolved, he may petition the district court in whose jurisdiction the article is detained or embargoed for a condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(3) If the court finds that a detained or embargoed article is in violation of *the act or rules adopted thereunder*, such article shall after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees and storage and other proper expenses shall be assessed against the claimant of such pesticide or device or his agent; provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and

HeinOnline -- 1977 vol. II 1504 1977

expenses have been paid and a good and sufficient bond *has been executed,* conditioned *upon the proper labeling or processing of* such pesticide or device, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the department of agriculture. The expense of such supervision shall be paid by claimant. The article shall be returned to the claimant of the pesticide or device on the representation to the court by the department of agriculture that the article is no longer in violation of this act, and that the expenses of such supervision have been paid."

Section 4. Section 27-221, R.C.M. 1947, is amended to read as follows:

"**27-221. Commercial applicator.** (1) It shall be unlawful for any person to engage in the business of applying pesticides for another without a pesticide applicator's license obtained from the department of agriculture. The application shall be accompanied by a fee of $10. Applicators applying for a dealer license under this act shall be required to pay only a $5 licensing fee for the dealer license. The provisions of this section shall not apply to any person employed only to operate any equipment used for the application of any pesticide, and in which the person has no financial interest or other control over such apparatus other than its day-to-day mechanical operation for the purpose of applying any pesticide.

(2) Public utility applicators shall be licensed in the same manner as commercial applicators, provided that public utility operators working under public utility applicators are not required to be licensed except as provided for under 27-223.

(3) Veterinarians licensed as provided in 66-2204 shall not be required to be licensed to apply *nonrestricted* pesticides, provided that these veterinarians shall register with the department of agriculture each year; provided further that the veterinarians shall be required to meet all other requirements and *rules* of the Montana Pesticides Act. The department shall consider the professional licensing requirements for veterinarians *when adopting rules.*"

Section 5. Section 27-222, R.C.M. 1947, is amended to read as follows:

"**27-222. Application for applicator's license.** (1) Application for a pesticide applicator's license provided for in 27-221 shall be made annually *to the department of agriculture* before applying pesticides in any calendar year. *Provided that pesticide applicators applying for renewal of license shall do so on or before May 1 of that calendar year. Any applicator applying for renewal of license after May 1 shall be assessed a $10 late licensing fee.*

(2) If the application is made for a license to engage in aerial application of pesticides, the applicant shall first meet all of the requirements of the federal aviation agency and the department of community affairs to operate the equipment described in the application."

Section 6. Section 27-225, R.C.M. 1947, is amended to read as follows:

"**27-225. Dealers.** (1) It is unlawful for a dealer to sell, deliver, or have delivered within this state any pesticide without first procuring a license from the department of agriculture for each calendar year or portion

HeinOnline -- 1977 vol. II 1505 1977

thereof. A separate dealer's license and fee shall be required for each location or outlet from which pesticides are distributed, sold, held for sale, or offered for sale. Pesticide fieldmen or salesmen employed directly out of the same location or outlet and under a licensed dealer, shall not be required to obtain a license.

(2) The dealer shall furnish the department of agriculture the names and addresses of its fieldmen and salesmen selling pesticides within the state. The application for a license shall be accompanied by a fee of $10. *Dealers applying for renewal of license shall do so on or before May 1 of that calendar year. Any dealer applying for renewal of license after May 1 shall be assessed a $10 late licensing fee.*

(3) The dealer shall require the purchaser of any restricted pesticide to exhibit *his* license or permit issued under authority of this act before completing a sale.

(4) *Dealers may make one application for two annual licenses if the application is accompanied by a $10 licensing fee for each year of the state biennium.*

(5) Pharmacists and veterinarians, licensed as provided for in 66-1506, 66-1507, and 66-2204, and certified pharmacies licensed under 66-1508(b), shall not be required to be licensed to sell pesticides, provided that the certified pharmacies and veterinarians shall register with the department of agriculture each year. However, the certified pharmacies and veterinarians shall be required to meet all other requirements concerning the commercial sale of pesticides. The department shall take into account the professional licensing requirements of pharmacists, certified pharmacies, and veterinarians *when adopting rules.*"

Section 7. Section 27-227, R.C.M. 1947, is amended to read as follows:

"**27-227. Retail noncommercial sale of pesticides.** The department of agriculture is authorized to designate the pesticides that may be sold in this state at retail for home, yard, garden, and lawn use. Only pesticides so designated may be sold at retail. The department of agriculture may also limit the retail sale of such designated pesticides to quantities up to a specific number of *pounds* or *gallons* and of such concentrations as would be sublethal to humans and animals if small amounts thereof were accidentally swallowed, inhaled, sprayed, or dusted on the skin."

Section 8. Section 27-228, R.C.M. 1947, is amended to read as follows:

"**27-228. Farm applicators.** (1) *Farm applicators shall be required to obtain a certificate or special use permit prior to purchasing and using any pesticide designated by the department as a restricted use pesticide. The certificate, to be issued for 5 calendar years, must be renewed annually by the department or its authorized representative. The 5-year certification period shall commence on January 1, 1978. Provided that the time period from October 21, 1977, through December 31, 1977, shall be considered as part of the January 1, 1978, 5-year certification period.*

(2) *Restricted pesticides may not be utilized by farm applicators or their employees except for the purpose of producing or protecting any agricultural commodity on property owned, leased, or rented, or as provided in (6) of this section.*

HeinOnline -- 1977 vol. II 1506 1977

(3) Farm applicators shall qualify for the certificate or permit by either passing a written examination or attending a training course approved by the department with or without an ungraded quiz. The examination or course shall include practical knowledge as the ability to:

(a) recognize common pests to be controlled and damage caused by them;

(b) read and understand the label and labeling information including the common name of the pesticide(s) applied; pest(s) to be controlled; timing and methods of application; safety precautions; any preharvest or reentry restrictions; and any specific disposal procedures.

(c) apply pesticides in accordance with label instructions and warnings, including the ability to prepare the proper concentration of pesticides to be used under particular circumstances taking into account such factors as area to be covered, speed at which application equipment will be driven, and the quantity dispersed in a given period of operation;

(d) recognize local environmental situations that must be considered during application to avoid contamination; and

(e) recognize poisoning symptoms and procedures to follow in case of a pesticide accident.

(4) The department may require farm applicators to attend a mandatory training session and pass a written examination for those restricted pesticides which are extremely toxic or for which an effective antidote is not available. The department may require farm applicators handling these pesticides to maintain use records.

(5) Farm applicators having verified reading disabilities may become certified to use up to two restricted use pesticides by passing a specific oral examination on the particular pesticide(s) if the applicator documents that a certified applicator in the immediate vicinity can advise him.

(6) Provisions of this act relating to licensing of farm applicators shall not apply to any farm applicator applying nonrestricted pesticides on his own land or on lands of his neighbor's; *provided* that *he*:

(a) operates farm property and operates and maintains pesticide application equipment primarily for his own use;

(b) is not regularly engaged in the business of applying pesticides for hire and does not publicly hold himself out as a pesticide applicator;

(c) operates his pesticide application equipment only in the vicinity of his own property and for the accommodation of his immediate neighbors."

Section 9. Section 27-230, R.C.M. 1947, is amended to read as follows:

"27-230. Revocation of licenses and permits. *(1)* The department of agriculture shall establish the policy and procedures on the revocation of licenses or permits. The department of agriculture may refuse to grant, renew, or may revoke a license or permit, as the case may require, when the department of agriculture is satisfied that the licensee or holder of a permit is not qualified to sell, use, or apply pesticides under the condi-

HeinOnline -- 1977 vol. II 1507 1977

tions in the locality in which he operates or has operated, or that he has committed any of the following acts, each of which is declared to be a violation of this act:

(a) made false or fraudulent claims *or recommendations* through any media misrepresenting the effect of materials or methods to be utilized;

(b) applied unapproved or illegal materials;

(c) operated in a faulty, careless, or negligent manner;

(d) operated faulty or unsafe equipment;

(e) refused or neglected to comply with the provisions of this act, the rules adopted hereunder, or any lawful order of the department of agriculture;

(f) refused or neglected to keep and maintain the records required by this act or to make reports when and as required;

(g) made false or fraudulent records or reports;

(h) operated equipment for the commercial application of a pesticide without having a license or permit;

(i) used fraud or misrepresentation in making an application for a license or permit or renewal of a license or permit;

(j) used or applied a registered pesticide inconsistent with its labeling or the label or the department restrictions on the use of that pesticide.

(2) Decisions of the department of agriculture relating to the issuing of licenses or permits may be appealed."

Section 10. Section 27-231, R.C.M. 1947, is amended to read as follows:

"**27-231. Government agencies.** (1) All state agencies, municipal corporations, or any other governmental agency shall be subject to the provisions of this act and rules adopted thereunder concerning the application *or sale* of pesticides. Applicators and operators *applying* pesticides *and dealers selling pesticides for* agencies, municipal corporations, or any governmental agencies shall be subject to the provisions of 27-221, 27-222, 27-223, 27-224, *27-225, and 27-226* and the department of agriculture shall issue a limited commercial applicator's, operator's, *or dealer's* license without a fee which shall be valid only when such applicators, operators, *and dealers* are applying *or selling* pesticides for such agencies. Provided, that the jurisdictional health officer, state veterinarian, their duly authorized representatives, or governmental research personnel are exempt from this licensing requirement when applying pesticides to experimental areas."

Section 11. Section 27-232, R.C.M. 1947, is amended to read as follows:

"**27-232. Liability.** The department of agriculture shall *annually* require from each commercial pesticide applicator proof of financial responsibility in amounts to be determined under rules *promulgated* by the department of agriculture."

HeinOnline -- 1977 vol. II 1508 1977

Section 12. Section 27-234, R.C.M. 1947, is amended to read as follows:

"**27-234. Rules and regulations.** (1) The department of agriculture may adopt by reference without a public hearing regulations adopted under the federal Insecticide, Fungicide, and Rodenticide Act, as amended. The department may, after a public hearing, adopt all rules and regulations necessary to carry out this act.

(2) The rules may prescribe methods of:

(a) *registration*, application, use or restricting use, prohibiting use, offering or exposing for sale, any pesticide;

(b) *determining* whether pesticides are highly toxic to man;

(c) *determining* standards of coloring or discoloring for pesticides, and subjecting pesticides to the requirements of 27-218;

(d) *licensing* commercial applicators and operators, dealers, establishing methods of record keeping for applicators, operators, *and* dealers, and providing for the review of the records by the department of agriculture's authorized agent and the submission of the records to the department of agriculture upon written request;

(e) *issuing* farm applicator special use permits and the maintenance and submission of records by farm applicators issued special use permits;

(f) *collection*, examination, and standard deviation from guarantee analysis and umpire analysis of pesticides and devices;

(g) *operating* and maintaining equipment used by applicators;

(h) *developing* examinations which shall be held periodically throughout the state;

(i) *establishing* the form and content of all applications for licenses and permits;

(j) *designating* pesticides that may be sold at retail for home, yard, garden, and lawn use. The department of agriculture may also limit retail sale of pesticides, up to a specific number of pounds or gallons and concentration which would be sublethal to humans and animals if small amounts of it were accidentally swallowed, inhaled, sprayed, or dusted on the skin.

(k) *revoking* licenses and permits;

(l) *registering* or controlling any spray adjuvant such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect of that other pesticide, whether or not distributed in a package or container separate from that of a pesticide with which it is to be used;

(m) *registering* pesticide fertilizer and other chemical blends or, instead of registration, establishing licensing, inspection, and fees for blending plants;

HeinOnline -- 1977 vol. II 1509 1977

(n) *establishing* registration procedures for devices with a fee not to exceed $5 per type of device, specifying classes of devices to be registered and providing for additional requirements.

(3) *(a) Whenever* the department of agriculture finds that those rules are necessary to carry out the purposes and intent of this act, the rules may relate to the time, place, manner, and method of registration, application, or selling of the pesticides, may restrict or prohibit use of pesticides in the state or in designated areas during specified periods of time and shall encompass all reasonable factors which the department of agriculture considers necessary to prevent damage or injury to:

(i) persons, animals, or pollinating insects from the effect of drift or careless application;

(ii) the environment;

(iii) plants, including forage plants;

(iv) wildlife;

(v) fish and other aquatic life.

(b) In issuing the *rules,* the department of agriculture shall give consideration to pertinent research findings and recommendations of other agencies of this state or of the federal government.

(4) If the department of agriculture finds that an emergency exists which requires immediate action with regard to the registration, use, or application of pesticides, the department of agriculture may, without notice or hearing, issue necessary orders *or* rules to protect the public health, welfare, and safety. An order *or* rule issued under this subsection is effective for *the* period *prescribed by the Administrative Procedure Act.* If the department of agriculture determines that the emergency order *or* rule should remain in effect, a public hearing under 27-235 shall be held within the *above* period to determine whether the order *or* rule should be adopted by the department of agriculture.

(5) All rules and orders issued by the department of agriculture shall be in writing, shall be entered in full in books to be kept by the department of agriculture for that purpose, shall be indexed, and shall be public records open for inspection at all times during reasonable office hours. Except for orders establishing or changing rules of practice and procedure, all orders made and published by the department of agriculture shall include and be based upon written findings of fact. A copy of any rule or order certified by the department of agriculture shall be received in evidence in all courts of this state with the same effect as the original."

Section 13. Section 27-235, R.C.M. 1947, is amended to read as follows:

"27-235. Administrative procedures. *The administration of this act and all rule making and hearing functions under the act shall be conducted in accordance with the Administrative Procedure Act."*

Section 14. Section 27-240, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1510 1977

"**27-240. Advisory council.** (1) The director of agriculture may appoint an advisory council to study and make recommendations on special pesticide problems in the state. The council shall consist of individuals representing, equally, controlled industry, agriculture, health, and wildlife. Governmental personnel, university personnel not included, may not be represented on the council. Governmental personnel shall meet with the council in an advisory capacity when requested by the council. The council may not exceed 12 members. The director of agriculture shall establish the time period in which the council shall exist. The time period may not exceed 2 years. The department of agriculture shall provide the necessary administrative, secretarial, and any other essential items to the council.

(2) Each member of the council shall receive as compensation for his services the sum of $25 per day for each day actually spent in the performance of his duties and shall be reimbursed for travel expenses as provided for in 59-538, 59-539, and 59-801.

(3) The council may request that the department of agriculture hold a public hearing to assist it in gathering factual data and information on the special problems assigned it."

Section 15. Section 27-242, R.C.M. 1947, is amended to read as follows:

"**27-242. Cooperation with other agencies.** *(1)* The department of agriculture may cooperate with agencies of this state or its subdivisions or with any agency of any other state or the federal government for the purpose of carrying out the provisions of this act for securing uniformity of *rules and entering into reciprocal licensing and certification agreements with other states.*

(2) The department and the department of health and environmental sciences shall enter into a memorandum of agreement concerning the inspection, regulation, and responsibilities of persons or activities that may be involved in the management, disposal, storage, transportation, treatment, recycling or recovery of hazardous wastes and the disposal of solid wastes.

(3) For the purpose of this section, solid waste means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood by-products and inert materials. Solid waste does not mean municipal sewage, industrial wastewater affluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood by-products.

(4) For the purpose of this section hazardous waste means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which may cause or contribute to an increase in mortality or

HeinOnline -- 1977 vol. II 1511 1977

an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to those which are toxic, radioactive, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes."

Section 16. Section 27-243, R.C.M. 1947, is amended to read as follows:

"27-243. Enforcement. In enforcing this act, the department of agriculture or its duly authorized agents, upon reasonable cause, *may* enter upon private and public premises and property with a warrant or consent of the inhabitant or owner to inspect or investigate at reasonable time:

(1) *equipment* subject to this act;

(2) *actual* or reported adverse effects caused by pesticides in humans, crops, animals, land, or other property;

(3) *records* on the selling or use of pesticides and the person's stock of pesticides;

(4) storage and disposal of pesticides by persons licensed or regulated under this act;

(5) sample pesticides being applied or to be applied; or

(6) the use and application of a pesticide."

Section 17. Section 27-245, R.C.M. 1947, is amended to read as follows:

"27-245. Violation. (1) Any person convicted of violating any of the provisions of this act or the rules issued thereunder or who may misrepresent, impede, obstruct, hinder, or otherwise prevent or attempt to prevent the department of agriculture or its duly authorized agent in performance of its duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor.

(2) The department of agriculture or its authorized representative is hereby authorized to apply to the district court of the county or any county wherein a violation *is about to occur or* has occurred to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rule promulgated under the act notwithstanding the existence of other remedies of law. The injunction is to be issued without bond.

(3) Nothing in this act is to be construed as requiring the department of agriculture or its authorized agent to report for prosecution or for the institution of seizure proceedings, minor violations of the act when it believes the public interest will be best served by other remedial action or by a suitable notice of warning in writing; nor is any part of this act to be construed to apply to common carriers transporting shipments tendered to them by the general public.

HeinOnline -- 1977 vol. II 1512 1977

(4) Notwithstanding any other provisions of this section, if any person with intent to defraud uses or reveals information relative to formulas of products acquired under the authority of 27-217, he shall, upon conviction, be fined not more than $500 or imprisoned for not more than 1 year or both.

(5) In all prosecutions under the registration section involving the composition of a lot of pesticide, a certified copy of the official analysis signed by the department of agriculture's authorized chemist shall be accepted as prima facie evidence of the composition."

Section 18. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 19. **Repealer.** Sections 27-236, 27-237, and 27-238, R.C.M. 1947, are repealed.

Section 20. **Effective date.** This act is effective on its passage and approval.

Approved April 26, 1977.

CHAPTER NO. 463

AN ACT TO CONTINUE THE FUNDING OF PUBLIC EDUCATIONAL INSTITUTIONS SUBJECT TO BOARD OF REGENTS' SUPERVISION BY A LEVY OF NOT TO EXCEED 6 MILLS ON ALL TAXABLE PROPERTY EACH YEAR FOR 10 YEARS AND PROVIDING THAT THE PROPOSED ACT BE SUBMITTED TO THE ELECTORS OF THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-8615 that reads as follows:

75-8615. State tax levy — support of public education institutions. Upon the approval of the electors of this state to be determined by their vote at the general election to be held in November of 1978, the legislature shall levy a property tax of not more than 6 mills on the taxable value of all real and personal property each year for 10 years beginning with the year 1979. All revenue from this property tax levy shall be appropriated for the support, maintenance, and improvement of the Montana university system and other public educational institutions subject to board of regents' supervision.

Section 2. **Submission to electorate.** The question whether this act will become effective shall be submitted to the electors of the state of Montana at the general election to be held November 7, 1978, by printing on the ballot the full title of this act, and the following:

HeinOnline -- 1977 vol. II 1513 1977

☐ FOR the 6-mill levy for the support of public educational institutions subject to board of regents' supervision.

☐ AGAINST the 6-mill levy for the support of public educational institutions subject to board of regents' supervision.

Approved April 26, 1977.

CHAPTER NO. 464

AN ACT TO REPEAL SECTION 28-701, R.C.M. 1947, RELATING TO TRANSPORTATION OF CONIFEROUS TREES WITHOUT A BILL OF SALE; SECTIONS 45-419 THROUGH 45-421, R.C.M. 1947, RELATING TO A LIEN FOR DRIVING LOGS; SECTION 81-1604, R.C.M. 1947, RELATING TO A STATE BRAND TO BE PLACED UPON SEIZED LOGS; AND SECTIONS 89-3201 THROUGH 89-3207, R.C.M. 1947, THE COLUMBIA INTERSTATE COMPACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Repealer.** Sections 28-701, 45-419 through 45-421, 81-1604, and 89-3201 through 89-3207, R.C.M. 1947, are repealed.

Approved April 26, 1977.

CHAPTER NO. 465

AN ACT TO GENERALLY REVISE THE PENALTIES FOR FISH AND GAME VIOLATIONS; AMENDING SECTIONS 26-315, 26-319, 26-324, 26-812, 26-1211, AND 95-302, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-324, R.C.M. 1947, is amended to read as follows:

"**26-324. Penalties.** *(1)* A person violating *any provision of Title 26,* any *other* state law pertaining to fish and game, or the orders *or* rules of the commission is, unless a different punishment is expressly provided by law for the violation, guilty of a misdemeanor and shall be fined not less than *$50 or* more than $500, imprisoned in the county jail for not more than 6 months, or both. In addition, the person shall *be subject to forfeiture of* his license and privilege to hunt, fish, or trap within this state for a period of *not less than 24* months from the date of conviction.

(2) (a) A person convicted of unlawfully taking, killing, possessing, transporting, or wasting of a bighorn sheep, moose, wild bison, caribou, mountain goat, or grizzly bear or any part of these animals shall be fined not less than $500 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the

HeinOnline -- 1977 vol. II 1514 1977

privilege to hunt, fish, or trap in this state for not less than 30 months from the date of conviction.

(b) A person convicted of unlawfully taking, killing, possessing, or transporting a deer, antelope, elk, mountain lion, or black bear or any part of these animals, or wasting a deer, antelope, or elk, shall be fined not less than $300 or more than $1,000, imprisoned in the county jail for not more than 6 months, or both. In addition, that person shall forfeit any current hunting, fishing, or trapping license issued by this state and the privilege to hunt, fish, or trap in this state for not less than 24 months from the date of conviction.

(c) A person convicted of unlawfully attempting to trap, take, shoot, or kill a game animal shall be fined not less than $200 or more than $600, imprisoned in the county jail for not more than 60 days, or both.

(d) A person convicted of unlawfully taking, killing, possessing, transporting, shipping, labeling, packaging, or wasting or unlawfully attempting to take, kill, or possess any game bird, wild turkey, fish, or fur-bearing animal or any part of any such animal or fish or of failure to tag a game animal or game bird as prescribed by law shall be fined not less than $50 or more than $200 or imprisoned in the county jail for not more than 30 days, or both.

(e) A person convicted of hunting, fishing or trapping while his license is forfeited or his privilege denied shall be imprisoned in the county jail for not less than 5 days or more than 6 months. In addition that person may be fined not less than $500 or more than $1,000."

Section 2. Section 26-315, R.C.M. 1947, is amended to read as follows:

"26-315. Taking deer within boundaries of cities or towns unlawful. It *is* unlawful to shoot, kill, take, or cause to be shot, killed, taken or captured or to attempt to shoot, kill, take or capture any deer within the boundaries of any incorporated or unincorporated city or town of this state."

Section 3. Section 26-319, R.C.M. 1947, is amended to read as follows:

"26-319. Unlawful to hunt during closed season on certain game birds — power of commission to open season. It *is* unlawful for any person to hunt, shoot, kill, capture, *possess,* or cause to be hunted, killed, or captured or *attempt* to shoot, kill, or capture any quail, Chinese or Mongolian pheasants, commonly called ringneck pheasants, Hungarian partridge, chukar partridge, sage grouse, sharptailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey until such time as the commission shall provide an open season on any quail, Chinese or Mongolian pheasants, commonly called ringneck pheasant, Hungarian partridge, chukar partridge, sage grouse, sharptailed grouse, blue grouse, fool hen, prairie chicken, ruffed grouse, ptarmigan, or wild turkey."

Section 4. Section 26-812, R.C.M. 1947, is amended to read as follows:

"26-812. Forfeiture of license or permit for littering. Any holder of a Montana resident or nonresident fishing or hunting license or camp-

HeinOnline -- 1977 vol. II 1515 1977

ing permit convicted of littering campgrounds, public or private lands, streams, or lakes while hunting, fishing, or camping shall forfeit his license and privilege to hunt, fish, camp, or trap within Montana for a period of 1 year from the date of conviction."

Section 5. Section 26-1211, R.C.M. 1947, is amended to read as follows:

"**26-1211. Enforcement — penalty — confiscation or disposal of illegally kept animals — appeal.** *(1)* The provisions of this act shall be enforced by any warden or any other legally authorized officer. Any person violating the provisions of this act shall, upon conviction, be punished *as provided in 26-324*, and at the discretion of the court the permit and all rights and privileges inherent therein may be forfeited.

(2) Any animals being kept in violation of any section of this act may be confiscated or ordered disposed of at the discretion of the director. The permittee may appeal to the commission within 20 days of the date of the order to confiscate and the commission shall hold a hearing on such an appeal and the decision of the commission shall be final."

Section 6. Section 95-302, R.C.M. 1947, is amended to read as follows:

"**95-302. Jurisdiction of the justice of the peace courts.** The justices' courts have:

(a) Jurisdiction of all misdemeanors punishable by a fine not exceeding $500.00 or imprisonment not exceeding 6 months, or both such fine and imprisonment, *and of all violations of fish and game statutes punishable by a fine of not more than $1,000 or imprisonment for not more than 6 months, or both*; excluding jurisdiction in cases commenced under the Montana Dangerous Drug Act except to act as examining and committing courts and to conduct preliminary hearings as provided in subsection (c).

(b) Concurrent jurisdiction, with district courts, of all misdemeanors punishable by a fine only, not exceeding $1,500.00; and

(c) Jurisdiction to act as examining and committing courts and for such purpose to conduct preliminary hearings."

Approved April 26, 1977.

CHAPTER NO. 466

AN ACT ENABLING THE DEPARTMENT OF AGRICULTURE TO PROVIDE TECHNICAL AND FINANCIAL ASSISTANCE FOR NOXIOUS PLANT MANAGEMENT AND TO OBTAIN FUNDS TO FINANCIALLY ASSIST LOCAL GOVERNMENTS MANAGING NOXIOUS PLANTS ON STATE AND FEDERAL LANDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 16-1724 that reads as follows:

HeinOnline -- 1977 vol. II 1516 1977

16-1724. Technical assistance. The department [of agriculture] is authorized to provide technical assistance and services to local governments, agricultural producers, and the general public on the management and control of noxious plants. This assistance and service may include:

(1) development, compilation, and reporting of information and records on noxious plant infestations in every county;

(2) information and data on the location of noxious plants and acres infested per county and major infestations of watersheds and geographical regions of the state;

(3) a determination of the economic and environmental impact of noxious plants on Montana and its citizens;

(4) providing technical assistance to various governmental units and citizens on managing long-term noxious plant control programs;

(5) delineation and recommendation of areas in the state where management programs or certain management tools should not be utilized because of economic or environmental considerations;

(6) information on the restrictions of and proper use of pesticides and other management techniques;

(7) publishing of model quarantine standards for counties desiring to provide a quarantine program for noxious plants, plant parts, and seed transported in the county; and

(8) cooperation and coordination of activities with any government agency, private industry, or citizens.

Section 2. There is a new R.C.M. section numbered 16-1725 that reads as follows:

16-1725. Funding of noxious plant management programs. (1) The department may make every effort to obtain federal funds under 43 U.S.C. 1242 to implement management of noxious plants on federal lands in cooperation with any federal agency and the local government body responsible for noxious plant management. These federal funds shall be directly disbursed to local governments authorized to conduct noxious plant management programs. The department may require individual or multiple local government units wishing to apply for federal funds to make proper application for the funds following the management program, budget guidelines and policies of the department, and the requirements of 43 U.S.C. 1241 through 1243. The department shall request 3% of the total federal funds received per year to cover the complete cost of administering, monitoring, and auditing the expenditure of these federal funds.

(2) The department may cooperate in and coordinate the planning and disbursement of these funds with federal, state, and local agencies responsible for management of noxious plants.

(3) The department may directly expend or provide federal or state funds to local governments to manage or eradicate new noxious plant infestations invading federal or state lands within the state.

HeinOnline -- 1977 vol. II 1517 1977

(4) The department may hold a public hearing in the specific locale requesting funding prior to granting the federal funds. The department may determine if there are any special requirements or restrictions that should be incorporated into the management program prior to its implementation.

Section 3. There is a new R.C.M. section numbered 16-1726 that reads as follows:

16-1726. Reports. The department may prepare a biennial report on the status of noxious plants and their management in Montana. Reports may be submitted to the governor and legislature and other such groups and organizations as the department considers necessary.

Section 4. There is a new R.C.M. section numbered 16-1727 that reads as follows:

16-1727. Rules. The department may adopt rules and policies necessary to implement this act pursuant to the Montana Administrative Procedure Act.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 26, 1977.

CHAPTER NO. 467

AN ACT TO AMEND SECTION 70-113, R.C.M. 1947, RELATING TO JUDICIAL REVIEW OF TEMPORARY RATE ORDERS; AND PROVIDING THAT A TEMPORARY RATE INCREASE MAY BE APPROVED PENDING A HEARING OR FINAL ORDER; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-113, R.C.M. 1947, is amended to read as follows:

"**70-113. Schedules of rates, tolls and charges.** Every public utility shall file with the commission, within a time fixed by the commission, schedules which shall be open to public inspection, showing all rates, tolls, and charges which it has established, and which are in force at the time, for any service performed by it within the state, or for any service in connection therewith, or performed by any public utility controlled or operated by it. The rates, tolls, and charges shown on such schedules shall not exceed the rates, tolls, and charges in force at the time of passage of this act. Every public utility shall file with, and as a part of such schedule, all rules and regulations that in any manner affect the rates charged or to be charged for any service. A copy of so much of said schedule as the commission shall deem necessary for the use of the public shall be

HeinOnline -- 1977 vol. II 1518 1977

printed in plain type, and kept on file in every station or office of such public utility, where payments are made by the consumers or users, open to the public, in such form and place as to be readily accessible to the public, and as can be conveniently inspected.

When a schedule of joint rates or charges is or may be in force between two or more public utilities, such schedule shall in like manner be printed and filed with the commission, and so much thereof as the commission shall deem necessary for the use of the public shall be filed in every such station or office as prescribed in the first paragraph of this section.

No change shall thereafter be made in any schedule, including schedules of joint rates, except as approved by the commission. Before it may approve any change increasing the rate or rates for utility service in a schedule generally affecting consumers in a utility's service area, the commission shall publish a notice of the proposed change, conforming to the requirements of section 82-4209(2) in one or more newspapers published and of general circulation within the area affected by the proposed change. This notice shall announce a hearing on the proposed change and shall inform interested persons how they may petition the commission to become parties to the hearing. The commission shall proceed to conduct the hearing under the Administrative Procedure Act. The consumer counsel may in his discretion petition to become a party to the hearing.

Notwithstanding any provision of this Title to the contrary, the final decision of the commission in any matter decided after a hearing conducted pursuant to this section shall conform to the requirements of a decision in a contested case under the Administrative Procedure Act. The commission may, *in its discretion,* temporarily approve *increases* pending a hearing *or* final decision. If the final decision is to disapprove the increase the commission shall order a rebate to all consumers for the amount collected retroactive to the date of the temporary approval. *An order of the commission approving or denying a temporary rate increase shall be an intermediate agency action subject to judicial review under the Montana Administrative Procedure Act.*"

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved April 26, 1977.

CHAPTER NO. 468

AN ACT TO ABOLISH THE OFFICE OF STATE TREASURER AND TRANSFER THE FUNCTIONS AND DUTIES OF THAT OFFICE TO THE DEPARTMENT OF ADMINISTRATION AND MEMBERSHIP ON THE BOARD OF HAIL INSURANCE TO THE STATE AUDITOR; AMENDING SECTIONS 82A-214 AND 82-1501, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-214, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1519 1977

"**82A-214. Office of state treasurer abolished — duties transferred.** (1) The office of state treasurer is *abolished.*

(2) All of the functions and duties of the state treasurer as prescribed by law are transferred to the director of the department of administration who shall serve as "ex officio" state treasurer."

Section 2. Section 82-1501, R.C.M. 1947, is amended to read as follows:

"**82-1501. State board of hail insurance — creation and powers — insurance, how effected.** (1) There is a state board of hail insurance of five members consisting of *the state auditor,* the director of agriculture, who is secretary of the board, and three other members to be appointed by the governor from names submitted by farmer organizations having a general membership throughout the state. The governor shall designate one of the appointive members to act as chairman of the board. Whenever the term of any member expires, either by death, resignation, removal for cause, or expiration of his term of office, the governor shall appoint his successor, and shall also appoint one of the board for chairman in case of a vacancy in that office.

(2) Each appointive member of the board shall be appointed for three years, except where such appointment is made to fill a vacancy on the board, in which event such appointee shall fill out the unexpired term of the member whose place he fills. All members of the board shall be subject to removal for cause by the governor; the board shall hold meetings when necessary and essential for the proper conduct of its business, at the state capitol in the office of the secretary, and is hereby authorized, directed and empowered to make rules as it may from time to time find practical, necessary and beneficial for the administration of this act. It shall prescribe blank forms for all purposes necessary, proper and incidental to the effective operation and enforcement of this act; it shall prescribe a special form outlining the purposes, scope and benefits of this act in furnishing protection against loss by hail, at the actual cost of the risk to all taxpayers who may elect to become subject to the provisions of this act, the form to be submitted by the agent of the department of revenue in each county at the time in which the regular assessments of property are made by the agents, to each farmer in each county in the state engaged in growing of crops subject to injury or destruction by hail, on which forms each such farmer taxpayer shall signify whether he desires to become subject to the provisions of this act or not.

(3) Every farmer taxpayer who signifies his desire to become subject to the provisions of this act, shall file in the office of the county assessor the properly filled out form not later than August 15th, and shall be chargeable with the tax on lands growing crops subject to injury or destruction by hail, hereinafter provided for, and shall share in the protection and benefits under the hail insurance provisions of this act. Such application for hail insurance shall be in full force and effect at noon the day following the acceptance of the same by the county assessor. Provided, however, that this act shall not be so construed as to empower anyone except the actual owner of the land to make such land subject to the hail tax provided in this act."

HeinOnline -- 1977 vol. II 1520 1977

Section 3. **State treasurer deleted.** Wherever the state treasurer appears in 19-112, 23-3513, 23-4121, 25-501, 59-304, 59-607, 82-601, and 82-4001, state treasurer is deleted.

Approved April 26, 1977.

CHAPTER NO. 469

AN ACT TO AMEND SECTION 40-3654, R.C.M. 1947, TO REQUIRE RATES TO BE FILED WITH THE INSURANCE COMMISSIONER; AND TO AMEND SECTION 40-4410, R.C.M. 1947, TO REQUIRE RETENTION BY INSURERS FOR 3 YEARS OF A NOTICE OF CANCELLATION, INTENTION NOT TO RENEW, OR REASONS FOR CANCELLATION OF CERTAIN INSURANCE POLICIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-3654, R.C.M. 1947, is amended to read as follows:

"**40-3654. Maintenance of records — rates to be filed.** *(1)* Every insurer, rating organization or advisory organization, and every group, association or other organization of insurers which engages in joint underwriting or joint reinsurance shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members, and of the data, statistics or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group or association, and, in the case of an insurer or rating organization, every rate, rating plan and rating system made or used by it, complies with the provisions of this chapter applicable to it. The maintenance of such records in the office of a licensed rating organization of which an insurer is a member or subscriber will be sufficient compliance with this section for any insurer maintaining membership or subscribership in such organization, to the extent that the insurer uses the rates, rating plans, rating systems or underwriting rules of such organization. Such records shall be maintained in an office within this state or shall be made available for examination or inspection within this state by the commissioner at any time upon reasonable notice.

(2) Every insurer shall in addition file with the commissioner all rates that the insurer uses within this state."

Section 2. Section 40-4410, R.C.M. 1947, is amended to read as follows:

"**40-4410. Retention and proof of notice.** *(1) A notice of cancellation or of intention not to renew or of reasons for cancellation of insurance issued under terms of this chapter shall be retained for a period of 3 years by the insurer or his agent within this state and shall be made available*

HeinOnline -- 1977 vol. II 1521 1977

within this state for examination or inspection by the commissioner or his agents at any time within such 3-year period upon reasonable notice.

(2) Proof of mailing of notice of cancellation, or of intention not to renew or of reasons for cancellation, to the named insured at the address shown in the policy or to the named insured's latest known address, shall be sufficient proof of notice."

Approved April 26, 1977.

CHAPTER NO. 470

AN ACT TO AMEND SECTION 89-880, R.C.M. 1947, TO PERMIT THE CONSTRUCTION OF STOCK WATER IMPOUNDMENTS OR PITS OF LESS THAN 15 ACRE-FEET WITHOUT FIRST SECURING A WATER USE PERMIT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 89-880, R.C.M. 1947, is amended to read as follows:

"**89-880. Right to appropriate — application for permit.** (1) After July 1, 1973, a person may not appropriate water except as provided in this act. A person may only appropriate water for a beneficial use. A right to appropriate water may not be acquired by any other method, including by adverse use, adverse possession, prescription or estoppel; the method prescribed by this act is exclusive.

(2) Except as otherwise provided in subsection (5) of this section, a person may not appropriate water or commence construction of diversion, impoundment, withdrawal, or distribution works therefor except by applying for and receiving a permit from the department. The application shall be made on a form prescribed by the department. The department shall make the forms available through its offices and the offices of the county clerks and recorders. The department shall return a defective application for correction or completion together with the reasons for returning it. An application does not lose priority of filing because of defects, if the application is corrected, completed and refiled with the department within thirty (30) days after its return to the applicant, or within a further time as the department may allow.

(3) The department may cease action upon an application for a permit and return it to the applicant when it finds that the application is not in good faith or does not show a bona fide intent to appropriate water for a beneficial use. An application returned for any of these reasons shall be accompanied by a statement of the reasons for which it was returned, and there shall be no right to a priority date based upon the filing of the application. Returning an application pursuant to this subsection shall be deemed a final decision of the department.

(4) A permit issued prior to a final determination of existing rights is provisional and is subject to that final determination. The amount of the appropriation granted in a provisional permit shall be reduced or

HeinOnline -- 1977 vol. II 1522 1977

modified where necessary to protect and guarantee existing rights determined in the final decree. A person may not obtain any vested right, to an appropriation obtained under a provisional permit, by virtue of construction of diversion works, purchase of equipment to apply water, planting of crops, or other action, where the permit would have been denied or modified if the final decree had been available to the department.

(5) *(a)* Outside the boundaries of a controlled groundwater area, a permit is not required before appropriating groundwater by means of a well with a maximum yield of less than one hundred (100) gallons a minute. Within sixty (60) days of completion of the well the appropriator shall file notice of completion on a form provided by the department at its offices and at the offices of the county clerks and recorders. Upon receipt of the notice, the department shall automatically issue a certificate of water right. The original of the certificate shall be sent to the county clerk and recorder, in the county where the point of diversion or place of use is located, for recordation. The department shall keep a copy of the certificate in its office in Helena. After recordation, the clerk and recorder shall send the certificate to the appropriator. The date of filing of the notice of completion is the date of priority of the right.

(b) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if the maximum capacity of the impoundment or pit is less than 15 acre-feet and the appropriation is from a source other than a perennial flowing stream. As used in this subsection, a perennial flowing stream means a stream which historically has flowed continuously at all seasons of the year, during dry as well as wet years. However, before constructing the impoundment or pit, the appropriator shall apply for a permit as prescribed by this act. If the department determines after processing the application that the rights of other appropriators have been or will be adversely affected, it may require the applicant to modify the construction of the impoundment or pit, and issue the permit subject to such terms, conditions, restrictions, or limitations it considers necessary to protect the rights of other appropriators.

(6) A person who desires to convert a nonproductive oil or gas well to a water well may do so immediately, but shall file a notice of completion or apply for a permit, depending on the maximum yield of the well, as otherwise provided in this act. The date of appropriation shall be the date of filing the notice of completion or the application for a permit.

(7) A person may also appropriate water, without applying for or prior to receiving a permit, under rules adopted by the board under section 89-869 of this act."

Approved April 26, 1977.

CHAPTER NO. 471

AN ACT CONCERNING THE AMOUNT OF RETROACTIVE PAY AWARDED UNDER A CLASSIFICATION APPEAL; AMENDING SECTION 59-907, R.C.M. 1947; AND TO PROVIDE FOR AN IMMEDIATE EFFECTIVE DATE.

HeinOnline -- 1977 vol. II 1523 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-907, R.C.M. 1947, is amended to read as follows:

"**59-907. Review of positions — change in classification.** *(1)* The department shall continuously review all positions on a regular basis and adjust classifications to reflect significant changes in duties and responsibilities.

(2) Employees and employee organizations will be given the opportunity to appeal any changes in classifications or positions.

(3) The period of time for which retroactive pay for a classification or position appeal may be awarded under this chapter or under 82A-1014 may not extend beyond 30 days prior to the date the appeal was filed. This provision shall not affect a classification or position appeal already in process on the effective date of this act.

(4) Anything relevant to the determination of reasonable classifications and grade levels for state employees shall be a negotiable item appropriate for the consideration of the state and exclusive representatives under the provisions of Title 59, chapter 16."

Section 2. **Effective date.** This act is effective upon its passage and approval.

Approved April 26, 1977.

CHAPTER NO. 472

AN ACT TO REQUIRE THE PUBLIC SERVICE COMMISSION TO INVESTIGATE ONLY MAJOR ACCIDENTS INVOLVING PUBLIC UTILITIES AND TO DELETE THE REQUIREMENT THAT THE COMMISSION REPORT SUCH ACCIDENTS TO THE GOVERNOR; AND RELATING TO REPORTING OF ACCIDENTS BY PUBLIC UTILITIES; AMENDING SECTION 70-129, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-129, R.C.M. 1947, is amended to read as follows:

"**70-129. Investigation of accidents — report as to accident.** *(1)* The commission or some member thereof, or some person deputed by it, shall investigate and make inquiry into every accident occurring in the operation of any public utility in this state, resulting in death or injury to any person of such gravity as to require *3 days or more of hospitalization.* The *report of the accident* shall be filed in the office of the commission.

(2) It is hereby made the duty of every public utility operating within this state, promptly upon the occurrence of any accident *in the public utility's operation and resulting in death or injury to any person of such grav-*

HeinOnline -- 1977 vol. II 1524 1977

ity as to require hospitalization, to report *the accident within the next two business days,* followed by written report in which shall be stated the time and place of accident, the names of persons killed or injured, and in concise form the nature and cause of such accident. *For any other accident occurring in a public utility's operation and resulting in injury, a public utility shall submit a written report to the commission within the 20 days after the occurrence of the accident.* The commission shall prescribe forms for the purpose of making such written reports."

Approved April 26, 1977.

CHAPTER NO. 473

AN ACT TO REVIVE THE PROHIBITION AGAINST DISCRIMINATORY CHARGES FOR TRANSPORTATION ALONG PORTIONS OF RAILROAD ROUTES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 72-231 that reads as follows:

72-231. Rail rate discrimination — penalty. (1) It is unlawful for any railroad subject to this title to charge or receive any greater compensation in the aggregate for the transportation of passengers or of like kind of property for a shorter distance than for a longer distance over the same line or route in the same direction, the shorter being included within the longer distance, or to charge any greater compensation as through rate than the aggregate of the intermediate rates; provided that upon application to the public service commission and after investigation, such carrier, in special cases, may be authorized by the commission to charge less for longer than for shorter distances for the transportation of passengers or property, and the commission may from time to time prescribe the extent to which such designated carriers may be relieved from the operation of the foregoing provisions of this section, but in exercising the authority conferred upon it in this proviso, the commission shall not permit the establishment of any charge to or from the more distant point that is not reasonably compensatory for the service performed.

(2) Violations of this section shall be punished in accordance with 72-149.

Approved April 26, 1977.

CHAPTER NO. 474

AN ACT TO CLARIFY THE RESPECTIVE ROLES OF THE CONSUMER COUNSEL AND THE PUBLIC SERVICE COMMISSION IN ADVERSARY UTILITY RATE CASES BEING CONDUCTED BY THE PUBLIC SERVICE COMMISSION.

HeinOnline -- 1977 vol. II 1525 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 70-707.1 that reads as follows:

70-707.1. Roles of public service commission and consumer counsel. In any case involving an application by a regulated entity to the public service commission for authority to increase its rates, which is actively contested by the consumer counsel, the public service commission shall leave representation of the interests of consumers to the consumer counsel when he timely petitions to become a party to such case, provided however, nothing contained herein prohibits the commission or its staff from investigating and interrogating in any hearing to clarify the case or present an issue. Evidence may be introduced by the commission on an issue that has not been adequately addressed by any party if the commission first requests counsel of record to address such issue and such counsel fails to introduce sufficient or adequate evidence.

Approved April 26, 1977.

CHAPTER NO. 475

AN ACT TO AMEND SECTION 70-128, R.C.M. 1947, TO SHORTEN THE TIME ALLOWED FOR AN APPEAL FROM A DECISION OF THE PUBLIC SERVICE COMMISSION AND TO SHORTEN THE TIME FOR ANSWERING THAT APPEAL; REPEALING SECTION 70-123, R.C.M. 1947, RELATING TO RECORDS KEPT BY THE COMMISSION FOR APPEALS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 70-128, R.C.M. 1947, is amended to read as follows:

"**70-128. Action to set aside rates or charges fixed by commission.** (1) Any party in interest being dissatisfied with an order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing any regulations, practices, or services, may within *30* days commence an action in the district court of the proper county against the commission and other interested parties as defendants, to vacate and set aside any such order on the ground that the rate or rates, fares, charges, classifications, joint rate or rates, fixed in such order is unlawful or unreasonable, or that any such regulation, practice, or service, fixed in such order, is unlawful or unreasonable. The commission and other parties defendant shall file their answer to said complaint within *20* days after the service thereof, whereupon such action shall be at issue and stand ready for trial upon twenty days' notice to either party.

(2) All actions brought under this section shall have precedence over any civil cause of a different nature pending in such court, and the court shall always be deemed open for the trial thereof, and the same shall be

HeinOnline -- 1977 vol. II 1526 1977

tried and determined as other civil actions; any party to such action may introduce evidence in addition to the transcript of the evidence offered to such commission. Any party in interest being dissatisfied with the order of the commission fixing any rate or rates, fares, charges, classifications, joint rate or rates, or any order fixing or prescribing any rule, regulation, practice, or service, may apply to the district court having jurisdiction, for, and upon proper showing there shall be issued by such court, an injunction, staying and suspending the operation of the order of the commission pending the final determination of the reasonableness and lawfulness of said order in the courts. All orders of the commission shall become operative within twenty days after the filing of the order by the commission subject to the right of stay and injunction as hereinbefore provided. As a condition to the granting of such injunction, the court shall require of the party seeking such injunction an undertaking entered into on the part of the plaintiff, supported by responsible corporate surety, in such reasonable sum as the court shall direct, to the effect that the plaintiff will pay all damages which the opposite party may sustain by reason of the delay or prevention of the order of the commission becoming effective if said order is sustained in the final determination, or in proceedings involving rates the court may in the alternative require the difference between the existing rate and the commission ordered rate to be impounded under the direction of the court, pending the final determination of the action.

(3) If, upon the trial of such action, evidence shall be introduced by the plaintiff which is found by the court to be different from that offered upon the hearing before the commission, or additional thereto, the court, before proceeding to render judgment, unless the parties to such action stipulate in writing to the contrary, shall transmit a copy of such evidence to the commission, and shall stay further proceedings in said action for fifteen days from the date of such transmission. Upon receipt of such evidence, the commission shall consider the same, and may modify, amend, or rescind its order relating to such rate or rates, fares, charges, classifications, joint rate or rates, regulation, practice, or service complained of in said action, and shall report its action thereon to said court within ten days from the receipt of such evidence.

(4) If the commission shall rescind its order complained of, the action shall be dismissed; if it shall alter, modify, or amend the same, such altered, modified, or amended order shall take the place of the original order complained of, and judgment shall be rendered thereon, as though made by the commission in the first instance. If the original order shall not be rescinded or changed by the commission, judgment shall be rendered upon such original order.

(5) Either party to said action, within sixty days after service of a copy of the order or judgment of the court, may appeal or take the case up on error as in other civil actions. Where an appeal is taken to the supreme court of Montana, the cause shall, on the return of the papers to the higher court, be immediately placed on the calendar of the then pending term, and shall be assigned and brought to a hearing in the same manner as other causes on the calendar.

(6) In all actions under this act, the burden of proof shall 'e upon the

HeinOnline -- 1977 vol. II 1527 1977

party attacking or resisting the order of the commission to show that the order is unlawful or unreasonable, as the case may be."

Section 2. **Repealer.** Section 70-123, R.C.M. 1947, is repealed.

Approved April 26, 1977.

CHAPTER NO. 476

AN ACT TO AMEND SECTIONS 8-108, 8-109, AND 8-110, R.C.M. 1947, TO RAISE THE FILING FEE FOR A MOTOR CARRIER CERTIFICATE AND TO DELETE PROVISIONS PERMITTING THE PASSING ON OF PUBLICATION OF NOTICE OF HEARING COSTS TO THE APPLICANT; TO AMEND SECTION 8-118, R.C.M. 1947, TO REQUIRE THE PUBLIC SERVICE COMMISSION TO PROVIDE STANDARD FORMS AND THE SUBMISSION BY MOTOR CARRIERS OF INTERSTATE COMMERCE COMMISSION ANNUAL REPORTS; AND TO AMEND SECTION 8-126, R.C.M. 1947, TO REQUIRE THAT NOTICE COSTS BE PASSED ON TO MOTOR CARRIERS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 8-108, R.C.M. 1947, is amended to read as follows:

"**8-108. Certificate required of class A motor carriers — contents of application — fee.** (a) No class A motor carrier, as in this act defined, shall hereafter operate for the transportation of persons and/or property for hire on any public highway in this state without first having obtained from the board, under the provisions of this act, a certificate declaring that public convenience and necessity require such operation.

(b) A motor carrier making application for such certificate shall do so in writing, separately for each route, which petition shall be verified by the applicant and shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.

2. The public highway or highways over which, and the fixed termini between which, or the regular route or routes over which it intends to operate.

3. The kind of transportation, whether passenger or freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic.

4. The proposed time schedule.

5. A schedule of the tariff or rates desired to be charged for the transportation of freight and/or passengers.

HeinOnline -- 1977 vol. II 1528 1977

6. A complete and detailed description of the property proposed to be devoted to the public service.

7. A detailed statement showing the assets and liabilities of such applicant.

8. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a filing fee of *$100 to $300* to be set by the board based on the number of counties for which the certificate is requested."

Section 2. Section 8-109, R.C.M. 1947, is amended to read as follows:

"8-109. Certificate required of class B motor carriers — contents of application — fee. (a) No class B motor carrier, as in this act defined, shall hereafter operate for the transportation of persons and/or property for hire on any public highway, in this state, without first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operations.

(b) A motor carrier making application for such permit shall do so in writing, separately for each locality for which consideration is desired, which petition shall be verified and shall specify the following matters:

1. Name and address of the applicant and the names and addresses of its officers, if any.

2. The kind of transportation, whether passenger or freight, or both, together with a full and complete description of the character of the vehicle or vehicles to be used, including the seating capacity of any vehicle to be used for passenger traffic and the tonnage capacity of any vehicle to be used in freight traffic.

3. The locality and character of operations to be conducted.

4. A schedule of the tariff of rates desired to be charged for the transportation of freight and/or passengers.

5. A complete and detailed description of the property proposed to be devoted to the public service.

6. A detailed statement showing the assets and liabilities of such applicant.

7. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a filing fee of *$100 to $300* to be set by the board based on the number of counties for which the certificate is requested."

Section 3. Section 8-110, R.C.M. 1947, is amended to read as follows:

"8-110. Certificate required of class C motor carriers — contents of application — fee. (1) (a) No class C motor carrier as in this act defined, except any class C motor carrier operating pursuant to the terms

HeinOnline -- 1977 vol. II 1529 1977

and conditions of a United States government contract, agency or department thereof, or of a contract for transporting solid waste with the state or an agency or department thereof, shall hereafter operate for the distribution, delivery, or collection of goods, wares, merchandise, or commodities, or for the transportation of persons on any public highway in this state, without first having obtained from the board, under the provisions of this act, a certificate that public convenience and necessity require such operation.

(b) A motor carrier making application for such permit shall do so in writing, separately for each route or locality for which consideration is desired, which petition shall be verified by the applicant and shall specify the following matters:

1. The name and address of the applicant and the names and addresses of its officers, if any.

2. The public highways or highways over which and the fixed termini between which, or the route or routes over which it intends to operate, if the same are fixed; or the particular city, town, station, or locality from and/or to which the applicant intends to operate.

3. The kind of transportation, the character of the goods, wares, merchandise, or commodities to be distributed, delivered or collected, together with a full and complete description of the character of the vehicle or vehicles, including the rated tonnage capacity of such vehicles, to be used in such service of distribution, delivery or collection.

4. And such other or additional information as the board may by order require.

(c) Such application shall be accompanied by a fee of *$100 to $300* to be set by the board based on the number of counties for which the certificate is requested.

(2) The transportation for hire of any persons or commodities between any two (2) points within the state of Montana by any motor carrier pursuant to the terms of a written contract between said carrier and the United States government, agency or department thereof, or the state or an agency or department thereof, for the transportation of solid waste, shall be deemed a transportation movement subject to the provisions of the Montana Motor Carrier Act, R.C.M. 1947, 8-101 et seq., provided, however, that the presentation of the written contract to the board shall be deemed sufficient proof of public convenience and necessity in accordance with the terms and conditions contained within the United States government or state contract.

The class C certificate of public convenience and necessity issued pursuant to the terms and conditions of the United States government or state contract may be issued by the board upon receipt of an executed copy of the United States government or state contract. The certificate of public convenience and necessity may be issued thereafter without requiring the board to fix a time and place for public hearing.

The certificate of public convenience and necessity, issued pursuant to the terms of the United States government or state contract, is authorized

HeinOnline -- 1977 vol. II 1530 1977

only for the duration of the United States government or state contract concerned, provided, however, the certificate may be renewed for another definite term if the same motor carrier is the motor carrier authorized to operate under the United States government or state contract."

Section 4. Section 8-118, R.C.M. 1947, is amended to read as follows:

"**8-118. Records of motor carriers to be open for inspection by commission — system of accounts to be prescribed — reports required.** All records, books, accounts and files of every class A and class B motor carrier in this state, so far as the same shall relate to the business of transportation conducted by such motor carrier, shall at all times be subject to examination by the *commission* or by any authorized agent or employee of the *commission.* The *commission* shall prescribe a uniform system of accounts and uniform reports covering the operations of such class A and class B motor carriers and every motor carrier authorized to operate as such in accordance with the provisions of this act shall keep its records, books, and accounts according to such uniform system, in so far as possible. On or before March *31* of each year, every motor carrier authorized to engage in such business shall file with the *commission* a report, under oath, *on a form prescribed and furnished by the commission. Those carriers filing an annual report with the interstate commerce commission shall, in addition to filing the report prescribed by the public service commission, submit to the public service commission a copy of the annual report filed with the interstate commerce commission.* In addition to such annual reports every motor carrier shall prepare and file with the *commission,* at the time or times and in the form to be prescribed by the *commission,* annual reports, special reports, and statements giving to the *commission* such information as it shall require in order to perform its duties under this act."

Section 5. Section 8-126, R.C.M. 1947, is amended to read as follows:

"**8-126. Fees required for filing various documents.** (1) The public service commission shall, except as otherwise provided by law, require and receive fees before filing annual reports, tariffs, schedules, and supplements of these and shall require and receive fees for copies of orders, documents, classifications, blank forms, and other instruments prepared by it or on file in its office, unless provided by law to be furnished free of charge, under the following schedule:

(a) Filing annual reports, each ..... $ 5.00

(b) Filing tariffs, time schedules and supplements thereto, each . 2.00

(c) For issuing certificates of public convenience and necessity to motor carriers, each 2.00

(d) Classification for public utilities, each 1.50

(e) Classification for motor carriers, each ..... .50

(f) For a copy of the rules for motor carriers and blank forms of annual reports for utilities and common carriers..... Cost

(2) The commission shall require and receive an additional sum to be

set by the commission to pay the cost of publishing such notice of hearing as may be required by this chapter except for notice published pursuant to 8-108, 8-109, or 8-110.

(3) This section does not require or authorize the public service commission to collect fees for the filing of annual reports, tariffs, schedules, and supplements of these which relate solely to interstate commerce."

Approved April 26, 1977.

CHAPTER NO. 477

AN ACT TO PROVIDE FOR NONPARTISAN ELECTIONS, TO PROVIDE FOR THE AMENDMENT OF SELF-GOVERNMENT CHARTERS OR ADOPTED ALTERNATIVE FORMS OF LOCAL GOVERNMENT, TO PROVIDE FOR ENACTMENT OF ORDINANCES AND RESOLUTIONS, TO PROVIDE FOR LOCAL GOVERNMENT INITIATIVE AND REFERENDUM, TO PROVIDE FOR THE OPERATION OF CONSOLIDATED UNITS OF LOCAL GOVERNMENT, AND TO OTHERWISE REVISE AND CLARIFY LOCAL GOVERNMENT LAWS; AMENDING SECTION 23 OF CHAPTER 513 OF LAWS, 1975; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 47A-3-301 that reads as follows:

47A-3-301. Nonpartisan nomination. (1) Each candidate for a nonpartisan primary election shall send a declaration of nomination, as prescribed in 23-3304, to the appropriate election official of the local government in which he seeks office not later than 5 p.m. 40 days prior to the date of the primary election. The declaration shall be accompanied by a petition signed by at least 25 electors of the local government requesting the candidacy.

(2) A candidate successfully completing the requirements of this section shall have his name entered on the nonpartisan primary election ballot as provided in 47A-3-302.

Section 2. There is a new R.C.M. section numbered 47A-3-302 that reads as follows:

47A-3-302. Nonpartisan primary ballot and election. (1) Except as otherwise provided in this section, a nonpartisan primary election shall be conducted, canvassed, and its results returned in the same manner as a partisan primary election.

(2) Ballots in a nonpartisan primary election shall contain only the name of the candidate and the office to which the candidate seeks election.

(3) Electors voting at a nonpartisan primary election may vote for the number of candidates to be elected to each office.

HeinOnline -- 1977 vol. II 1532 1977

(4) If the number of candidates to be entered on the nonpartisan primary ballot for each office does not exceed twice the number of candidates to be elected for the respective offices, a nonpartisan primary election shall not be held in that year and all candidates entered on the nonpartisan primary ballot shall be considered nominated for their respective offices and shall have their names placed on the nonpartisan general election ballot. If the number of candidates to be entered on the nonpartisan primary ballot for any particular office does exceed twice the number of persons to be elected to that office, a primary election shall be held for all offices to be voted on at the general election.

(5) Candidates for nomination, equal to twice the number to be elected at the nonpartisan general election for that office, who receive the highest number of votes cast at the nonpartisan primary or nominees determined under subsection (4) of this section are nominees for office and shall have their names entered on the nonpartisan general election ballot.

(6) In municipalities with a population of 3,500 or less, a primary election is not required and candidates shall have their names entered on the general election ballot by filing a declaration of nomination not later than 5 p.m. 40 days before the date of the election.

Section 3. There is a new R.C.M. section numbered 47A-3-303 that reads as follows:

47A-3-303. Nonpartisan general elections. A nonpartisan general election shall be conducted, canvassed, and its results returned in the same manner as a partisan general election except that party designation may not appear on the ballot.

Section 4. There is a new R.C.M. section numbered 47A-3-209 that reads as follows:

47A-3-209. Amendment of self-government charters or adopted alternative forms of government. (1) An amendment to a self-government charter or an adopted alternative form of government may only be made by submitting the question of amendment to the electors of the local government. To be effective, a proposed amendment must receive an affirmative vote of a majority of the electors voting on the question. An amendment approved by the electors becomes effective on the first day of the local government fiscal year following the fiscal year of approval unless the question submitted to the electors provides otherwise.

(2) An amendment to a self-government charter or an adopted alternative form of government may be proposed by initiative by petition of 15% of the electors of the local government or by ordinance enacted by the governing body. The question on amendment of a charter or an adopted alternative form of government shall be submitted to the electors as soon as possible after the submission of a petition or enactment of a resolution, either at a regularly scheduled election or at a special election.

(3) The local government, by ordinance, may provide procedures for the submission and verification of initiative petitions.

Section 5. There is a new R.C.M. section numbered 47A-3-102 that reads as follows:

HeinOnline -- 1977 vol. II 1533 1977

47A-3-102. Ordinance requirements. (1) All ordinances shall be submitted in writing in the form prescribed by resolution of the governing body.

(2) No ordinance passed shall contain more than one comprehensive subject which shall be clearly expressed in its title, except ordinances for codification and revision of ordinances.

(3) An ordinance must be read and adopted by a majority vote of members present at two meetings of the governing body not less than 12 days apart. After the first adoption and reading, it must be posted and copies made available to the public.

(4) In the event of an emergency, the governing body may waive the second reading. An ordinance passed in response to an emergency shall recite the facts giving rise to the emergency and requires a two-thirds vote of the whole governing body for passage. An emergency ordinance shall be effective on passage and approval and shall remain effective for no more than 90 days.

(5) After passage and approval, all ordinances shall be signed by the chairman of the governing body and filed with the official or employee designated by ordinance to keep the register of ordinances.

(6) No ordinance other than an emergency ordinance shall be effective until 30 days after second and final adoption. The ordinance may provide for a delayed effective date or may provide for the ordinance to become effective upon the fulfillment of an indicated contingency.

(7) If the plan of government allows the chief executive to veto an ordinance, this power must be exercised in writing prior to its next regularly scheduled meeting of the governing body. Whenever the chief executive vetoes an ordinance, the governing body must act at the next regularly scheduled meeting to either override or confirm the veto. Whenever the veto is overridden or the executive fails to act, the ordinance shall take effect.

(8) There shall be maintained a register of ordinances in which all ordinances are entered in full after passage and approval, except when a code is adopted by reference. When a code is adopted by reference, the date and source of the code shall be entered.

(9) (a) No later than 1980 and at 5-year intervals thereafter appropriate ordinances shall be compiled into a uniform code and published.

(b) The recodification is not effective until approved by the governing body.

(10) This section merely provides a procedure for the adoption of ordinances, and shall not be construed as granting authority to adopt ordinances.

Section 6. There is a new R.C.M. section numbered 47A-3-103 that reads as follows:

47A-3-103. Adoption and amendment of codes by reference. (1)

Any local government may adopt or repeal an ordinance which incorporates by reference the provisions of any code or portions of any code, or any amendment thereof, properly identified as to date and source, without setting forth the provisions of the code in full. Notice of the intent to adopt a code by reference shall be published after first reading and prior to final adoption of the code. At least one copy of the code, portion, or amendment which is incorporated or adopted by reference shall be filed in the office of the clerk of the governing body and there kept available for public use, inspection, and examination. The filing requirements herein prescribed shall not be considered to be complied with unless the required copies of the codes, portion, amendment, or public record are filed with the clerk of the governing body for a period of 30 days prior to final adoption of the ordinance which incorporates the code, portion, or amendment by reference.

(2) The governing body may adopt or amend a code by reference by an emergency ordinance and without notice. The emergency ordinance is automatically repealed 90 days following its adoption and cannot be reenacted as an emergency ordinance.

(3) The process for repealing an ordinance which adopted or amended a code by reference shall be the same as for repealing any other ordinance.

(4) The filing requirement of subsection (1) of this section shall be complied with in adopting amendments to codes.

(5) Any ordinance adopting a code, portion, or amendment by reference shall state the penalty for violating the code, portion, or amendment, or any provision thereof separately, and no part of any penalty shall be incorporated by reference.

(6) For purposes of this section, "code" means any published compilation of rules which has been prepared by various technical trade associations, model code organizations, federal agencies, or this state or any agency thereof; and shall include specifically but shall not be limited to: traffic codes, building codes, plumbing codes, electrical wiring codes, health or sanitation codes, fire prevention codes, inflammable liquids codes, together with any other code which embraces rules pertinent to a subject which is a proper local government legislative matter.

Section 7. There is a new R.C.M. section numbered 47A-3-104 that reads as follows:

47A-3-104. Penalty for violation of ordinance. A local government may fix penalties for the violation of an ordinance which do not exceed a fine of $500 or 6 months' imprisonment or both the fine and imprisonment.

Section 8. There is a new R.C.M. section numbered 47A-3-105 that reads as follows:

47A-3-105. Resolution requirements. (1) All resolutions shall be submitted in the form prescribed by resolution of the governing body.

(2) Resolutions may be submitted and adopted at a single meeting of the governing body.

HeinOnline -- 1977 vol. II 1535 1977

(3) If the plan of government allows the executive to veto resolutions, this power must be exercised in writing at the next regular meeting. If the executive fails to act, the resolution shall be approved. If the executive vetoes a resolution, the governing body must act at the same meeting or its next regularly scheduled meeting to either override or confirm the veto.

(4) After passage and approval, all resolutions shall be entered into the minutes and signed by the chairperson of the governing body.

(5) All resolutions shall be immediately effective unless a delayed effective date is specified.

Section 9. There is a new R.C.M. section numbered 47A-3-106 that reads as follows:

47A-3-106. Initiative and referendum. (1) The powers of initiative and referendum are reserved to the electors of each local government. Resolutions and ordinances within the legislative jurisdiction and power of the governing body of the local government, except those set out in subsection (2) of this section, may be proposed or amended and prior resolutions and ordinances may be repealed in the manner provided in this section.

(2) The powers of initiative shall not extend to the following:

(a) the annual budget;

(b) bond proceedings, except for ordinances authorizing bonds;

(c) the establishment and collection of charges pledged for the payment of principal and interest on bonds; or

(d) the levy of special assessments pledged for the payment of principal and interest on bonds.

(3) The electors may initiate and amend ordinances and require submission of existing ordinances to a vote of the people by petition. If submitted prior to the ordinance's effective date, a petition requesting a referendum on the ordinance shall delay the ordinance's effective date until the ordinance is ratified by the electors. A petition requesting a referendum on an emergency ordinance filed within 30 days of its effective date shall suspend the ordinance until ratified by the electors.

(4) The governing body may refer existing or proposed ordinances to a vote of the people by resolution.

(5) A petition or resolution for initiative or referendum shall:

(a) embrace only a single comprehensive subject;

(b) set out fully the ordinance sought by petitioners, or in the case of an amendment, set out fully the ordinance sought to be amended and the proposed amendment, or in the case of referendum, set out the ordinance sought to be repealed; and

(c) contain the signatures of 15% of the electors of the local government.

HeinOnline -- 1977 vol. II 1536 1977

(6) (a) The governing body may, within 60 days of receiving the petition, take the action called for in the petition. If the action is taken, the question need not be submitted to the electors.

(b) If the governing body does not, within 60 days, take the proposed action, then the question shall be submitted to the electors at the next school, primary, or general election or a special election called for that purpose. Before submitting the question to the electors, the governing body may direct that a suit be brought in district court by the local government to determine whether the petition is regular in form, has sufficient signatures, and whether the proposed action would be valid and constitutional.

(c) The complaint shall name as defendants not less than 10 or more than 20 of the petitioners. In addition to the names of the defendants, to the caption of the complaint there shall be added the words: "And all petitioners whose names appear on the petition for an ordinance filed on the ..... day of ....., in the year .....", stating the date of filing. The summons shall be similarly directed and shall be served on the defendants named therein, and in addition shall be published.

(d) If an ordinance is repealed or enacted pursuant to a proposal initiated by the electors of a local government, the governing body may not for 2 years reenact or repeal the ordinance. If during the 2-year period the governing body enacts an ordinance similar to the one repealed pursuant to a referendum of the electors, a suit may be brought to determine whether the new ordinance is a reenactment without material change of the repealed ordinance. This section shall not prevent exercise of the initiative, at any time, to procure a reenactment of an ordinance repealed pursuant to referendum of the electors.

(7) (a) Any ordinance proposed by petition or any amended ordinance proposed by petition or any referendum on an ordinance which is entitled to be submitted to the electors shall be voted on at the next regular election to be held in the local government unless:

(i) the petition asks that the question be submitted at a special election and is signed by at least 25% of the electors of the local government, in which case the governing body shall call a special election; or

(ii) the governing body calls for a special election on the question.

(b) If the adequacy of the petition is determined by the elections administrator less than 45 days prior to the next regular election, the election shall be delayed until the following regular election, unless a special election is called.

(c) Whenever a measure is ready for submission to the electors, the appropriate election official shall, in writing, notify the governing body and shall publish notice of the election and the ordinance which is to be proposed or amended. In the case of a referendum, the ordinance sought to be repealed shall be published.

(d) The question shall be placed on the ballot giving the electors a choice between accepting or rejecting the proposal.

HeinOnline -- 1977 vol. II 1537 1977

(e) If a majority of those voting favor the proposal, it becomes effective when the election results are officially declared, unless otherwise stated in the proposal.

Section 10. There is a new R.C.M. section numbered 47A-3-107 that reads as follows:

47A-3-107. Determination of the number of signatures required for a petition. In order to determine the number of signatures needed on a petition to meet the percentage requirements of this act, the number of electors shall be the number of individuals registered to vote at the last preceding general election for the local government.

Section 11. There is a new R.C.M. section numbered 47A-3-108 that reads as follows:

47A-3-108. Operation of self-government consolidated units of local government. (1) Whenever existing law contains different provisions and procedures for the functioning of counties and municipalities, including but not limited to such areas as election procedures, issuance of bonds, adoption of budgets, creation of special districts, levying of taxes, and provision of services, the governing body of a self-government consolidated unit of local government which contains at least one county and one municipality shall, by ordinance, adopt either the county or municipality provisions. The ordinance may provide for necessary changes in the statutes to accommodate the structure of the consolidated unit. This subsection applies to self-government consolidated units only in those areas where such units are subject to state law under 47A-7-201 through 47A-7-204.

(2) A combination of county and municipal offices in a self-government consolidated unit may be accomplished by ordinance whenever such a combination is necessary for carrying out a duty assigned by state law to the local government. Whenever state law imposes a duty upon a specific official or employee of a self-government consolidated unit of local government and the local government under its adopted alternative form of government does not have such an official or employee, the governing body may by ordinance assign that duty to the appropriate official or employee of the local government. The governing body of any self-government consolidated unit of local government may by ordinance assign responsibility to carry out any function or provide any service required by state law to one or more departments, officers, or employees of the local government notwithstanding the fact that the state law may assign the function or service to a specific office.

Section 12. Section 23 of Chapter 513 of Laws, 1975, is amended to read as follows:

"Section 23. **Automatic repealer.** This act, *except for sections 4, 6, 14, 15, 16, and 17,* terminates on June 30, 1977."

Section 13. There is a new R.C.M. section numbered 47A-3-101 that reads as follows:

47A-3-101. Definition. As used in this act, "chief executive" means

HeinOnline -- 1977 vol. II 1538 1977

the elected executive in a government adopting the commission-manager form, the chairman in a government adopting the commission-chairman form, the town chairman in a government adopting the town meeting form, the commission acting as a body in a government adopting the commission form, or the officer or officers so designated in the charter in a government adopting a charter.

Section 14. **Effective date.** This act is effective May 1, 1977.

Approved April 26, 1977.

CHAPTER NO. 478

AN ACT TO REVISE TITLE 82, CHAPTER 31, R.C.M. 1947, REGARDING SURPLUS PROPERTY TO INCORPORATE CHANGES IN FEDERAL LAW, TO TRANSFER THE SURPLUS PROPERTY FUNCTION FROM THE SUPERINTENDENT OF PUBLIC INSTRUCTION TO THE DEPARTMENT OF ADMINISTRATION, AND TO CHANGE THE DEPOSIT OF SURPLUS PROPERTY INCOME FROM THE FEDERAL AND PRIVATE GRANT CLEARANCE FUND TO THE REVOLVING FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-3101, R.C.M. 1947, is amended to read as follows:

"**82-3101. Administration of the state agency for surplus property.** There is hereby created and established a Montana state agency for surplus property, which shall be administered by the *department of administration.* The *director of the department may* prescribe the duties of such personnel as are needed to carry out the duties as hereinafter stated."

Section 2. Section 82-3102, R.C.M. 1947, is amended to read as follows:

"**82-3102. Authority and duties of the state agency for surplus property.** (a) The state agency for surplus property is hereby authorized and empowered (1) to acquire from the United States of America under and in conformance with the provisions of the Federal Property and Administrative Services Act of 1949, as amended, hereinafter referred to as the "act," such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for purposes authorized by *the act*; (2) to warehouse such property; and (3) to distribute such property within the state to *eligible participants.*

(b) The state agency for surplus property is hereby authorized to receive applications from eligible *participants* for the acquisition of federal surplus real property, investigate the same, obtain expression of views respecting such applications from the appropriate authorities of the state, make recommendations regarding the need of such applicant for

HeinOnline -- 1977 vol. II 1539 1977

the property, the merits of its proposed program of utilization, the suitability of the property for such purposes, and otherwise assist in the processing of such applications for acquisition of real and related personal property of the United States under section 203(k) of the act *as amended.*

(c) For the purpose of executing its authority under this act, the state agency for surplus property is authorized and empowered to adopt, amend, or rescind such rules and regulations and prescribe such requirements as may be deemed necessary; and take such other action as is deemed necessary and suitable, in the administration of this act, to assure maximum utilization by and benefit to *participants* within the state from property distributed under this act.

(d) The state agency for surplus property is authorized and empowered to make such certifications, take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the state (including co-operative agreements with any federal agencies providing for utilization by and exchange between them of the property, facilities, personnel and services of each by the other), require such reports and make such investigation as may be required by law or regulation of the United States of America in connection with the disposal of real property and the receipt, warehousing, and distribution of personal property received by the state agency for surplus property from the United States of America.

(e) The state agency for surplus property is authorized and empowered to act as clearinghouse of information for *eligible participants* to locate both real and personal property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from *eligible participants* and to transmit to them all available information in reference to such property, and to aid and assist *eligible participants* in every way possible in the consummation of acquisitions or transactions hereunder.

(f) The state agency for surplus property, in the administration of this act, shall co-operate to the fullest extent consistent with the provisions of the act, with the departments or agencies of the United States of America and shall file a state plan of operation, operate in accordance therewith, and take such action as may be necessary to meet the minimum standards prescribed in accordance with the act, and make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use or accounting for, property donable or donated to the state."

Section 3. Section 82-3104, R.C.M. 1947, is amended to read as follows:

"**82-3104. Authorization for financing.** The state agency for surplus property shall be self-sustaining and shall pay for its operation and maintenance directly from receipts from surplus property which shall be deposited in the treasury in the *revolving* fund."

HeinOnline -- 1977 vol. II 1540 1977

Section 4. Section 82-3105, R.C.M. 1947, is amended to read as follows:

"**82-3105. Department director — delegating powers and duties.** The *director of the department* may delegate to any employees of the state agency for surplus property such power and authority as he deems reasonable and proper for the effective administration of this act."

Section 5. Section 82-3106, R.C.M. 1947, is amended to read as follows:

"**82-3106. Officers or employees authorized to secure transfer of surplus property.** Any provision of law to the contrary notwithstanding, the governing board, or in case there be none, the executive head, of any state department, instrumentality, or agency or of any city, county, school district or other political subdivision may by order or resolution confer upon any officer or employee thereof continuing authority from time to time to secure the transfer to it of surplus property under this act through the department of *administration* under the provisions of section 203(j) of the Federal Property and Administrative Services Act of 1949, as amended, and to obligate the state or political subdivision and its funds to the extent necessary to comply with the terms and conditions of such transfers. The authority conferred upon any such officer or employee by any such order or resolution shall remain in effect unless and until the order or resolution is duly revoked and written notice of such revocation shall have been received by *the* department."

Approved April 26, 1977.

CHAPTER NO. 479

AN ACT TO AMEND SECTION 59-1001, R.C.M. 1947, TO PROVIDE THAT MILITARY SERVICE BE COUNTED AS STATE EMPLOYMENT FOR PURPOSES OF EARNING VACATION LEAVE CREDITS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-1001, R.C.M. 1947, is amended to read as follows:

"**59-1001. Annual vacation leave.** (1) Each full-time employee of the state, or any county or city thereof is entitled to and shall earn annual vacation leave credits from the first full pay period of employment. For calculating vacation leave credits two thousand eighty (2,080) hours (52 weeks x 40 hours) shall equal one (1) year. Proportionate vacation leave credits shall be earned and credited at the end of each pay period. However, employees are not entitled to any vacation leave with pay until they have been continuously employed for a period of six (6) calendar months. Persons regularly employed nine (9) or more months each year, but whose continuous employment is interrupted by the seasonal nature of the position, shall earn vacation credits. However, such persons must be employed six (6) qualifying months before they can use the vacation credits. In order

HeinOnline -- 1977 vol. II 1541 1977

to qualify, such employees must immediately report back for work when operations resume in order to avoid a break in service.

(2) A period of absence from employment with the state, county, or city occurring either during a war involving the United States or in any other national emergency and for 90 days thereafter for one of the following reasons is considered as service for the purpose of determining the number of years of employment used in calculating vacation leave credits under this section:

(a) having been ordered on active duty with the armed forces of the United States;

(b) voluntary service on active duty in the armed forces or on ships operated by or for the United States government; or

(c) direct assignment to the United States department of defense for duties related to national defense efforts if a leave of absence has been granted by the employer.

(3) Vacation leave credits shall be earned *at a yearly rate calculated* in accordance with the following schedule:

Years of employment	*Working days credit*
1 full pay period through 10 years	*15*
10 years through 15 years	*18*
15 years through 20 years	*21*
20 years on	*24*

(4) Permanent part-time employees are entitled to prorated annual vacation benefits if they have regularly scheduled work assignments and normally work at least twenty (20) hours each week of the pay period and have worked the qualifying period.

(5) It shall be unlawful for an employer to terminate or separate an employee from his employment in an attempt to circumvent the provisions of this law. Should a question arise under this paragraph, it shall be submitted to arbitration as provided in chapter 201, Title 93, R.C.M., 1947 unless there is a collective bargaining agreement applicable."

Approved April 26, 1977.

CHAPTER NO. 480

AN ACT TO CLARIFY THE RELATIONSHIP BETWEEN CHAPTER 95 OF LAWS, 1977, AND SECTIONS 19, 21, AND 29 OF CHAPTER 157 OF LAWS, 1977, REGARDING THE AGENCY FUND AND THE VOLUNTEER FIREMEN'S FUND.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 19, Chapter 157, Laws of 1977, is amended to read as follows:

HeinOnline -- 1977 vol. II 1542 1977

"Section 19. There is a new R.C.M. section numbered 11-2020.1 that reads as follows:

11-2020.1. Definitions. Unless the context requires otherwise, the following definitions apply in 11-2020 through 11-2031, 11-2020.2, and 11-2024.1:

(1) "Board of administration" means the board of administration of the public employees' retirement system.

(2) "Division" means the division of workers' compensation of the department of labor and industry.

(3) "Fire company" means a fire company organized in an unincorporated area, town, or village under the laws of the state of Montana.

(4) "Fund" or "volunteer firemen's fund" means the volunteer firemen's compensation account in the *agency* fund."

Section 2. Section 1, Chapter 95, Laws of 1977, is amended to read as follows:

"Section 1. Section 11-2022, R.C.M. 1947, is amended to read as follows:

11-2022. Disability, death, insurance and pension benefits. 1. Every member of a fire company organized in an unincorporated area, town or village under the laws of this state, shall be entitled to receive compensation for disability incurred while in the performance of his duties as such fireman, when such disability necessitates the services of a physician or surgeon, while confined or nonconfined, in the amount of his necessary and reasonable medical expenses resulting directly from such disability, and incurred within a period of not more than thirty-six (36) months from the date of the injury which caused such disability, not to exceed a total of twenty-five thousand dollars ($25,000).

2. Where an injury incurred in line of such duty results in the loss by amputation of an arm, hand, leg or foot, or the enucleation of an eye, or the loss of any of the natural teeth, the board shall order them an artificial member or members be furnished to supply the loss thereof. The expense of furnishing such members shall not exceed the sum of one thousand five hundred dollars ($1,500). The replacement of an artificial member so furnished shall be required every five (5) years, if necessary.

3. To aid in defraying funeral expenses of a fireman covered under this act whose death occurs in line of duty, an amount not to exceed the actual necessary and reasonable expenses, or the sum of one thousand five hundred dollars ($1,500), whichever is less, shall be allowed.

4. To encourage and aid volunteer fire departments to maintain group insurance for benefits on account of death or injury incurred by members while in the performance of duties as volunteer firemen, the sum of seventy-five dollars ($75) per year for each mobile unit of fire-fighting equipment, not exceeding two (2) such units in number for any such department, shall be paid to each volunteer fire department maintaining such insurance, or to the organization or agency maintaining such insurance for any such volunteer fire department.

HeinOnline -- 1977 vol. II 1543 1977

5. In the case of every volunteer fireman who shall meet the qualification requirements set forth in subparagraph two (2) of section 11-2023, and then if the claim provided for under subparagraph two (2) of section 11-2024 shall be completed and filed, the claimant shall be entitled thereafter to participate in the volunteer firemen's pension plan as provided in this act, and to receive payments thereunder computed each year in the following manner. Whenever at the close of business on the last day of any fiscal year there shall be a balance in the volunteer *firemen's* fund in excess of one million dollars ($1,000,000) then the industrial accident board shall set aside and pay over to the public employees' retirement system, the smaller of such amount in excess of one million dollars ($1,000,000), or an amount equal to ninety-five percent (95%) of the increase of said account balance over the account balance at the end of the preceding fiscal year, for the payment by said public employees' retirement system of pensions to qualified claimants during the immediately succeeding fiscal year. The amount to be paid to each qualifying claimant shall be determined by dividing said amount set aside by the number of claimants qualifying to participate in such pension plan at the beginning of such succeeding fiscal year. If such amount set aside shall be sufficient to pay each such qualified claimant at least twenty dollars ($20) per month throughout such succeeding fiscal year, then such pension shall be paid monthly, on or before the last day of each month of such succeeding fiscal year; but if said amount set aside shall not be sufficient to pay each qualified claimant at least twenty dollars ($20) per month, then each qualified claimant's full pension for that year shall be paid to him in one lump payment on or before the fifteenth day of December of such year; provided, however, that in any event the total pension payable hereunder to any qualified claimant shall not exceed the sum of fifty dollars ($50) per month, and the amount to be set aside hereunder from the volunteer *firemen's* fund at the beginning of any fiscal year for the funding of such pensions shall not in any event exceed the amount necessary to pay such maximum of fifty dollars ($50) per month to each claimant qualified as of the beginning of such fiscal year. For the purpose of computation and payment of benefits under this act, if children of any volunteer fireman shall become eligible for benefits hereunder, then all children of such volunteer fireman shall be treated collectively as one (1) claimant. The fiscal year for the purpose of this act shall begin on the first day of July of each year and end on the last day of June of each year."

Section 3. Section 4, Chapter 95, Laws of 1977, is amended to read as follows:

"Section 4. Section 11-2030, R.C.M. 1947, is amended to read as follows:

11-2030. Fire insurance premium tax to be paid into fund. The state auditor and ex officio commissioner of insurance of the state of Montana shall annually deposit in the *volunteer firemen's* fund, such sum as shall be equivalent to five per cent (5%) of premium taxes collected from insurers authorized to effect insurance against risks enumerated in section 11-1919, as shall remain after the amounts provided for by section 11-1919 shall have been first deducted. Such moneys shall be used for

HeinOnline -- 1977 vol. II 1544 1977

the payment of claims and administrative costs as provided in sections 11-2025 and 11-2026."

Approved April 26, 1977.

CHAPTER NO. 481

AN ACT TO PREPARE FOR PROVIDING FIRE PROTECTION SERVICES FOR CERTAIN STATE-OWNED BUILDINGS AND AUTHORIZING PAYMENTS FOR SUCH PROTECTION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82-3310.1 that reads as follows:

82-3310.1. Fire protection for state-owned buildings. The department of administration shall obtain information necessary to prepare a budget for the next session of the legislature for fire protection services for state-owned buildings that present particular firefighting problems as determined by the state fire marshal. In preparing the budget the state may consider providing protection directly or contracting for protection with a local fire service and making payments to local governments for fire services provided to state agencies, all of which are subject to appropriation by the legislature.

Section 2. There is a new R.C.M. section numbered 82-3310.2 that reads as follows:

82-3310.2. Review of fire protection services by fire marshal. The state fire marshal shall review provisions for protection of state-owned buildings in connection with inspections conducted under 82-1202.

Approved April 26, 1977.

CHAPTER NO. 482

AN ACT TO AMEND SECTIONS 46-801.2, 46-801.4, 46-803, 46-804, AND 46-806, R.C.M. 1947, TO REMOVE THE REQUIREMENT THAT LIVESTOCK BE INDIVIDUALLY INSPECTED PRIOR TO REMOVAL FROM A LIVESTOCK MARKET, TO ESTABLISH A REQUIREMENT THAT LIVESTOCK CANNOT BE REMOVED FROM A LIVESTOCK MARKET UNTIL RELEASED BY THE DEPARTMENT OF LIVESTOCK, AND RAISING THE REMOVAL FROM MARKET FEE TO 20 CENTS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 46-801.2, R.C.M. 1947, is amended to read as follows:

"**46-801.2. Inspection of livestock before change of ownership or removal from county — transportation permits.** (1) Except as otherwise provided in this act, it is unlawful to remove or cause to be removed from a county in this state any livestock or to transfer ownership by sale or otherwise or for an intended purchaser or his agent to take possession of any such animal subject to title passing upon meeting or satisfaction of any conditions unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate of the inspection has been issued in connection with and for the purpose of the transportation or removal or of such change of ownership as provided in this act. The inspection must be made in daylight, provided, however, that the change of ownership inspection requirements of this subsection shall not apply when such sale or change of ownership transaction involves five or less such animals.

(2) It is unlawful to sell or offer for sale at a livestock market any livestock originating within any county in this state in which a livestock market is maintained, or transported under a market consignment permit until the livestock has been inspected for marks and brands by a state stock inspector, as provided in this act.

(3) It is unlawful to remove or cause to be removed any livestock from the premises of a livestock market in this state unless the livestock has been *released* by a state stock inspector and *a* certificate *of release* for the livestock has been issued in connection with and for the purpose of the removal from the premises of the livestock market, as provided in this act. *The release obtained pursuant to this subsection will permit the movement of the livestock so released directly to the destination shown on the certificate.*

(4) The person in charge of livestock being removed from a county in this state, where inspection thereof is required by this act or where change of ownership has occurred or when moved under a market consignment permit *or a market release certificate* shall have in his possession the certificate of inspection, market consignment permit, *or market release certificate* issued in connection therewith and shall exhibit the certificate to any sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector *upon* request. Section 46-803 shall be extended to livestock transported or sold under the above-mentioned permits.

(5) The following transportation permits may be issued:

(a) If a saddle, work, or show horse is being transported from county to county in this state by the owner for his personal use or business, or where a purebred cow is being transported from county to county in this state by its owner for show purposes, and where there is no change of ownership, the inspection certificate as required by this act, may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for a period not to exceed 1 year for the horse or cow described thereon. The permit becomes void upon any transfer of ownership or if the horse or cow are to be removed from the state. In such instances an inspection must be secured for removal and the endorsed certificate surrendered.

HeinOnline -- 1977 vol. II 1546 1977

(b) The owner of a saddle, work, or show horse may apply for a permanent transportation permit valid for both interstate and intrastate transportation of the horse until there is a change of ownership. To obtain a permit a horse must have either a registered brand that has been legally cleared, or a lip tattoo, or the owner must present proof of ownership to a state stock inspector. A written application, on forms to be provided by the department, must be completed by the owner and presented to a state stock inspector together with a $5 permit fee for each horse. The application shall contain a thorough physical description of the horse and list all brands and tattoos carried by the horse.

Upon approval of the application by a state stock inspector, a permanent transportation permit shall be issued by the department to the owner for each horse and such permit shall be valid for the life of the horse. If there is a change of ownership in a horse the permit shall automatically become void. The permit must accompany the horse for which it was issued at all times while the horse is in transit. This permit shall be in lieu of other permits and certificates required under the provisions of this section. The state of Montana shall recognize as valid permanent transportation permits issued in other jurisdictions to the owner of a saddle, work, or show horse subsequently entering the state. Such a permit shall be automatically void upon a change of ownership.

(c) When livestock owned by and bearing the registered brand of a bona fide rodeo producer are being transported from county to county in this state by the owner for rodeo purposes, and where there is no change of ownership, the inspection certificate required by this section may be endorsed as to the purpose and extent of transportation by the inspector issuing the certificate in order to serve as a travel permit in this state for the livestock described thereon. The certificate is effective only between April 1 and October 31 of the year for which it is issued. The certificate shall be issued by a state stock inspector."

Section 2. Section 46-801.4, R.C.M. 1947, is amended to read as follows:

"**46-801.4. Inspection for livestock removed from this state.** Except as provided for in subsections (1) and (2) of section 46-801.3 and *subsections (3) and* (5)(b) of section 46-801.2, nothing contained in this chapter authorizes or permits a person to remove or cause to be removed livestock from this state to a location outside of this state, unless the livestock has been inspected for brands by a state stock inspector or deputy state stock inspector and a certificate for the inspection has been issued in connection with and for the purpose of the transportation or removal as provided in this chapter."

Section 3. Section 46-803, R.C.M. 1947, is amended to read as follows:

"**46-803. Seizure of livestock, retention of livestock, sale, disposal of proceeds.** (1) All state stock inspectors inspecting any livestock, either before or after shipment or removal from any county in this state or upon a change of ownership, may inspect and seize either at the point of sale, shipment, or destination or en route any livestock or proceeds thereof which the inspector believes is stolen or upon which brands have been

HeinOnline -- 1977 vol. II 1547 1977

altered or obliterated or which does not conform to the description contained on the tally sheet furnished by the shipper thereof or to the description contained in any certificate of inspection *or release* issued before shipment or removal of the livestock.

(2) Upon taking possession of livestock under this act, a state stock inspector may retain the livestock in his possession for 15 days to make further investigation relative to its ownership. A state stock inspector may either at once or at any time within 15 days sell the livestock at a licensed livestock market or in the open market for the best available price and remit the proceeds, less the cost of keeping and sale, to the department together with a full description of the livestock sold, giving marks and brand, if any, and a statement of the reason for the seizure and sale. The proceeds shall be deposited by the department with the state treasurer and credited to the department fund, where it is subject to claim by the owner of the livestock in the same manner and for the same length of time as is provided by law for the making of claims for moneys arising from the sale of stray stock."

Section 4. Section 46-804, R.C.M. 1947, is amended to read as follows:

"**46-804. Fees for inspection and livestock transportation permits.** (1) For the service of inspection before removal from a county or before change of ownership, the inspector making the inspections shall receive *25* cents per head for 12 head or less, or $3 for 12 head to 20 head and shall receive *20* cents per head for each head over 20 head. For the issuance of a market consignment permit or transportation permit (other than a permanent permit) before removal from a county, the inspector, sheriff, or deputy sheriff issuing the permits shall receive *25* cents for each permit issued for 12 head or less; *50* cents for each permit for 12 to 30 head and $1 for each permit issued for over 30 head and shall receive in addition his necessary actual expenses, to be paid by the owner or the person for whom the inspection is made or permit issued. For the issuance of a permanent horse transportation permit, the state stock inspector taking the application for permit shall receive $5 per head for each permit issued. All inspection and permit fees and expenses shall be collected by the inspector, sheriff, or deputy sheriff at the time of inspection or issuance of permit, and all the fees and expenses collected by a deputy state stock inspector, sheriff, or deputy sheriff shall be retained by him, and all such fees and expenses collected by a state stock inspector shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(2) For the service of inspection before livestock is sold or offered for sale at a licensed *livestock* market, a state stock inspector making the inspection shall receive *20* cents per head for an animal originating within the county in the state in which the market is maintained or transported under a market consignment permit and *10* cents per head for an animal previously inspected before removal from a county as herein provided. All fees shall be paid by the owner or by the person for whom the inspection is made. For *releasing* an animal *so that it may be* removed from the premises of a licensed *livestock* market, the state stock inspector making the *release* shall receive *20* cents per head from the owner or the person for whom the *release* is made. All fees for inspection *and release* at the

HeinOnline -- 1977 vol. II 1548 1977

market shall be collected by the state stock inspector making the inspection *or release* at the time the inspection *or release* is made and shall be sent by him to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department.

(3) All inspection *and release* fees and expenses shall be paid to the department for deposit in the state treasury to the credit of the earmarked revenue fund for the use of the department. State stock inspectors shall be paid for their services and receive their expenses as fixed by the department."

Section 5. Section 46-806, R.C.M. 1947, is amended to read as follows:

"**46-806. Penalties for violations of act.** (1) A person who removes or causes to be removed from a county in this state, livestock (a) without having the livestock inspected before removal where an inspection is required by law; (b) without obtaining a market consignment permit or transportation permit, where the permits are obtainable by law; (c) and does obtain a market consignment permit for livestock but does not deliver the livestock transported thereunder to the livestock market designated in the market consignment permit; (d) and does obtain a transportation permit for the livestock but does not deliver the livestock transported thereunder to the destination as shown on the transportation permit and fails to have the livestock so transported inspected at the point of destination or does not file a loading tally with the carrier as provided in 46-1008; is guilty of a misdemeanor and shall be punishable as provided in subsection (6) of this section.

(2) A person who sells *livestock* or offers *such* for sale at a livestock market *without having the livestock inspected* or removes *livestock* or causes *such* to be removed from a livestock market, *without obtaining a release* is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(3) A person who ships by railroad carrier and the railroad carrier transporting livestock for which a loading tally has been filed as provided by 46-1008 and for which shipment of livestock an inspection has not been made, and after shipment, causes or permits the livestock to leave the custody of the railroad carrier at a place other than where this state regularly maintains a stock inspector, is guilty of a misdemeanor and shall be punishable as provided in subsection (6) of this section.

(4) A person who has in his charge livestock being removed from a county in the state for which an inspection certificate, a market consignment permit, *or a market release certificate* has been issued, and fails to have in his possession accompanying the livestock the inspection certificate, market consignment permit, *or a market release certificate* as issued for the livestock; or who, having the certificate of inspection, market consignment permit, *or market release certificate,* fails to exhibit them to a sheriff, deputy sheriff, constable, highway patrolman, state stock inspector, or deputy state stock inspector at *his* request is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

(5) A person violating any of the provisions of this act is guilty of a misdemeanor and is punishable as provided in subsection (6) of this section.

HeinOnline -- 1977 vol. II 1549 1977

(6) Upon conviction, a person, firm, association, or corporation under this act, shall be fined not less than $50 *or* more than $500 or imprisoned in the county jail for a period of not more than 6 months, or both fined and imprisoned. Of all fines assessed and collected under this act, 50% shall be paid into the state treasury and credited to the earmarked revenue fund for the use of the department, and 50% shall be paid into the general fund of the county in which the conviction occurred."

Approved April 26, 1977.

CHAPTER NO. 483

AN ACT TO REVISE AND CLARIFY THE LAWS PERTAINING TO TRAVEL EXPENSES OF STATE OFFICERS AND EMPLOYEES; AMENDING SECTIONS 59-538 AND 59-539, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-538, R.C.M. 1947, is amended to read as follows:

"**59-538. Travel expense of persons in state service.** Every elected official, appointed members of boards, commissions, councils, and department directors, and all other state employees shall be reimbursed for meals and lodging while away from the person's designated headquarters and engaged in official state business in accordance with the following provisions:

(1) Travel within the state of Montana:

(a) The governor shall be authorized actual and necessary expenses not to exceed *$40* per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding *$18* per day plus two dollars ($2) for the morning meal, three dollars ($3) for the midday meal, and five dollars ($5) for the evening meal. All claims for lodging expense reimbursement allowed under this section must be documented by an appropriate receipt.

(2) Travel out of the state of Montana:

(a) The governor shall be authorized actual and necessary travel expenses not to exceed seventy dollars ($70) per day.

(b) All other elected state officials, appointed members of boards, commissions, councils, department directors, and all other state employees shall be authorized the actual cost of lodging not exceeding thirty-seven dollars ($37) per day plus three dollars ($3) for the morning meal, four dollars ($4) for the midday meal, and six dollars ($6) for the evening meal. All claims for the lodging expense reimbursement allowed under this subsection must be documented by an appropriate receipt.

HeinOnline -- 1977 vol. II 1550 1977

(3) When other than commercial, non-receiptable lodging facilities are utilized by a state employee while conducting official state business in a travel status, the amount of seven dollars ($7) will be authorized for lodging expenses for each day in which travel involves an overnight stay in lieu of the amount authorized in subsection (1)*(b)* or (2)*(b)* above. *However, when overnight accommodations are provided at the expense of any government entity, no reimbursement may be claimed for lodging.*

(4) The actual cost of reasonable transportation expenses and other necessary business expenses incurred by a state official or employee while in an official travel status shall be subject to reimbursement.

(5) The provisions of this section shall not be construed as affecting the validity of section 43-310.

(6) The department of administration shall prescribe rules necessary to effectively administer this section for state government.

(7) All commercial air travel shall be by the least expensive class service available."

Section 2. Section 59-539, R.C.M. 1947, is amended to read as follows:

"**59-539. Computation of meal allowance.** (1) To be eligible for the *meal* allowance provided in section 59-538, an employee must have been in a travel status for more than three (3) continuous hours. If eligible, an employee *receives*:

(a) the morning meal allowance if in a travel status between the hours of 12:01 a.m. and 10 a.m.;

(b) the midday meal allowance if in a travel status between the hours of 10:01 a.m. and 3 p.m.; and

(c) the evening meal allowance if in a travel status between the hours of 3:01 p.m. and 12 midnight.

(d) only one of the three meal allowances provided, if the travel was performed within the employee's assigned travel shift.

(e) a maximum of two meal allowances if the travel begins before or was completed after the employee's assigned travel shift and the travel did not exceed 24 hours.

(2) *"Travel shift" is that period of time beginning 1 hour before and terminating 1 hour after the employee's normally assigned work shift.*

(3) The department of administration shall prescribe rules necessary to effectively administer this section for state government."

Approved April 26, 1977.

CHAPTER NO. 484

AN ACT TO PROVIDE A PARTIAL SERVICE PENSION FOR PAID FIREMEN WITH 10 YEARS OR MORE OF ACTIVE DUTY AND

CLARIFYING ELIGIBILITY FOR FULL SERVICE PENSION; AMENDING SECTIONS 11-1911 AND 11-1925, R.C.M. 1947; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-1911, R.C.M. 1947, is amended to read as follows:

"**11-1911. Contributions to fund.** *(1)* The disability and pension fund of the fire department relief association of such city or town shall consist of all bequests, fees, gifts, emoluments, or donations given or paid to such fund or any of its members, except as otherwise designated by the donor, a monthly fee which shall be paid into the fund by each paid member and part-paid member of *the* fire department relief association amounting to 6% of the member's regular monthly salary, the proceeds of a tax levy as provided by 11-1912, all moneys received from the state as provided for by 11-1919, and the interest of any portion of such fund.

(2) A fireman *is* entitled to a *refund,* in lump sum, without interest, of all monthly contributions made by the fireman to such funds, within 60 days of permanent separation from service in the fire department of such city, town or municipality, except for separation by reason of retirement, death, or disability which would otherwise qualify such separated fireman, the surviving spouse or *children,* to benefits or allowances from such fire department relief association. *A fireman who is eligible to receive a partial service pension under 11-1925.1 may either elect to take the refund provided for in this section or elect to receive the partial pension.*"

Section 2. There is a new R.C.M. section numbered 11-1925.1 that reads as follows:

11-1925.1. Partial service pension after early separation from service. (1) A member of a fire department relief association is eligible to receive a partial service pension if he:

(a) has completed at least 10 years of active duty as a fully paid member of a fire department but has not both completed 20 years of service and attained age 50 as an active fireman;

(b) is permanently separated from service on or after the effective date of this act;

(c) does not qualify for a disability pension under 11-1926; and

(d) does not receive a refund of his contributions under 11-1911.

(2) The right to receive the pension vests upon the fireman's permanent separation from service, but the payments may not commence until the date he would have both reached his 50th birthday and completed 20 years of service as a member of a fire department had his active duty not been terminated.

(3) The pension shall be paid out of the disability and pension fund and shall consist of monthly payments in an amount equal to the number of years of the fireman's service divided by the number of years of service

HeinOnline -- 1977 vol. II 1552 1977

the fireman would have had if he had remained in active duty as a member of a fire department until the date he would have both attained age 50 and completed 20 years of service and multiplied by one-half of the sum last received by the fireman as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of the fire department.

(4) If the fireman dies after he is permanently separated from service and before he both reaches the age of 50 years and completes 20 years of service as an active member of a fire department, the payments prescribed in subsection (3) shall be made to the surviving spouse commencing on the date the fireman would have both reached his 50th birthday and completed 20 years of service as an active member of a fire department and terminating upon the surviving spouse's death or remarriage. If there is no surviving spouse or the surviving spouse dies or remarries and if the fireman leaves one or more children who have not reached the age of 18 years, the children shall receive the payments until the youngest reaches the age of 18 years.

(5) If the fireman dies after he both reaches the age of 50 years and completes 20 years of service as an active member of a fire department, the payments shall be made to the surviving spouse or children as provided in subsection (4).

(6) The pension escalation provisions of 11-1925 do not apply to pensions received under this section.

Section 3. Section 11-1925, R.C.M. 1947, is amended to read as follows:

"**11-1925. Pensions to retired firemen.** *(1)* Each and every fire department relief association organized and existing under the laws of this state shall pay to each of its members who elect to retire from active service after having completed twenty (20) years or more of active duty and has reached the age of fifty (50) years as a fully paid member of a paid, or partly paid and partly volunteer fire department of the city or town wherein such association has been formed, out of any money in the association's "disability and pension fund," a "service pension" in an amount which shall be equal to one-half (½) of the sum last received by the member as a monthly compensation, excluding overtime and payments in lieu of sick leave and annual leave, for his services as an active member of said fire department.

(2) However, effective July 1, 1974, and after an active member has completed twenty (20) years of service the pension of the member who serves or has served an additional one (1) to ten (10) years shall be increased at the rate of one percent (1%) per year for each additional year of service completed, up to a maximum of sixty percent (60%) of the last month's salary received as a monthly compensation for his services as an active member of said fire department; provided that no member shall be eligible to receive a service pension prior to attaining the age of fifty (50) years.

(3) However, the monthly compensation paid to members retiring on or after July 1, 1973, shall in no event become less than one-half (½)

HeinOnline -- 1977 vol. II 1553 1977

the regular monthly salary paid, excluding overtime and payments in lieu of sick leave and annual leave, to a confirmed active fireman of that city as provided each and every year in the annual budget of that city. In no event shall the monthly compensation paid to a member retiring prior to July 1, 1974 be less than two hundred dollars ($200). In case of volunteer men the compensation shall in no event exceed the sum of seventy-five dollars ($75) per month.

(4) As of the effective date of this act, a member is not eligible to receive a service pension under this section unless he is making a monthly contribution to the disability and pension fund as required by 11-1911, and is on active duty as a fully paid member of a fire department when he reaches the age of 50 years.

(5) A member of a pure volunteer fire department who has served twenty (20) years or more as an active member of such fire department, without qualifying as to any provisions pertaining to an attained age, shall be entitled to the benefits provided for by this act; provided, that a member of a pure volunteer fire department who has completed at least ten (10) years' service as an active member of such fire department, but who is prevented from completing at least twenty (20) years' service by dissolution or discontinuance of his volunteer fire department, or by personal relocation due to transfer or loss of employment, or by personal disability, or by any other factor beyond his reasonable control, may nevertheless qualify for partial or reduced pension, in such amount and to such extent as shall be determined by the board of trustees of the fire department relief association, without qualifying as to any provisions pertaining to an attained age."

Section 4. **Interpretation.** This act is not intended to increase or decrease benefits earned by present members under prior acts. The amendments in section 3 of this act are intended to clarify that section but are not intended to imply that prior to the effective date of this act a member could have retired prior to age 50 with full benefits to be paid at age 50.

Approved April 26, 1977.

CHAPTER NO. 485

AN ACT TO PROHIBIT THE USE OF AIRCRAFT, INCLUDING HELICOPTERS, FOR TRANSPORTING HUNTERS, HUNTING EQUIPMENT, OR WILDLIFE AND HARASSING CERTAIN WILDLIFE; PROVIDING EXCEPTIONS; AMENDING SECTION 26-301, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 26-301, R.C.M. 1947, is amended to read as follows:

"26-301. Restrictions of manner of taking and possessing fish and game and powers of commission relating thereto. (1) It shall be

unlawful for anyone to take, capture, shoot, kill, or attempt to take, capture, shoot or kill, any game animal, or game bird from any self propelled or drawn vehicle, or on, or from any public highway in the state of Montana, or by the aid or with the use of any set gun, jack-light or other artificial light, trap, snare, salt lick, nor shall any such set gun, jack-light or other artificial light, trap, snare, salt lick or other device to entrap or entice game animals or game birds be used, made or set, nor may rifles be used to hunt or shoot upland game birds unless the use of rifles is permitted by the commission; provided, however, that this does not prohibit the shooting of wild waterfowl from blinds over decoys with a shotgun only, not larger than a number ten (10) gauge fired from the shoulder, nor shall any game fish be caught, captured, or taken, or attempted to be caught, captured or taken by the aid or with the use of any gun, or trap, nor shall any such set gun, or trap or other device to entrap game fish be used, made, or set.

(2) (a) No game birds or game or fur-bearing animals shall be killed, taken or shot at from any aircraft *including helicopters*, nor shall any aircraft *or helicopter* be used for the purpose of concentrating, pursuing, driving, rallying or stirring up any game or migratory birds, game or fur-bearing animals, nor shall any powerboat, sailboat, or any boat under sail or any floating device towed by a powerboat, sailboat, or any boat under sail be used for the purpose of killing, capturing, taking, pursuing, concentrating, driving or stirring up any upland game birds, or game or fur-bearing animals.

(b) *It is unlawful for any person airborne in any aircraft, including a helicopter, to spot or locate any game or fur-bearing animals and communicate the location thereof to any person on the ground by means of any air-to-ground communication signal or device whatsoever as an aid to hunting or pursuing wildlife.*

(c) Within the boundaries of a national forest, except as permitted by the department, it is unlawful to use aircraft, including helicopters, for hunting purposes, except when persons or cargo are loaded and unloaded at federal aviation agency approved airports, aircraft landing fields, or heliports which have been established on private property or which have been established by any federal, state, county, or municipal governmental body. Hunting purposes include the transportation of hunters or wildlife, and hunting equipment and supplies. The provisions of this subsection do not apply during emergency situations or when search and rescue operations are being conducted or for predator control as permitted by the department of livestock.

(3) No person shall take into a field or forest, or have in his possession while out hunting, any device or mechanism devised to silence, or muffle or minimize the report of any firearms, whether such device or mechanism be operated from or attached to any firearm.

(4) No person may use a shotgun to hunt, kill or shoot deer except with loads as specified by the commission.

(5) No person shall chase with dogs any of the game or fur-bearing animals as defined by the fish and game laws of this state; provided,

HeinOnline -- 1977 vol. II 1555 1977

however, that livestock owners, employees of the state fish and game commission and of the federal fish and wildlife service may use dogs in pursuit of stock-killing bears, and stock-killing mountain lions, or other means of taking stock-killing bears and stock-killing mountain lions except the use of the dead fall; providing, however, that traps used in capturing bear shall be inspected twice each day, which inspection shall be twelve (12) hours apart; and provided further, that a person may take game birds during the open season thereon with the aid of a dog or dogs and any person or association organized for the protection of game, may run field trials at any time upon obtaining written permission from the state fish and game director.

(6) The state fish and game commission shall have the power to designate certain waters where set lines may be used to fish for certain species of game or nongame fish, and the commission may designate the number of hooks and lines and the length of line or lines which may be used as set lines.

(7) Game fish shall be taken only by angling, that is by hook and single line in hand or single rod in hand, or within immediate control; this does not prevent, however, the snagging of paddlefish, coho (silver salmon), and kokanee (sockeye salmon) when the commission shall declare an open season when paddlefish, coho (silver salmon), and kokanee (sockeye salmon) may be taken by snagging, the taking of paddlefish with long bow and arrow when the commission shall declare an open season when paddlefish may be taken by long bow and arrow, the taking of walleyed pike, sauger, northern pike and nongame fish with spear or gig when the commission shall declare an open season for taking walleyed pike, sauger, northern pike and nongame fish with spear or gig, nor the use of landing net or gaff to land a game fish after the same has been hooked by angling as above specified, nor does it prevent the taking of minnows other than game fish variety by the use or aid of a net not to exceed twelve (12) feet in length and four (4) feet in width, in such waters as may be designated by the commission.

(8) No person, while hunting game animals or game birds shall use a motor-driven vehicle on any other than an established road or trail, unless he has reduced a big game animal to possession and cannot easily retrieve said big game animal, in which case a motor-driven vehicle may be used to retrieve the big game animal, except in areas where more restrictive regulations apply or where the landowner has not granted such permission, provided that after such retrieval, such motor-driven vehicle is again returned to an established road or trail by the shortest possible route. For purposes of safety and allowing normal travel, a motor-driven vehicle may be parked on the roadside or directly adjacent to said road or trail. No person, while hunting game animals or game birds, shall drive or attempt to drive, run or attempt to run, molest or attempt to molest, flush or attempt to flush, or harass or attempt to harass any game animal or game bird with the use or aid of any motor-driven vehicle. No person, while hunting game animals or game birds shall drive through any retired cropland, brush area, slough area, timber area, open prairie, or unharvested or harvested cropland, except upon an established road or trail unless written permission has been given by the landowner and in

HeinOnline -- 1977 vol. II 1556 1977

possession of the hunter. The restrictions in this subsection on motor-driven vehicle use off an established road or trail apply only to hunting on state or private land, not to hunting on federal land unless the federal agency specifically requests or approves state enforcement.

(9) It is unlawful for a person to use a self-propelled vehicle to intentionally concentrate, drive, rally, stir up, or harass wildlife except predators of this state, providing that this subsection does not apply to landowners and their authorized agents engaged in the immediate protection of that landowner's property.

(10) Whenever said fish and game commission shall have made any orders, rules or regulations for the carrying out of the powers granted to it under this act, the same shall take effect and be in force from and after the publication and posting of notice of said orders, rules and regulations as required by the fish and game laws.

(11) The provisions of this section relating to methods of herding, driving, capturing, taking, locating or concentrating of fish, game animals, game birds or fur-bearing animals do not apply to the department of fish and game, or any employee thereof, while acting within the scope and course of the powers and duties of the department.

Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and shall be punishable as provided by law."

Approved April 26, 1977.

CHAPTER NO. 486

AN ACT PROVIDING FOR INVESTIGATIVE SUBPOENAS FOR COUNTY ATTORNEYS AND THE ATTORNEY GENERAL; PROVIDING FOR PROCEDURES IN RELATION TO SUCH SUBPOENAS AND THE INVESTIGATIVE INQUIRIES; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 95-720 that reads as follows:

95-720. Investigative subpoena. (1) Whenever the attorney general or a county attorney has a duty to investigate alleged unlawful activity, any justice of the supreme court or district court judge of this state may cause subpoenas to be issued commanding the persons to whom they are directed to appear before the attorney general or the county attorney and give testimony and produce such books, records, papers, documents, and other objects as may be necessary and proper to the investigation. A subpoena may issue only when it appears upon the affidavit of the attorney general or the county attorney that the administration of justice requires it to be issued.

HeinOnline -- 1977 vol. II 1557 1977

(2) A person who, without just cause, fails to obey a subpoena served on him pursuant to this act is punishable for contempt of court.

(3) A person aggrieved by a subpoena issued pursuant to this act may, within a reasonable time, file a motion to dismiss the subpoena and, in the case of a subpoena duces tecum, to limit its scope. The motion shall be granted if the subpoena was improperly issued or, in the case of a subpoena duces tecum, if it is overly broad in its scope.

Section 2. There is a new R.C.M. section numbered 95-721 that reads as follows:

95-721. Conduct of investigative inquiry. (1) The attorney general or the county attorney may examine under oath all witnesses subpoenaed pursuant to this act. Testimony shall be recorded. The witness has the right to have counsel present at all times. If he does not have funds to obtain counsel, the judge or justice shall appoint counsel for him.

(2) The secrecy and disclosure provisions relating to grand jury proceedings apply to proceedings conducted under subsection (1). A person who divulges the contents of the application or the proceedings without legal privilege to do so is punishable for contempt of court.

(3) All penalties for perjury or preparing, submitting, or offering false evidence apply to proceedings conducted under this act.

Section 3. There is a new R.C.M. section numbered 95-722 that reads as follows:

95-722. Self-incrimination and immunity. (1) No person subpoenaed to give testimony pursuant to this act may be required to make any statement or produce any evidence which may incriminate him. The attorney general or the county attorney may, with the approval of the justice or judge who authorized the issuance of the subpoena on behalf of the state, grant any person subpoenaed immunity from prosecution or punishment for or on account of any transaction or other matter concerning which the person testifies or produces evidence pursuant to the subpoena. After being granted such immunity, no person may be excused from testifying on the grounds that his testimony may incriminate him. The immunity may not extend to prosecution or punishment for false statements given pursuant to the subpoena.

(2) Nothing in this act requires a witness to divulge the contents of a privileged communication unless the privilege is waived as provided by law.

Section 4. There is a new R.C.M. section numbered 95-723 that reads as follows:

95-723. Applicability of other laws — costs. (1) The fees and mileage of witnesses subpoenaed pursuant to this act shall be the same as required in criminal actions. The state shall bear all costs, including the cost of service, when the application for the subpoena is made by the attorney general, and the appropriate county shall bear all costs, including the cost of service when the application for the subpoena is made by a county attorney.

HeinOnline -- 1977 vol. II 1558 1977

(2) All provisions relating to subpoenas in criminal actions apply to subpoenas issued pursuant to this act, including the provisions of 95-1808 through 95-1811.

Section 5. **Effective date.** This act is effective on its passage and approval.

Approved April 26, 1977.

CHAPTER NO. 487

AN ACT TO AMEND SECTIONS 82-1133 AND 82-3317, R.C.M. 1947, TO ABOLISH THE MINIMUM NUMBER OF BIDS REQUIRED FOR STATE CONSTRUCTION PROJECTS AND TO CLARIFY THE LAWS RELATED TO BID SECURITY.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1133, R.C.M. 1947, is amended to read as follows:

"**82-1133. Bid security.** *Each* bid must be accompanied by bid *security in the amount of 10% of the bid, such security to consist of cash, cashier's check, certified check, bank money order, or bank draft, drawn and issued by a national banking association located in the state of Montana or by any banking corporation incorporated under the laws of the state of Montana, or a bid bond or bonds executed by a surety corporation authorized to do business in the state of Montana.*"

Section 2. Section 82-3317, R.C.M. 1947, is amended to read as follows:

"**82-3317. Supervision of construction of buildings.** (1) For the construction of a building costing more than ten thousand dollars ($10,000.00) the department of administration shall:

(a) Review and approve all plans and working drawings prepared by architects.

(b) Approve all bond issues or other financial arrangements and supervise and approve the expenditure of all moneys.

(c) Under the supervision and with the approval of the board of examiners, solicit, accept and reject bids and award all contracts to the lowest qualified bidder *considering conformity with specifications and terms and reasonableness of bid amount. Before any contract is awarded, two formal bids must have been received, if reasonably available.*

(d) Review and, with the consent of the board of examiners, approve all change orders.

(e) Accept the building when completed according to approved plans and specifications.

HeinOnline -- 1977 vol. II 1559 1977

(2) The department of administration is responsible for concurring in construction projects where the proposed cost is less than ten thousand dollars ($10,000.00), but more than three thousand dollars ($3,000.00). *Before any contract is approved for construction, alteration, or improvement at least three informal bids, if reasonably available, shall be procured from bona fide contractors duly licensed as such in the state of Montana.*

(3) The department need not require the provisions of Montana law relating to advertising, bidding or supervision where proposed construction costs are less than three thousand dollars ($3,000.00).

(4) For the construction of buildings owned or to be owned by a school district, the department of administration shall, upon request, provide inspection to insure compliance with the plans and specifications for the construction of such buildings. "Construction" shall include construction, repair, alteration, equipping and furnishing during construction, repair or alteration. These services shall be provided at a cost to be contracted for between the department of administration and the school district, with the receipts to be deposited in the department of administration's construction revolving account in the revolving fund.

(5) It is the intent of the legislative assembly that student housing and other facilities constructed under the authority of the regents of the university of Montana are subject to the provisions of subsection (1) of this section."

Approved April 26, 1977.

CHAPTER NO. 488

AN ACT TO CLARIFY THE MEANING OF PERSONAL STAFF EXEMPTED FROM THE STATE CLASSIFICATION AND COMPENSATION PLAN; AMENDING SECTIONS 59-903 AND 59-904, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-903, R.C.M. 1947, is amended to read as follows:

"59-903. Definitions. *As used in this chapter, the following definitions apply:*

(1) "Agency" means *a* department, board, commission, office, bureau, institution or unit of state government recognized in the state budget.

(2) "Department" means the department of administration.

(3) "Personal staff" means those positions occupied by employees appointed by the elected officials enumerated in 59-904(9). The personal staff of each of the elected officials may not exceed 10 unless otherwise approved by the department according to criteria developed by the department.

HeinOnline -- 1977 vol. II 1560 1977

(4) "Program" means a combination of planned efforts to provide a service.

(5) "Position" means a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time or intermittent employment of one person."

Section 2. Section 59-904, R.C.M. 1947, is amended to read as follows:

"59-904. Officers and employees excepted from provisions of act. This act does not apply to the following positions in state government:

(1) elected officials and their chief deputy and executive secretary;

(2) officers and employees of the legislative branch;

(3) judges and employees of the judicial branch;

(4) members of boards and commissions appointed by the governor, appointed by the legislature or appointed by other elected state officials;

(5) officers or members of the militia;

(6) agency heads appointed by the governor;

(7) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(8) academic and professional administrative personnel who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(9) personal staff of the elected officials enumerated in Article VI, section 1, of the constitution of Montana are exempt from sections 59-909, 59-910, and 59-911 of this act, and section 82A-1014;

(10) legal services staff and the special assistant attorneys general under the direct control of the attorney general."

Approved April 26, 1977.

CHAPTER NO. 489

AN ACT RELATING TO THE TERMINOLOGY IN THE LAWS RELATING TO FIREMEN AND POLICE RETIREMENT AND DEATH AND DISABILITY BENEFITS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 11-1839.1 that reads as follows:

11-1839.1. Municipality — definition. Unless the context requires a different meaning, any reference to "municipality", "city", or "town" in the laws governing police retirement and death and disability benefits

HeinOnline -- 1977 vol. II 1561 1977

includes those jurisdictions which, prior to the effective date of a county-municipal consolidation, were incorporated municipalities, subsequent districts created for urban law enforcement services, or the entire county included in the county municipal consolidation.

Section 2. There is a new R.C.M. section numbered 11-1910.1 that reads as follows:

11-1910.1. Municipality — definition. Unless the context requires a different meaning, any reference to "municipality", "city", or "town" in the laws governing firemen's retirement and death and disability benefits includes those jurisdictions which, prior to the effective date of a county-municipal consolidation were incorporated municipalities, or subsequent districts created for urban fire protection services.

Section 3. **Standardization of terminology.** To facilitate the use of common terminology for local government purposes, the code commissioner shall, where appropriate, change all statutory references to comply with the following rules:

(1) Every reference to "fireman" when referring to a person who extinguishes dangerous fires shall be changed to "firefighter".

(2) Every reference to "reserve officer" in the laws governing police retirement and death and disability benefits shall be changed to "retired officer".

(3) Every reference to "reserve list" in the laws governing police retirement and death and disability benefits shall be changed to "retired list".

Approved April 26, 1977.

Note: Section 2 was erroneously enrolled as 11-1910.1. This section will appear in R.C.M. 1947 as 11-1910.2.

CHAPTER NO. 490

AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE INTERIM SUBCOMMITTEE ON TAXATION, REVISING AND UPDATING THE MONTANA INHERITANCE TAX WITH REGARD TO JOINT ESTATES AND EXEMPTIONS; AMENDING SECTIONS 91-4405, 91-4409, 91-4410, 91-4414, 91-4416, 91-4419, AND 91-4453, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 91-4405, R.C.M. 1947, is amended to read as follows:

"91-4405. Joint estates, government bonds, tenants by the entirety, joint bank accounts, and similarly held property. Whenever any property, however acquired, real or personal, tangible or intangible, including government bonds of the United States, *is* inscribed in co-owner-

ship form, held *by two or more persons* in joint tenancy or as tenants by the entirety, or is deposited in any bank or other depositary in the joint names of two or more persons and payable to the survivor or survivors of them upon the death of one of them, the right of the survivor or survivors to the immediate possession or ownership is a taxable transfer. The tax is upon the transfer of decedent's interest, one-half or other proper fraction, as evidenced by the written instrument creating the same, as though the property to which the transfer relates belonged to the joint tenants, tenants by the entirety, joint depositors, holders in co-ownership form, or persons, as tenants in common, and had been, for inheritance tax purposes, bequeathed or devised to the survivor or survivors by will, except such part thereof as may be shown to have originally belonged to the survivor and never to have belonged to the decedent *when the surviving joint tenant is a spouse of the decedent. In all other cases the full value of the property shall be taxable except such portion thereof that originally belonged to the survivor and as to which the decedent had made no contribution; if the decedent had made a contribution to the ownership of such property the amount of such contribution shall be taxable.* This section shall not be construed to repeal or modify the provisions of section 91-4402."

Section 2. Section 91-4409, R.C.M. 1947, is amended to read as follows:

"**91-4409. Primary rates, where remaining amount not in excess of $25,000.** *The exemptions allowed by 91-4414 shall be subtracted from the total value of property or beneficial interests transferred to any person, institution, association, corporation, or political entity by the decedent. A tax is imposed upon the first $25,000 in value of the remaining amount of the total value of property or beneficial interests at the following rates:*

(1) *at the rate of 2% of the clear value of the interest in property passing to a person if* the person entitled to any beneficial interest in such property *is:*

(a) the husband, wife, lineal issue, *or* lineal ancestor of the decedent;

(b) any child adopted as such in conformity with law or any child to whom such decedent for not less than 10 years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's *15th* birthday and was continuous for 10 years; or

(c) any lineal issue of such adopted or mutually acknowledged child;

(2) *at the rate of 4% of the clear value of the interest in property passing to a person if* the person entitled to any beneficial interest in such property *is:*

(a) the brother or sister or a descendant of a brother or sister of the decedent;

(b) a wife of a son or the husband of a daughter of the decedent;

(3) *at the rate of 6% of the clear value of the interest in property passing to a person if* the person entitled to any beneficial interest in such property *is* the uncle, aunt, or first cousin of the decedent;

HeinOnline -- 1977 vol. II 1563 1977

(4) *at the rate of 8% of the clear value of the interest in property passing if the entity* entitled to any beneficial interest in such property *is:*

(a) a person in any other degree of collateral consanguinity than is hereinbefore stated*;*

(b) is a stranger in blood to the decedent*;* or

(c) is a body politic or corporate."

Section 3. Section 91-4410, R.C.M. 1947, is amended to read as follows:

"**91-4410. Other rates, where remaining amount in excess of $25,000.** The rates in 91-4409 are for convenience termed the primary rates. When the amount of the clear value of *the remaining amount of the* property or interests exceeds $25,000, the *rate* of tax upon such excess shall be as follows:

(1) *upon* all in excess of $25,000 and up to $50,000, two times the primary *rate;*

(2) *upon* all in excess of $50,000 and up to $100,000, three times the primary *rate;*

(3) *upon* all in excess of $100,000, four times the primary *rate.*"

Section 4. Section 91-4414, R.C.M. 1947, is amended to read as follows:

"**91-4414. Exemptions.** *(1)* The exemption allowed to each person, institution, association, corporation, *or* body politic *shall* be taken *as provided in 91-4409.*

(2) The following transfers are totally exempt*:*

(a) all property transferred to the state or any of its institutions or to municipal corporations within the state for strictly county, city, town, or municipal purposes*;*

(b) all property transferred to any society, corporation, institution, or association, in trust or otherwise, or to any foundation or trust organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, no part of the net earnings of which inures to the benefit of any private stockholder or individual and no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation, if any of the following conditions is present:

(i) the society, corporation, institution, foundation, trust, or association is organized solely for religious, charitable, scientific, literary, or educational purposes under the laws of this state or of the United States;

(ii) the property transferred is limited for use within this state;

(iii) the society, corporation, institution, foundation, trust, or association is organized or existing under the laws of another state of the United States or of a foreign state or country *and* at the date of the decedent's death any one of the following conditions existed:

HeinOnline -- 1977 vol. II 1564 1977

(A) the other state, foreign state, or foreign country did not impose a legacy, succession, or death tax of any character in respect to property transferred to a similar society, corporation, institution, foundation, trust, or association organized or existing under the laws of this state;

(B) the laws of the other state, foreign state, or foreign country contained a reciprocal provision under which property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country was exempt from legacy, succession, or death taxes of every character, if the other state of the United States or foreign state or country allowed a similar exemption in respect to property transferred to a similar society, institution, foundation, trust, or association organized or existing under the laws of another state of the United States or foreign state or country;

(C) the society, corporation, institution, foundation, trust, or association owns or operates a hospital for crippled children within the United States, primarily practicing orthopedics, to which crippled or afflicted children from the state of Montana are, without discrimination, gratuitously admitted and treated and the property transferred is limited for use at such hospital.

(3) The clear value of one-half of the property distributed or passing to decedent's surviving spouse is exempt.

(4) The following amounts are exempt:

(a) property of the clear value of *$40,000* transferred to the *surviving spouse* of the decedent;

(b) property of the clear value of $15,000 transferred to:

(i) each minor lineal issue of the decedent;

(ii) any minor child adopted as such in conformity with law;

(iii) any minor child to whom such decedent for not less than 10 years prior to such transfer stood in the mutually acknowledged relation of a parent, provided such relationship began at or before the child's *15th* birthday and was continuous for 10 years; or

(iv) any minor lineal issue of such adopted or mutually acknowledged child; and

(c) property of the clear value of $7,000 transferred to each of the lineal issue who have attained majority and to each of the other persons who have attained majority described in 91-4409*(1)*.

(5) Any child of *a* decedent *is* entitled to credit for so much of the tax paid by *the decedent's spouse* as applied to any property which *is* thereafter transferred by or from such *spouse* to *the* child, provided the *spouse* does not survive *the* decedent to exceed *10* years.

(6) Property of the clear value of *$1,000* transferred to each of the persons described in 91-4409*(2) is* exempt.

(7) No tax *may* be imposed upon any tangible personal property of a resident decedent when such property is located without this state and when the transfer of such property is subject to an inheritance or transfer tax in the state where located and *the* tax has actually been paid, secured, or guaranteed, provided such property is not without this state temporarily *or* for the sole purpose of deposit or safekeeping and provided the laws of the state where such property is located allow a like exemption in relation to such property left by a resident of that state and located in this state."

Section 5. Section 91-4416, R.C.M. 1947, is amended to read as follows:

"**91-4416. Discount — interest.** (1) If *the* tax is paid within 18 months *of the death of the decedent,* a discount of 5% shall be deducted therefrom. The deduction of this discount of 5% shall be accomplished by paying within the 18-month period from the date that the tax accrues an amount equal to 95% of the total tax declared due by the person making payment.

(2) If such tax is not paid within 18 months *of the death of the decedent,* interest shall be charged and collected thereon at the rate of 10% *a year* from the time the tax accrued unless *because* of claims made upon the estate, necessary litigation, or other unavoidable cause of delay, *the* tax *is* not determined and paid as herein provided, in which case interest at the rate of 6% shall be charged upon such tax from the accrual thereof until the cause of such delay is removed, after which *time* 10% shall be charged. *Litigation* to defeat the payment of the tax *is not* necessary litigation. *When permission has been granted to defer payment of tax* under 91-4419, interest shall be charged at the rate of 6% after 1 year from the date of death until the date of payment thereof."

Section 6. Section 91-4419, R.C.M. 1947, is amended to read as follows:

"**91-4419. Permission for deferred payment of tax.** Any beneficiary of any property chargeable with a tax under *91-4401 through 91-4406* and any *personal representative or trustee of the estate* may *request,* within *18* months from the date of the death of decedent or transfer *of the property, permission* not to pay such tax *or a portion thereof* until the person beneficially interested *comes* into the actual possession or enjoyment thereof, *or until payment can be made without liquidating a portion of the capital assets. The department may permit the deferral of payment for not more than 5 years, upon such conditions and terms as the department considers necessary to assure payment.*"

Section 7. Section 91-4453, R.C.M. 1947, is amended to read as follows:

"**91-4453. Definitions.** *(1)* The words "estate" and "property" as used in this act shall be taken to mean the real and personal property or interest therein passing or transferred to individual legatees, devisees, heirs, next of kin, grantees, donees, or vendees, and not as the property or interest therein of the decedent, grantor, donor, or vendor, and shall include all personal property within or without the state. The word "transfer" as used in this act shall be taken to include the passing of property or any

HeinOnline -- 1977 vol. II 1566 1977

interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, bargain, sale, gift, or appointment in the manner herein prescribed to each individual or corporation. The word "decedent" as used in this act shall include the testator, intestate, grantor, bargainor, vendor, or donor. "Intangible" or "intangible property", when used in this act without other qualifications, shall be taken to include all moneys, stocks, bonds, notes, securities, and credits of all kinds, secured or unsecured. The words "county treasurer", "public administrator", and "county attorney" as used in this act shall be taken to mean the treasurer, public administrator, and county attorney of the county in which the district court has jurisdiction of the proceedings.

(2) The terms "joint" and "jointly" as used in this chapter refer to ownership of property by two or more persons having as one of the incidents of such ownership the right of survivorship in the surviving owner or owners upon the death of one of the owners. This definition does not affect the concept of property owned as tenants in common, and this type of ownership shall continue to be recognized where applicable."

Approved April 26, 1977.

CHAPTER NO. 491

AN ACT TO EXEMPT THE BUILDING AND APPURTENANT LAND OF CERTAIN COMMUNITY SERVICE ORGANIZATIONS FROM PROPERTY TAXATION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-202.1 that reads as follows:

84-202.1. Certain community services buildings exempt. (1) The building and appurtenant land, not exceeding 1 acre, owned by a nonprofit community service organization is exempt from property taxation, except as provided in subsections (3) and (4), if such organization:

(a) is a lodge of a nationally recognized fraternal organization and does not sell food or beverages under license from the state of Montana; or

(b) furnishes services to senior citizens in the form of daytime or evening educational or recreational activities and does not furnish living accommodations to such citizens or sell food or beverages under license from the state of Montana; services qualifying under this provision must be recognized in the state plan on aging adopted by the department of social and rehabilitation services; or

(c) primarily furnishes facilities without charge, except that a minimal fee may be charged for janitorial services, for public meetings and entertainments.

(2) An applicant for exemption under this section shall demonstrate

HeinOnline -- 1977 vol. II 1567 1977

that it has been an active community service organization continuously from January 1, 1976.

(3) A building and lot exempted under this section shall be appraised, assessed, and subject to levies for any special improvement district if the special improvement directly benefits the building or lot.

(4) The exemption provided under this section may not be extended to any property owned by a community service organization described herein which is leased in whole or in part to any person for business or profit-making purposes.

Approved April 26, 1977.

CHAPTER NO. 492

AN ACT TO AMEND SECTION 84-202, R.C.M. 1947, TO EXEMPT PROPERTY OF IRRIGATION DISTRICTS FROM TAXATION AND TO AMEND SECTION 89-1702, R.C.M. 1947, TO EXEMPT EQUIPMENT, MACHINERY, MOTOR VEHICLES, AND OTHER PERSONAL PROPERTY BELONGING TO IRRIGATION DISTRICTS FROM STATE, COUNTY, OR MUNICIPAL TAXATION; AMENDING SECTION 53-106, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-202, R.C.M. 1947, is amended to read as follows:

"**84-202. Exemptions from taxation.** (1) (a) The property of the United States, the state, counties, cities, towns, school districts, *irrigation districts organized under the laws of Montana and not operating for profit,* municipal corporations, public libraries, buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

(2) When a clubhouse or building erected by or belonging to any

HeinOnline -- 1977 vol. II 1568 1977

society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(4) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(5) [The following agricultural products are exempt from taxation:]

(a) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation.

(b) All nonperishable unprocessed agricultural products except livestock, held in possession of the original producer for less than seven (7) months following harvest.

(c) Livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of nine (9) months as of the last day of any month.

(6) Moneys and credits are exempt from taxation.

(7) A capital investment in a recognized nonfossil form of energy generation is exempt to the extent provided under section 84-7403."

Section 2. Section 89-1702, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1569 1977

"**89-1702. Exemption of irrigation district property.** The bonds issued under the provisions of this act, rights of way, ditches, flumes, pipelines, dams, water rights, reservoirs, *equipment, machinery, motor vehicles, and all other personal property* belonging to any irrigation district *organized under the laws of Montana and not operating for profit may* not be taxed for state, county, or municipal purposes."

Section 3. Section 53-106, R.C.M. 1947, is amended to read as follows:

"**53-106. Number plates.** (1) Every motor vehicle which shall be driven upon the streets or highways of this state shall display both front and rear a number plate, bearing the distinctive number assigned such vehicle. Such number plate shall be in eight series: one series for owners of motor cars, one for owners of motor vehicles of the motorcycle type, one for trailers, one for trucks, one for dealers in vehicles of the motorcycle type which shall bear the distinctive letters "MCD" or the letters "MC" and the word "DEALER," one for franchised dealers in new motor cars (including trucks and trailers) or new and used motor cars (including trucks and trailers) which shall bear the distinctive letter "D" or the word "DEALER," one for dealers in used motor cars only (including used trucks and trailers) which shall bear the distinctive letters "UD" or the letter "U" and the word "DEALER," and one for dealers in trailers and/or semitrailers (new or used) which shall bear the distinctive letters "DTR" or the letters "TR" and the word "DEALER," and all such markings for the aforementioned kinds of dealers' plates shall be placed on the number plates assigned thereto in such position thereon as the registrar may designate. All number plates for motor vehicles shall be issued for a minimum period of four years, provided that number plates shall next be issued in the year 1976 and as often thereafter as is consistent with the provisions of this section, shall bear a distinctive marking, and shall be furnished by the state. In years when number plates are not issued, the registrar shall provide nonremovable stickers bearing appropriate registration numbers which shall be affixed to the license plates in use.

(2) In the case of motor cars and trucks, number plates shall be of metal six inches wide and twelve inches in length, the number plates issued in the year 1976 to be of a graphic design commemorating the bicentennial of the founding of the United States of America, and the word "Montana" with the year placed on the plate. For number plates issued after 1976, the outline of the state of Montana shall be used as a distinctive border on such license plates, and the word "Montana" with the year shall be placed across the bottom of the plate. Such registration plate shall be treated with a reflectorized background material according to specifications prescribed by the registrar. An additional fee of one dollar ($1.00) per year for each registration of a vehicle shall be added to the registration fee. Revenue from this fee shall be forwarded by the respective county treasurers to the state treasurer for deposit in the motor vehicle recording account of the earmarked revenue fund. Disbursements from the motor vehicle recording account shall be made by warrant drawn by the registrar. The distinctive registration numbers shall begin with a number one (1) or with a letter-number combination such as "A 1" or "AA 1," or any other similar combination of letters and numbers and be numbered consecutively for each series of plates. The distinctive registra-

HeinOnline -- 1977 vol. II 1570 1977

tion number or letter-number combination assigned to the vehicle shall appear on the plate preceded by the number of the county and appearing in horizontal order on the same horizontal base line, and the county number shall be separated from the distinctive registration number by a separation mark unless a letter-number combination is used. The dimensions of such numerals and letters shall be determined by the registrar of motor vehicles, provided that all county and registration numbers shall be of equal height.

(3) For the use of tax-exempt motor vehicles, in addition to the markings herein provided, number plates shall have thereon the following distinctive markings:

For vehicles owned by the state the registrar of motor vehicles may designate the prefix number for the various state departments, and all numbered plates issued to state departments shall bear the words "State Owned" and no year number will be indicated thereon as these numbered plates will be of a permanent nature, and will be replaced by the registrar of motor vehicles at such time when the physical condition of numbered plates requires same. For vehicles owned by the counties, municipalities, *irrigation districts organized under the laws of Montana and not operating for profit,* and school districts and used and operated by officials and employees thereof in line of duty as such, and for vehicles on loan from the United States government or the state of Montana, to, or owned by, the civil air patrol and used and operated by officials and employees thereof in the line of duty as such, there shall be placed on the number plates assigned thereto, in such position thereon as the registrar may designate, the letter "X" or the word "EXEMPT." Distinctive registration numbers for plates assigned to motor vehicles of each of the counties in the state and those of the municipalities and school districts situated within each of said counties *and those of the irrigation districts which obtain plates within each county* shall begin with number 1 and be numbered consecutively.

(4) On all number plates assigned to motor vehicles of the truck and trailer type, other than tax-exempt trucks and trailers, there shall appear the letter "T" or the word "TRUCK" for plates assigned to trucks and the letters "TR" or the word "TRAILER" for plates assigned to trailers, and housetrailers, and the letters "MC" or the word "CYCLE" for plates assigned to vehicles of the motorcycle type.

Number plates issued to a passenger car, truck, trailer or vehicle of the motorcycle type may be transferred only to a replacement passenger car, truck, trailer or motorcycle type vehicle.

(5) For the purpose of this act, the several counties of the state shall be assigned numbers as follows: Silver Bow, 1; Cascade, 2; Yellowstone, 3; Missoula, 4; Lewis and Clark, 5; Gallatin, 6; Flathead, 7; Fergus, 8; Powder River, 9; Carbon, 10; Phillips, 11; Hill, 12; Ravalli, 13; Custer, 14; Lake, 15; Dawson, 16; Roosevelt, 17; Beaverhead, 18; Chouteau, 19; Valley, 20; Toole, 21; Big Horn, 22; Musselshell, 23; Blaine, 24; Madison, 25; Pondera, 26; Richland, 27; Powell, 28; Rosebud, 29; Deer Lodge, 30; Teton, 31; Stillwater, 32; Treasure, 33; Sheridan, 34; Sanders, 35; Judith Basin, 36; Daniels, 37; Glacier, 38; Fallon, 39; Sweet Grass, 40; McCone,

HeinOnline -- 1977 vol. II 1571 1977

41; Carter, 42; Broadwater, 43; Wheatland, 44; Prairie, 45; Granite, 46; Meagher, 47; Liberty, 48; Park, 49; Garfield, 50; Jefferson, 51; Wibaux, 52; Golden Valley, 53; Mineral, 54; Petroleum, 55; Lincoln, 56; any new counties shall be assigned numbers by the registrar of motor vehicles as they may be formed, beginning with the number 57."

Approved April 26, 1977.

CHAPTER NO. 493

AN ACT TO AMEND SECTIONS 25-605 AND 16-912, R.C.M. 1947, TO INCREASE THE SALARIES OF CERTAIN COUNTY OFFICERS AND TO INCLUDE COUNTY ASSESSOR IN SALARY SCHEDULE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-605, R.C.M. 1947, is amended to read as follows:

"**25-605. Salaries of certain county officers.** The salaries of county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, *county assessors,* county superintendents of schools, and of county surveyors in counties where county surveyors now receive salaries as provided in 16-3302, shall be based on the population and taxable valuation of the county *as of January 1, 1977,* in accordance with the following schedule:

Population of County	Salary Col. A
Below 3,000	*$4,494*
3,000 to 3,999	*$4,729*
4,000 to 4,999	*$4,833*
5,000 to 5,999	*$4,938*
6,000 to 6,999	*$5,058*
7,000 to 7,999	*$5,394*
8,000 to 8,999	*$5,487*
9,000 to 9,999	*$5,617*
10,000 to 12,499	*$5,708*
12,500 to 14,999	*$5,826*
15,000 to 17,499	*$5,943*
17,500 to 19,999	*$6,048*
20,000 to 24,999	*$6,165*
25,000 to 29,999	*$6,270*
30,000 to 39,999	*$6,387*
40,000 to 49,999	*$6,544*
50,000 to 59,999	*$6,779*
60,000 to 69,999	*$7,014*
70,000 to 79,999	*$7,275*
80,000 to 89,999	*$7,432*
90,000 to 99,999	*$7,676*
100,000 and over	*$7,902*

HeinOnline -- 1977 vol. II 1572 1977

Taxable Valuation of County	Salary Col. B
Below $2,000,000	*$4,598*
$2,000,000 to 2,999,999	*$4,729*
3,000,000 to 3,999,999	*$4,833*
4,000,000 to 4,999,999	*$4,938*
5,000,000 to 5,999,999	*$5,069*
6,000,000 to 6,999,999	*$5,394*
7,000,000 to 7,999,999	*$5,487*
8,000,000 to 9,999,999	*$5,617*
10,000,000 to 11,999,999	*$5,708*
12,000,000 to 13,999,999	*$5,826*
14,000,000 to 15,999,999	*$5,942*
16,000,000 to 17,999,999	*$6,047*
18,000,000 to 19,999,999	*$6,165*
20,000,000 to 22,499,999	*$6,270*
22,500,000 to 24,999,999	*$6,387*
25,000,000 to 29,999,999	*$6,544*
30,000,000 to 34,999,999	*$6,779*
35,000,000 to 39,999,999	*$7,014*
40,000,000 to 44,999,999	*$7,275*
45,000,000 to 49,999,999	*$7,432*
50,000,000 to 54,999,999	*$7,667*
55,000,000 to 59,999,999	*$7,902*
60,000,000 to 64,999,999	*$8,138*
65,000,000 to 69,999,999	*$8,372*
70,000,000 to 74,999,999	*$8,607*
75,000,000 to 79,999,999	*$8,843*
80,000,000 to 84,999,999	*$9,078*
85,000,000 to 89,999,999	*$9,313*
90,000,000 to 94,999,999	*$9,548*
95,000,000 to 99,999,999	*$9,783*
100,000,000 *to 109,999,999*	*$10,019*
110,000,000 to 119,999,999	*$10,195*
120,000,000 to 129,999,999	*$10,398*
130,000,000 to 139,999,999	*$10,606*
140,000,000 to 149,999,999	*$10,817*
150,000,000 and over	*$11,035*

The total salary paid to county treasurers, clerk and recorder, clerk of the court, county attorneys, sheriffs, *county assessors,* county superintendents of schools and county sheriffs, and county surveyors in counties where county surveyors receive salaries, as provided in 16-3302, shall be the sum of the salary shown in column A based on population when added to the salary shown in column B based on taxable valuation; provided, however, that county superintendent of schools shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of $400 per year and county sheriffs and county attorneys shall receive, in addition to the salary based upon the totals of columns A and B above, the sum of $1,200 per year. Notwithstanding the above, in each county with a population in excess of 30,000 the salary of the county attorney shall be *$30,000* per year."

HeinOnline -- 1977 vol. II 1573 1977

Section 2. One-half of all salary increases provided for in section 1 shall be effective July 1, 1977, and the remainder of such increases shall be effective July 1, 1978.

Section 3. Section 16-912, R.C.M. 1947, is amended to read as follows:

"**16-912. Compensation of members of board.** (1) Each member of the board of county commissioners in counties of the first, second, third, and fourth class, shall receive an annual salary to be established by resolution of the board of county commissioners in an amount not to exceed the annual salary established in the schedule in section 25-605, R.C.M. 1947, for the clerk and recorder.

In addition, each member of the board of county commissioners in counties of the first, second, third and fourth class shall receive a mileage allowance as provided in section 59-801 for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, and while engaged in the performance of his official duties.

(2) Each member of the board of county commissioners in all other counties is entitled to a salary to be established by the board of county commissioners by resolution in an amount not to exceed *$40* per day for each day's attendance on the sessions of the board and a mileage allowance as provided in section 59-801 for the distance necessarily traveled in going to and returning from the county seat and his place of residence each day that such trip is actually made, provided, however, that any county commissioner whose place of residence is fifty (50) miles or more from the county seat, as measured by the usual route of travel, may elect to receive mileage as provided in this section or, in lieu of mileage, a sum of ten dollars ($10) per day for each day's attendance on sessions of the board as expenses, while engaged in the performance of his official duties, and no other compensation must be allowed. *This section does not apply to counties that have adopted charter form of government.*"

Approved April 26, 1977.

CHAPTER NO. 494

AN ACT TO CHANGE THE DATE FOR FILING RAILROAD ASSESSMENT STATEMENTS; AMENDING SECTION 84-801, R.C.M. 1947, AND SECTION 3, CHAPTER 98, LAWS OF 1977.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-801, R.C.M. 1947, is amended to read as follows:

"**84-801. Assessment of railroads.** The president, secretary, or managing agent, or such other officer as the state department of revenue may designate, of any corporation, and each person or association of persons, owning or operating any railroad in more than one county in this state, must, on or before April *15* of each year, furnish the department

HeinOnline -- 1977 vol. II 1574 1977

a statement, signed and sworn to by one of such officers, or by the person or one of the persons forming such association, showing in detail for the year ending on the thirty-first day of December, immediately preceding:

(1) The whole number of miles of railroad in the state; and, where the line is partly out of the state, the whole number of miles without the state, and the whole number within the state, owned or operated by such corporation, person, or association.

(2) The value of the roadway, roadbed, and rails of the whole railroad, and the value of the same within the state.

(3) The width of the right of way.

(4) The number of each kind of all rolling stock used by such corporation, person, or association in operating the entire railroad, including the part without the state.

(5) Number, kind, and value of rolling stock owned and operated in the state.

(6) Number, kind, and value of rolling stock used in the state, but now owned by the party making the returns.

(7) Number, kind, and value of rolling stock owned but used out of the state, either upon divisions of road operated by the party making the returns, or by and upon other railroads.

(8) The whole number of sidetracks in each county, including the number of miles of track in each railroad yard in the state.

(9) The number of each kind of rolling stock used in operating the entire railroad, including the part without the state, which must include a detailed statement of the number and value thereof, of all engines, passenger, mail, express, baggage, freight, and other cars, or property owned or leased by such corporation, persons, or association.

(10) The number of sleeping and dining cars not owned by such corporation, person, or association, but used in operating the railroads of such corporation, person, or association in the state, or on the line of the road without the state, during each month of the year for which the return is made; also the number of miles each month said cars have been run or operated within and without the state.

(11) A description of the road, giving the points of entrance into and the points of exit from each county, with a statement of the number of miles in each county. When a description of the road shall have once been given, no other annual description thereof is necessary, unless the road shall have been changed. Whenever the road, or any portion of the road, is advertised to be sold, or is sold for taxes, either state or county, no other description is necessary than that given by, and the same is conclusive upon, the person, corporation, or association giving the description. No assessment is invalid on account of a misdescription of the railroad, or the right of way for the same. If such statement is not furnished as above provided, the assessment made by the state department of revenue upon the property of the corporation, person, or association failing to furnish the statement is conclusive and final.

HeinOnline -- 1977 vol. II 1575 1977

(12) Also showing in detail for the year preceding the first of January:

(a) The gross earnings of the entire road;

(b) The gross earnings of the road within the state, and where the railroad is let to other operators, how much was derived by the lessor as rental;

(c) The cost of operating the entire road, exclusive of sinking fund, expenses, of land department, and money paid to the United States;

(d) Net income for such year, and amount of dividend declared;

(e) Capital stock authorized;

(f) Capital stock paid in;

(g) Funded debt;

(h) Number of shares authorized;

(i) Number of shares of stock issued.

(13) Any other facts the state department of revenue may require."

Section 2. Section 3, Chapter 98, Laws of 1977, is amended to read as follows:

"Section 3. **Due date of reports and returns — extensions.** Each report or return described in 84-901, 84-1320, 84-5402, 84-6202, or 84-6403 shall be delivered to the department on or before March 31 each year and each report described in 84-801 shall be delivered to the department before April 15 each year. The department may for good cause extend the time for filing a return or report for not more than 30 days."

Approved April 26, 1977.

CHAPTER NO. 495

AN ACT TO PROVIDE THAT ROYALTY INTERESTS MAY BE REQUIRED TO SHARE THE BURDEN OF THE RESOURCE INDEMNITY TRUST TAX ON A PRO RATA BASIS; AMENDING SECTION 84-7006, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-7006, R.C.M. 1947, is amended to read as follows:

"**84-7006. Tax on mineral production.** The annual tax to be paid by the person engaged in or carrying on the business of mining, extracting, or producing a mineral shall be $25, together with an additional sum or amount computed on the gross value of product which may have been derived from the business work or operation within this state during the calendar year immediately preceding, at the rate of ½ of 1% of the amount

of gross value of product at the time of extraction from the ground, if in excess of $5,000. *Unless otherwise provided in a contract or lease, the pro rata share of any royalty owner or owners may be deducted from any settlements under the lease or leases or division of proceeds orders or other contracts.*"

Approved April 26, 1977.

CHAPTER NO. 496

AN ACT TO REVISE AND CLARIFY THE MONTANA ALCOHOLIC BEVERAGE CODE IN SUPPORT OF RECODIFICATION; AMENDING SECTIONS 4-1-304, 4-2-102, 4-2-204, 4-4-105, 4-4-201, 4-4-202, 4-4-301, 4-4-302, 4-4-303, 4-4-401, 4-4-403, 4-4-404, 4-5-105, 4-6-102, 4-6-205, AND 4-6-401; REPEALING SECTIONS 4-1-305, 4-1-307, 4-4-106, AND 4-6-206, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4-1-304, R.C.M. 1947, is amended to read as follows:

"**4-1-304. Prohibited acts within division.** (1) No officer or employee of the liquor division, *including those engaged in the sale of liquor at the various state liquor stores, may* be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent, or employee and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the division or any employee of the state *may* solicit or receive directly or indirectly any commission, remuneration, or gift whatsoever from any person or corporation having sold, selling, or offering liquor for sale to the state or division *pursuant to* this code.

(3) No person selling or offering for sale to or purchasing liquor from the state liquor division *may* either directly or indirectly offer to pay any commission, profit, or remuneration or make any gift to any member or employee of the division, to any employee of the state, or to anyone on behalf of such member or employee.

(4) The prohibition contained in subsection (3) of this section does not prohibit the division from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any other person, firm, or corporation proposing to sell any *liquor* to the Montana liquor division shall submit, without cost to the division prior to the original purchase, an analysis of each brand and may submit a representative sample not exceeding 25 fluid ounces of such merchandise to the division.

(b) *When* a brand of liquor has been accepted for testing by the division, *the division shall* forward the sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

HeinOnline -- 1977 vol. II 1577 1977

(c) The division shall maintain written records of all samples received. *The* records shall show the brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the division's action on the brand, and the person to whom delivered or other final disposition of the sample.

(5) No liquor, wine, or other *alcoholic* beverage *may* be withdrawn from the regular warehouse inventory or from the state liquor stores of the Montana liquor division for any purpose other than sale at the prevailing state retail prices or for destroying damaged or defective merchandise. The division shall maintain a written record including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method of destruction or other disposition of damaged or defective warehouse or state store merchandise."

Section 2. Section 4-2-102, R.C.M. 1947, is amended to read as follows:

"**4-2-102. Containers to be sealed with official seal — opening package on liquor store premises forbidden.** No *liquor may* be sold to any purchaser except in a package sealed with the official seal prescribed by this *code*, which package *may* not be opened on the premises of a state store."

Section 3. Section 4-2-204, R.C.M. 1947, is amended to read as follows:

"**4-2-204. Department to sell to licensees — posted price.** The department *may* sell through its stores all kinds of liquor, wine, and cordials kept in stock to licensees licensed under this code at the posted price thereof in the store in which *the* liquor is sold. All sales shall be upon a cash basis. The posted price *means* the retail price of such liquor as fixed and determined by the department and in addition thereto an excise *and license* tax as *provided* in this *code*."

Section 4. Section 4-4-105, R.C.M. 1947, is amended to read as follows:

"**4-4-105. Special permits to sell alcoholic beverages — application and issuance.** (1) *(a)* Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event shall in the discretion of the liquor division be entitled to a special permit to sell beer to the patrons of such event to be consumed within the enclosure wherein the event is held.

(b) The application of any such association or corporation shall be presented 10 days in advance and shall describe the location of such enclosure *where* such event is *to be* held, the nature of *the* event, *and* the period when it is contemplated that the *event* will be held. *The* application shall be accompanied by the amount of the permit fee.

(c) The permit issued to such association or corporation *is* a special permit but shall not authorize the sale of beer except starting 1 day in advance of the regular period when events are being held upon such grounds and during the period described in *the* application and for 1 day thereafter.

(2) *(a) A* post of a nationally chartered veterans' organization or *a*

HeinOnline -- 1977 vol. II 1578 1977

lodge of a recognized national fraternal organization not otherwise licensed under this code shall, in the discretion of the department, without notice or hearing as provided in 4-4-302, be entitled to a special permit to sell beer *or a special permit to sell all alcoholic beverages* at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

(b) The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit *will* be used and the date it will be used.

(c) The special permit issued shall be for a *24-hour* period *only* ending at 2 a.m., and the department *may* not issue more than 12 such permits to any such post or lodge during a calendar year."

Section 5. Section 4-4-201, R.C.M. 1947, is amended to read as follows:

"**4-4-201. Issuance of retail beer licenses — limit on number of retail licenses — wine license amendments — off-premises consumption.** (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this *code* and the *rules* of the department, may be issued to any person, firm, or corporation who *is* approved by the department as a fit and proper person, firm, or corporation to sell beer, *except* that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by *congress, as follows*:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than one retail beer license which *may* not be used in conjunction with a retail *all-beverages* license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities or towns, one beer license for each 500 inhabitants which *may* not be used in conjunction with retail *all-beverages* licenses;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities, two additional retail beer licenses for the first 2,000 inhabitants or major fraction thereof and one additional retail beer license for each additional 2,000 inhabitants which *may* not be used in conjunction with retail *all-beverages* licenses;

(b) the number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail beer licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. *If* two or more incorporated municipalities are situated within a distance of 5 miles

from each other, the total number of retail beer licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined populations of both of such municipalities and *may* not exceed the foregoing limitations. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of such city or town.

(c) retail beer licenses of issue on *March 7, 1947,* and which are in excess of the foregoing limitations shall be renewable, but no new licenses *may* be issued in violation of such limitations;

(d) such limitations *do* not prevent the issuance of a nontransferable and nonassignable retail beer license to *a* post of a nationally chartered veterans' organization or *a* lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949;

(e) the number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof or for use at premises situated within any unincorporated town shall be as determined by the department in the exercise of its sound discretion, except that no retail beer license may be issued for any premises so situated unless the department determines that the issuance of such license is required by public convenience and necessity.

(2) The cities and incorporated towns may enact ordinances defining certain areas in the cities and towns where alcoholic beverages may or may not be sold. No incorporated city or incorporated town may by ordinance restrict the number of licenses that the department may issue. *However,* no retail license may be issued by the department for any premises situated within any zone of such city or town *where* the sale of beer *or liquor* is prohibited by ordinance, a certified copy of which has been filed with the department. The department *may* deny the issuance of a retail beer *or all-beverages* license if it *determines* that the premises proposed for licensing are off regular police beats and cannot be properly policed by local authorities.

(3) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The division may issue such amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or *prepared-food* business. A person holding a beer-and-wine license may sell wine for consumption on the premises. He may buy wine only at retail from the department. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

(4) A retail license to sell beer in the original packages for *off-premises* consumption only may be issued to any person, firm, or corporation who

HeinOnline -- 1977 vol. II 1580 1977

is approved by the department as a fit and proper person, firm, or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue *is* not limited by the provisions of subsection (1) of this section but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause."

Section 6. Section 4-4-202, R.C.M. 1947, is amended to read as follows:

"**4-4-202. All-beverages license quota.** Except as otherwise provided by law, a license to sell liquor, beer, and wine at retail, an all-beverages license, in accordance with the provisions of this code and the *rules* of the department, may be issued to any person who *is* approved by the department as a fit and proper person to sell such beverages, *except* that:

(1) the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by *congress, as follows*:

(a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of such towns, not more than two retail licenses;

(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000 inhabitants and within a distance of 5 miles from the corporate limits of such cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

(c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate limits thereof, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

(2) The number of the inhabitants in such cities and towns, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits thereof, shall govern the number of retail licenses that may be issued for use within such cities and towns and within a distance of 5 miles from the corporate limits thereof. *If* two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of such municipalities and within a distance of 5 miles from their respective corporate limits shall be determined on the basis of the combined population of both of such municipalities and *may* not exceed the foregoing limitations. Notwithstanding the preceding sentence, the total population for determining the quota of a city may include with the city's population the population residing outside but within 5 miles of the city limits in a case where the number of persons residing outside but within 5 miles of the city exceeds the number of persons residing within the city. Such a determination may be made only upon a special census taken by

HeinOnline -- 1977 vol. II 1581 1977

the department or its agent at the expense of the applicant for a license under this section. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town shall be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of *the* city or town.

(3) Retail all-beverages licenses of issue on *March 7, 1947,* and which are in excess of the foregoing limitations shall be renewable, but no new licenses *may* be issued in violation of such limitations.

(4) Such limitations *do* not prevent the issuance of a nontransferable and nonassignable (as to ownership only) retail license to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if such veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(5) The number of retail all-beverages licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits thereof *may* not *be* more than one license for each 750 population of the county after excluding the population of incorporated cities and incorporated towns in such county."

Section 7. Section 4-4-301, R.C.M. 1947, is amended to read as follows:

"**4-4-301. Application for all-beverages license — penalty for false statements.** *(1)* Prior to the issuance of *an all-beverages* license as provided *in 4-4-202,* the applicant shall file with the department an application in writing, signed by the applicant and containing such information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as may be required by the department.

(2) The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. If any false statement is made in any part of *the* application, the applicant or applicants *are* guilty of a misdemeanor, and upon conviction thereof the license, if issued, shall be revoked and the applicant or applicants subjected to the penalties provided by law."

Section 8. Section 4-4-302, R.C.M. 1947, is amended to read as follows:

"**4-4-302. Notice of application — publication — protest.** *(1)* When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer such license, the department shall promptly publish in a newspaper of general circulation in the city, town, or county from *which the* application *comes* a notice that such applicant has made application for such license and that protests against the issuance of a license to the applicant will be heard at a time and place stated in the notice, which shall be in the city of Helena, Montana. Notice of application for a new license shall be published once a week for 4 consecutive weeks. Notice of application for transfer of a license shall be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

HeinOnline -- 1977 vol. II 1582 1977

NOTICE OF APPLICATION FOR RETAIL
ALL-BEVERAGES LICENSE

Notice is hereby given that on the .... day of ...., 19.., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue, to be used at (describe location of premises where *beverages are* to be sold), and protests, if any there be, against the issuance of such license will be heard at the hour of —M, on the .... day of ...., 19.., at the office of the Montana department of revenue in Helena, Montana.

Dated .... Signed .....
ADMINISTRATOR

(2) No license *may* be issued until on or after the date set in the notice for hearing protests. Nor *may* a license under this code be issued if the department *finds* from the evidence at *the* hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected or that the purposes of this code will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay to the department an amount sufficient to cover the costs of publishing *the* notice."

Section 9. Section 4-4-303, R.C.M. 1947, is amended to read as follows:

"**4-4-303. Investigation of application.** Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee, the department shall within 30 days *make* a thorough investigation of all matters pertaining thereto and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business and whether the requirements of this code and the rules promulgated by the department are met and complied with."

Section 10. Section 4-4-401, R.C.M. 1947, is amended to read as follows:

"**4-4-401. Fees for licenses.** *(1) (a)* Each *beer* licensee, under the provisions of this code, shall pay an annual license fee as follows:

(i) each brewer, wherever located, whose product is sold or offered for sale within the state, $500; *for each storage depot, $400;*

(ii) each wholesaler, $400;

(iii) each beer retailer, $200; *with a wine license amendment, an additional $200;*

(iv) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(v) any unit of a nationally chartered veterans' organization, $50.

(b) A transfer of any *brewer's, wholesaler's, or beer retailer's* license may be made on application to the department with the consent of the department, provided that *the* transferee *qualifies* under this code.

(c) This code shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of this code which require

HeinOnline -- 1977 vol. II 1583 1977

beer manufactured outside of Montana and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or subwarehouse in Montana.

(2) The permit fee under 4-4-105(1) is computed at the rate of $15 a day for each day beer is sold at those events lasting 2 or more days but in no case be less than $30.

(3) The permit fee under 4-4-105(2) is $10 for the sale of beer only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses shall be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license, is $200.

(6) Each licensee licensed under the quotas of 4-4-202 shall pay an annual license fee as follows:

(a) except as hereinafter provided, for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $400;

(b) except as hereinafter provided, for each license in incorporated cities with a population of more than 2,000 and less than 5,000, or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $500;

(c) except as hereinafter provided, for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $650;

(d) for each license in incorporated cities with a population of 10,000 or more, or within a distance of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, $800;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and shall be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and shall be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in paragraph (d) of this subsection shall pay a one

HeinOnline -- 1977 vol. II 1584 1977

time original license fee of $20,000 for any such license issued. The one-time license fee of $20,000 shall not apply to any transfer or renewal of a license duly issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee of $800.

(7) The license fees herein provided for are exclusive of and in addition to other license fees chargeable in Montana for the sale of liquor, beer, and malt beverages."

Section 11. Section 4-4-403, R.C.M. 1947, is amended to read as follows:

"**4-4-403. Census of population.** The census taken under the direction of *congress* shall be the basis upon which the respective populations of *the* municipalities shall be determined unless a direct enumeration of the inhabitants *is* made by the state or municipal corporation, in which case such later direct enumeration shall constitute such basis. *No* census hereafter taken *may* be such basis until it *is* published under the authority under which the same *is* taken, and then its effect shall *be prospective only* from the date of such publication."

Section 12. Section 4-4-404, R.C.M. 1947, is amended to read as follows:

"**4-4-404. Fee for and expiration of licenses.** *Each* July 1, the department shall issue licenses *to brewers, wholesalers, or retailers or* for the retail sale of alcoholic beverages on an annual basis and at such fees as are prescribed by law, and such licenses shall expire at midnight of June *30* of the succeeding year. The department shall notify each applicant for an original license or renewal that he should inform himself of applicable provisions of federal law which may require a permit from a federal agency."

Section 13. Section 4-5-105, R.C.M. 1947, is amended to read as follows:

"**4-5-105. Fee to be charged.** The county clerk and recorders shall charge and collect a fee of $1.50 from the applicant at the time the application is prepared; *and* $1 thereof shall be transmitted to the department along with the application and shall be used to defray the cost of administering and executing the provisions of this *chapter*. Any surplus shall revert to the general fund of Montana. The remaining *50 cents* shall be paid into the general fund of the county to defray the county's costs in administering this program."

Section 14. Section 4-6-102, R.C.M. 1947, is amended to read as follows:

"**4-6-102. Sale of liquor not purchased from state store forbidden — penalty.** It *is* unlawful for any licensee to sell or keep for sale or have on his premises for any purpose whatever any liquor except that purchased from the state liquor store, and any licensee found in possession of or selling and keeping for sale any liquor which was not purchased from a state liquor store shall, upon conviction, be *punished by a fine of* not less than $500 *or* more than $1,500, *be punished* by imprisonment for not less than 3 months *or* more than 1 year or *by* both such fine and

HeinOnline -- 1977 vol. II 1585 1977

imprisonment, and if the department *is* satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by *the* licensee or by his agents, servants, or employees, *the* department *shall* immediately revoke the license."

Section 15. Section 4-6-205, R.C.M. 1947, is amended to read as follows:

"**4-6-205. Unlawful alcoholic beverage — seizure — forfeiture.** Any investigator or peace officer who finds an alcoholic beverage which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this code may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon conviction of the person for a violation of any provision of *4-3-102,* the alcoholic beverage and all packages containing the same shall, in addition to any other penalty prescribed by this code, ipso facto be forfeited to the state of Montana."

Section 16. Section 4-6-401, R.C.M. 1947, is amended to read as follows:

"**4-6-401. Premises where liquor illegally sold public nuisance.** Any room, house, building, boat, vehicle, structure or place where alcoholic beverages are knowingly manufactured, sold, or bartered in violation of this code or 94-8-107 and all property knowingly kept and used in maintaining the same is hereby declared to be a public nuisance, and any person who maintains such a nuisance shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than $100 *or* more than $500 and *be imprisoned* not less than *30* days *or* more than *6* months."

Section 17. **Repealer.** Sections 4-1-305, 4-1-307, 4-4-106, and 4-6-206, R.C.M. 1947, are repealed.

Approved April 26, 1977.

CHAPTER NO. 497

AN ACT TO LOWER THE TAX ASSESSMENT ON LIVESTOCK BY CHANGING THE CLASSIFICATION OF LIVESTOCK FROM CLASS THREE TO CLASS TWO; AMENDING SECTION 84-301, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"**84-301. Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, except coal mines, after deducting only the expenses specified and allowed by 84-5403; also, where the right to enter upon land to explore, prospect, or dig for oil, gas, coal, or mineral is reserved in land or received by mesne

HeinOnline -- 1977 vol. II 1586 1977

conveyance (exclusive of leasehold interests), devise, or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal, or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. *Livestock, poultry, and unprocessed products of both, all* agricultural and other tools, implements, and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks, and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery, and robes and, except as provided in Class Five (a) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns, provided that any such city or town has a population of 800 persons or less; and provided further, that the average circuit miles for each station on the system is more than 1 ¼ miles.

Class Three. *Furniture* and fixtures used in commercial activities; the annual gross proceeds of underground coal mines; and all office or hotel furniture and fixtures, except improvements included in Class Nine.

Class Four. (a) All land *and* town and city lots with improvements, except improvements included in Class Nine, and all trailers affixed to land owned, leased, or under contract *of* purchase by the trailer owner; manufacturing and mining machinery, fixtures, and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven, or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery, and other property used and owned by *cooperative* rural electrical and *cooperative* rural telephone associations organized under the laws of Montana, except those within the incorporated limits of a city or town in which less than 95% of the electric consumers or telephone users are served by a *cooperative* organization, and as to the property enumerated in this *subsection* (a) within incorporated limits of a city or town in which less than 95% of the electric consumers or users will be served by a *cooperative* organization, such property shall be put in Class Two.

(b) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse, or flour mill owner or company storing the same or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

HeinOnline -- 1977 vol. II 1587 1977

(c) The dwelling house and the lot on which it is erected owned and occupied by any resident of the state who has been honorably discharged from active service in any branch of the armed forces *and* who is rated 100% disabled due to a service-connected disability by the United States veterans administration or its successors. In the event of the veteran's death, the dwelling house and the lot on which it is erected, so long as the surviving spouse remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by 84-308.

Class Seven. (a) *(i)* All new industrial property. "New industrial property" *means* any new industrial plant, including land, buildings, machinery, and fixtures, which, in the determination of the state department of revenue, is used by a new industry during the first 3 years of operation not having been assessed prior to July 1, 1961, within the state of Montana. "New industry" *means* any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. *New* industrial property *is* limited to industries that manufacture, mill, mine, produce, process, or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; industries that engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions. New industrial property does not include a plant which will create an adverse impact on existing state, county, or municipal services. The department shall promulgate regulations for the determination of what constitutes an adverse impact taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then upon proper notice hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing and it also may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during *the* construction period.

(ii) In the event of a prepayment of taxes, the maximum amount *of* prepayment shall be the amount without the application of Class 7(a) to such property.

(iii) If a major new industrial facility qualifies under Class 7(a), the reduction of its yearly payment of property taxes for reimbursement of

HeinOnline -- 1977 vol. II 1588 1977

its prepaid taxes, as provided for in 84-41-105, shall not begin until the Class 7(a) qualification expires. *New* industrial property shall not be *construed* to mean property which is used or employed in any industrial plant which has been in operation in this state for 3 years or longer. Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

(b) Business inventories. Business inventories include goods intended for sale or lease in the ordinary course of business, and include raw materials and work in progress with respect to such goods, but *do* not include goods actually leased or rented on the lien date, or mobile homes held by a dealer or distributor as a part of his stock in trade.

(c) Air pollution control equipment as defined in 69-3923.

(d) A capital investment in a recognized nonfossil form of energy generation, to the extent provided under 84-7403.

Class Eight. (a) *(i)* Any improvement on real property, trailers affixed to land, or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, with appurtenant land not exceeding 5 acres, which together have a market value of not more than $27,500, which dwelling is owned or under a contract for deed and which is actually occupied for at least 10 months *a* year as the primary residential dwelling of:

(A) a widow 62 years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of *(D);*

(B) a widower 62 years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of *(D);*

(C) a widow or widower with minor or dependent children regardless of age who qualifies under the income limitations of *(D);* or

(D) a recipient or recipients of retirement or disability benefits whose income from all sources is not more than $6,000 for a single person and $6,800 for a married couple total per annum, whether said dwelling is occupied by a single person or a married couple.

(ii) One who applies for classification of property under this class must make an affidavit to the state department of revenue, on a form as may be provided by the department *and* supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, *and* as to his marital status, if applicable, and to the fact that he actually occupies or maintains as his primary residential dwelling such land and improvements, with right of the county welfare board to investigate the applicant on the completion of the form as to answers given on *it. The* assessed value of said property shall not be increased during the life of the recipient of retirement benefits or widow or widower covered under this class unless the owner-resident makes a substantial improvement in the dwelling. For the purposes of the affidavit required for classification of property under this class, it *is* sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied,

HeinOnline -- 1977 vol. II 1589 1977

whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of 94-7-203, relating to the criminal offense of false swearing.

(b) A capital investment in a building for an energy conservation purpose, to the extent provided under 84-7403.

Class Nine. The incremental increase in the value of real estate attributable to repairing, maintaining, or improving existing improvements.

Class Ten. The annual gross proceeds of coal mines using the strip mining method.

Class Eleven. Centrally assessed utility allocations after deductions of locally assessed properties and except as provided in Class Two for rural telephones and Class Five (a) for cooperatives, and all other property not included in the 10 preceding classes."

Approved April 26, 1977.

CHAPTER NO. 498

AN ACT PROVIDING FOR THE AD VALOREM TAXATION OF THE GROSS PROCEEDS OF METAL MINES AT A PERCENTAGE OF MERCHANTABLE VALUE; DELETING METALS FROM NET PROCEEDS TAXATION; AMENDING SECTIONS 84-101, 84-301, 84-302, 84-401, AND 84-5402, R.C.M. 1947; COORDINATING THIS ACT WITH OTHER PENDING LEGISLATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-101, R.C.M. 1947, is amended to read as follows:

"**84-101. Definition of terms.** Whenever the terms mentioned in this section are employed in dealing with the subject of taxation, they are employed in the sense hereafter affixed to them.

First—The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things real, personal, and mixed, capable of private ownership; but this must not be construed so as to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by such stocks is within the state and has been taxed.

Second—The term "real estate" includes:

1. The possession of, claim to, ownership of, or right to the possession of land.

2. All mines, minerals, and quarries in and under the land, subject

HeinOnline -- 1977 vol. II 1590 1977

to the provisions of 84-5401 *and 84-7901*, all timber belonging to individuals or corporations growing or being on the lands of the United States, and all right and privileges appertaining thereto.

3. Improvements.

Third—The term "improvements" includes all buildings, structures, fixtures, fences, and improvements, including mobile homes and house trailers situated upon, erected upon or affixed to land when the department of revenue or its agent determines that the permanency of location of the mobile home has been established and for this purpose any mobile home is presumed to be an improvement to real property. If the mobile home or house trailer is an improvement located on land not owned by the owner of such improvement, the improvement shall be assessed as a leasehold improvement to real property and delinquent taxes can be a lien only on the leasehold improvement.

Fourth—The term "personal property" includes everything which is the subject of ownership, not included within the meaning of the term "real estate" and "improvements."

Fifth—The terms "value" and "full cash value" mean the amount at which the property would be taken in payment of a just debt due from a solvent debtor.

Sixth—The term "credit" means those solvent debts, secured or unsecured, owing to a person.

Seventh—The term "mobile home" means forms of housing known as "trailers", "house trailers" or "trailer coaches" exceeding 8 feet in width or 32 feet in length designed to be moved from one place to another by an independent power connected thereto."

Section 2. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, except coal *and metal* mines, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (a) of this section, all poles, lines, transformers, transformer stations, meters,

HeinOnline -- 1977 vol. II 1591 1977

tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of 800 persons or less; and provided further, that the average circuit miles for each station on the system is more than 1 ¼ miles.

Class Three. Livestock, poultry, and unprocessed products of both; furniture and fixtures used in commercial activities; the annual gross proceeds of underground coal mines; and all office or hotel furniture and fixtures, except improvements included in Class Nine.

Class Four. (a) All land, town and city lots, with improvements, except improvements included in Class Nine, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than 95% of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (a) within incorporated limits of a city or town in which less than 95% of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(b) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(c) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated 100% disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the surviving spouse remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by 84-308, R.C.M. 1947.

HeinOnline -- 1977 vol. II 1592 1977

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first 3 years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; industries that engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual, prepared by the United States office of management and budget; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. New industrial property does not include a plant which will create an adverse impact on existing state, county, or municipal services. The department shall promulgate regulations for the determination of what constitutes an adverse impact taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then upon proper notice hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing, and it also may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during construction period.

In the event of a prepayment of taxes, the maximum amount or prepayment shall be the amount without the application of the Class 7 (a) to such property.

If a major new industrial facility qualifies under Class 7 (a) the reduction of its yearly payment of property taxes for reimbursement of its prepaid taxes as provided for in 84-41-105, R.C.M. 1947, shall not begin until the Class 7 qualification expires. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for 3 years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

(b) Business inventories. Business inventories shall include goods intended for sale or lease in the ordinary course of business, and shall

HeinOnline -- 1977 vol. II 1593 1977

include raw materials and work in progress with respect to such goods, but shall not include goods actually leased or rented on the lien date, or mobile homes held by a dealer or distributor as a part of his stock in trade.

(c) Air pollution control equipment as defined in 69-3923.

(d) A capital investment in a recognized nonfossil form of energy generation, to the extent provided under 84-7403.

Class Eight. (a) Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, with appurtenant land not exceeding 5 acres, which together have a market value of not more than $27,500, which dwelling is owned or under a contract for deed, and which is actually occupied for at least 10 months per year as the primary residential dwelling of:

(1) a widow 62 years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower 62 years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow or widower with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient or recipients of retirement or disability benefits whose income from all sources is not more than $6,000 for a single person and $6,800 for a married couple total per annum whether said dwelling is occupied by a single person or a married couple. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies or maintains as his or her primary residential dwelling, such land and improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, the assessed value of said property shall not be increased during the life of the recipient of retirement benefits or widow or widower covered under this class, unless the owner-resident makes a substantial improvement in the dwelling. For the purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

(b) A capital investment in a building for an energy conservation purpose, to the extent provided under section 84-7403.

Class Nine. The incremental increase in the value of real estate

HeinOnline -- 1977 vol. II 1594 1977

attributable to repairing, maintaining or improving existing improvements.

Class Ten. The annual gross proceeds of coal mines using the strip mining method.

Class Eleven. Centrally assessed utility allocations after deductions of locally assessed properties and except as provided in Class Two for rural telephones and Class Five (a) for cooperatives, and all other property not included in the ten (10) preceding classes.

Class Twelve. The annual gross proceeds of metal mines."

Section 3. Section 84-302, R.C.M. 1947, is amended to read as follows:

"**84-302. Basis for imposition of taxes.** As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Class 1. 100% of its true and full value.

Class 2. 20% of its true and full value.

Class 3. 33 ⅓ % of its true and full value.

Class 4. 30% of its true and full value.

Class 5. 7% of its true and full value.

Class 6. As specified in section 84-308, R.C.M. 1947.

Class 7. 7% of its true and full value.

Class 8. 15% of its true and full value.

Class 9. 6% of the true and full value for the first full year following completion of the repair, maintenance or improving of existing improvements; 12% of the true and full value for the second full year following completion of the repair, maintenance or improving of existing improvements; 18% of the true and full value for the third full year following completion of the repair, maintenance or improving of existing improvements; 24% of the true and full value for the fourth full year following completion of the repair, maintenance or improving of existing improvements; and 30% for the fifth full year following completion of the repair, maintenance or improving of existing improvements and for every year thereafter.

Class 10. 45% of its true and full value.

Class 11. 40% of its true and full value.

Class 12. 7.5% of its true and full value."

Section 4. Section 84-5402, R.C.M. 1947, is amended to read as follows:

"**84-5402. Net proceeds tax — statement of yield, penalty, extension of time.** Every person, partnership, corporation, or association, engaged in mining, extracting or producing from any quartz vein or lode,

placer claim, dump or tailings, or other place or sources whatever, precious stones or gems, *vermiculite, bentonite,* petroleum, natural gas, or other valuable mineral, except coal *and metals,* must on or before March *31* of each year make out a statement of the gross yield of the above-named metals or minerals from each mine owned or worked by such person, corporation or association during the year preceding January *1* of the year in which such statement is made, and the value thereof. Such statement shall be in the form prescribed by the state department of revenue, and must be verified by the oath of such person or the manager, superintendent, agent, president or vice-president of such corporation, association or partnership, and must be delivered to the state department of revenue on or before March *31.* Such statement shall show the following:

1. The name and address of the owner or lessee or operator of the mine, together with the names and addresses of any and all persons, corporations, or associations owning or claiming any royalty interest in the mineral product of such mine or the proceeds derived from the sale thereof, and the amount or amounts paid or yielded as royalty to each of such persons, corporations or associations during the period covered by the statement.

2. The description and location of the mine.

3. The number of tons of ore, barrels of petroleum, cubic feet of natural gas or other mineral products or deposits extracted, produced, and treated or sold from the mine during the period covered by the statement.

4. The amount and character of such ores, mineral products or deposits, and the yield of such ores, mineral products or deposits from such mine in constituents of commercial value; that is to say, barrels of petroleum or other crude or mineral oil, cubic feet of natural gas or other commercially valuable constituents of said ores or mineral products or deposits measured by standard units of measurement, yielded to such person, corporation or association so engaged in mining, and to said royalty holders and each of them, if any, during the period covered by the statement.

5. The gross yield or value in dollars and cents.

6. Actual cost of extracting same from mine.

7. Actual cost of transporting to place of reduction or sale.

8. Actual cost of reduction or sale.

9. Actual cost of marketing the product and conversion of same into money.

10. Cost of construction, repairs and betterments of mines, and cost of repairs and replacements of reduction works.

11. The assessed valuation of reduction works for the calendar year for which such return is made.

12. Actual cost of fire insurance and workmen's compensation insurance.

HeinOnline -- 1977 vol. II 1596 1977

If any person shall fail, neglect or refuse to file the statement required by this section within the time required, or within any extended period of time allowed, the state department of revenue when transmitting the net proceeds valuations to the counties shall inform the county assessor of such failure, neglect or refusal and the county assessor in addition to the net proceeds tax, if any, shall assess a penalty of ⅔ of 1% of such tax for each calendar month or fraction thereof that the required statement is not filed, deducting therefrom any moneys collected by the state department of revenue required by this section. The state department of revenue shall assess a penalty of $25 for each calendar month or fraction thereof, not exceeding four months, that the required statement is not filed, to be collected by the state department of revenue and deposited to the credit of the general fund of the state of Montana.

The state department of revenue shall, upon a showing of reasonable cause, grant an extension of time for filing the statement required by this section. This penalty shall be in addition to penalties provided in section 84-5410."

Section 5. Section 84-401, R.C.M. 1947, is amended to read as follows:

"**84-401. Property assessed at 40% of its full cash value — exceptions.** All taxable real property and improvements *and gross proceeds of metal mines* must be assessed at 40% of its full cash value except:

(1) Properties in 84-301, under Class One, shall be assessed at 100% of full cash value.

(2) The assessment of agricultural lands shall be based upon the productive capacity of the lands when valued for agricultural purposes. All lands shall be valued as agricultural lands for tax purposes that meet the qualifications of 84-437.2, R.C.M. 1947. Land and improvements thereon shall be separately assessed when any of the following conditions occur:

(a) when ownership of the improvements is different from ownership of the land,

(b) when requested in writing by the taxpayer, or

(c) when the land is outside an incorporated city or town.

The taxable value of all property shall be determined by sections 84-301 and 84-308."

Section 6. There is a new R.C.M. section numbered 84-212 that reads as follows:

84-212. Exemption — metal mines gross proceeds. Metal mines producing less than 20,000 tons of ore in a taxable year shall be exempt from property taxation on one-half of the merchantable value.

Section 7. There is a new R.C.M. section numbered 84-7901 that reads as follows:

84-7901. Definitions. As used in this chapter the following definitions apply:

HeinOnline -- 1977 vol. II 1597 1977

(1) "Merchantable value" means the average market value of all salable metals produced or extracted in a county over a 12-month period. If the extracted ores are milled, smelted, or reduced by the taxpayer, the merchantable value in the county in which they are extracted shall be the average market value of these metals after this processing.

(2) "Agreement not at arm's length" means an agreement between parties where the sales price does not represent market value.

(3) "Department" means the department of revenue.

(4) "Market value" means the exchange value of a property in a competitive market.

(5) "Gross proceeds" or "gross metal yield" means the revenue realized from the extraction of metals, determined by multiplying the quantity produced by the merchantable value.

Section 8. There is a new R.C.M. section numbered 84-7902 that reads as follows:

84-7902. Metal mines — ad valorem taxation. Each person, partnership, corporation, or association mining or extracting gold, silver, copper, lead, or other metals from whatever source must, on or before March 31 each year, file with the department of revenue a statement of the gross metal yield from each mine owned or worked by such person in the preceding calendar year and the value thereof. The statement shall be in the form prescribed by the department and shall contain the following:

(1) the name, address, and telephone number of the owner, lessee, or operator of the mine;

(2) the mine's location by county and legal description;

(3) the tons of ore extracted from the mine during the taxable period;

(4) the merchantable value in dollars and cents of all metals extracted; and

(5) any other information requested by the department.

Section 9. There is a new R.C.M. section numbered 84-7903 that reads as follows:

84-7903. Valuation — gross proceeds. On or before July 1 each year, the department shall determine the merchantable value of all metal production from the previous calendar year. The department shall transmit to its agent in each county where metals are produced the merchantable value as has been determined by the department for placement on the assessment roll, after subtracting such portion of the proceeds as may be exempt from property taxation.

Section 10. There is a new R.C.M. section numbered 84-7904 that reads as follows:

84-7904. Taxation of merchantable value. The department's agent shall prepare from the reported valuation a tax roll which shall be trans-

HeinOnline -- 1977 vol. II 1598 1977

mitted to the county treasurer on or before September 15 each year. The county treasurer shall proceed to give full notice thereof to each metal producer and to collect the taxes due at the times provided for in 84-4103, and any delinquencies in the payment of same shall be subject to the interest and penalties provided for in 84-4103.

Section 11. There is a new R.C.M. section numbered 84-7905 that reads as follows:

84-7905. Imputed value — procedure for metals. If there is no sale or the sale is by an agreement not at arm's length or no statement is filed, the department shall impute the merchantable value of the metal. When imputing value, the department shall consider all appropriate market information available. When the imputed value is contested in any proceedings, the burden of proof is with the contesting party.

Section 12. There is a new R.C.M. section numbered 84-7906 that reads as follows:

84-7906. Lien of tax. The tax or penalty on gross proceeds is a lien upon the mine from which the metal is extracted and is prior lien upon all owned or leased personal property and improvements used in extracting the ore or metal. The tax shall be collected in the manner provided under chapter 41 of this title.

Section 13. There is a new R.C.M. section numbered 84-7907 that reads as follows:

84-7907. Assessment and collection procedures. The gross proceeds of metal mines shall be assessed and taxes thereon collected under the provisions of 84-7801 through 84-7807.

Section 14. **Effective date.** This act shall apply to all metal mines production for calendar year 1976.

Section 15. In the event House Bill 70 is enacted into law and repeals sections 84-301 and 84-302, R.C.M. 1947, and amends section 84-401, R.C.M. 1947, then in lieu of sections 2, 3 and 5 of this act, there is enacted a new R.C.M. section that reads as follows:

Class nineteen property — description — taxable value. (1) Class nineteen property includes the annual gross proceeds of metal mines.

(2) Class nineteen property is taxed at 3% of its assessed value, which is 100% of annual gross proceeds.

Section 16. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part rmains in effect in all valid applications that are severable from the invalid applications.

Approved April 26, 1977.

CHAPTER NO. 499

AN ACT TO REVISE THE ELIGIBILITY CRITERIA FOR CLASS EIGHT

PROPERTY TAX CLASSIFICATION; AMENDING SECTION 84-301, R.C.M. 1947; COORDINATING THIS AMENDMENT WITH OTHER PENDING LEGISLATION; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"**84-301. Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, except coal mines, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remain[illegible] another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (a) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of 800 persons or less; and provided further, that the average circuit miles for each station on the system is more than 1 ¼ miles.

Class Three. Livestock, poultry, and unprocessed products of both; furniture and fixtures used in commercial activities; the annual gross proceeds of underground coal mines; and all office or hotel furniture and fixtures, except improvements included in Class Nine.

Class Four. (a) All land, town and city lots, with improvements, except improvements included in Class Nine, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All poles, lines, transformers, transformer stations,

HeinOnline -- 1977 vol. II 1600 1977

meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (a) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(b) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(c) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the surviving spouse remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; industries that engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual, prepared by the United States office of management and budget; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. New industrial property does not include a

HeinOnline -- 1977 vol. II 1601 1977

plant which will create an adverse impact on existing state, county, or municipal services. The department shall promulgate regulations for the determination of what constitutes an adverse impact taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then upon proper notice hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing, and it also may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during construction period.

In the event of a prepayment of taxes, the maximum amount or prepayment shall be the amount without the application of the Class 7(a) to such property.

If a major new industrial facility qualifies under Class 7(a) the reduction of its yearly payment of property taxes for reimbursement of its prepaid taxes as provided for in section 84-41-105, R.C.M. 1947, shall not begin until the Class 7 qualification expires. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

(b) Business inventories. Business inventories shall include goods intended for sale or lease in the ordinary course of business, and shall include raw materials and work in progress with respect to such goods, but shall not include goods actually leased or rented on the lien date, or mobile homes held by a dealer or distributor as a part of his stock in trade.

(c) Air pollution control equipment as defined in section 69-3923.

(d) A capital investment in a recognized nonfossil form of energy generation, to the extent provided under section 84-7403.

Class Eight. (a) *So much of the market value of any* improvement on real property, trailers affixed to land, or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, with appurtenant land not exceeding 5 acres, *as does not exceed $35,000,* which dwelling is owned or under a contract for deed *by* and which is actually occupied for at least 10 months per year as the primary residential dwelling of:

(1) a widow *or widower* 62 years of age or older who qualifies under the income limitations of *(3);*

(2) a widow or widower with minor or dependent children, regardless of age, who qualifies under the income limitations of *(3);* or

(3) a recipient or recipients of retirement or disability benefits whose

HeinOnline -- 1977 vol. II 1602 1977

total annual income from all sources is not more than *$7,000* for a single person and *$8,000* for a married couple. *A person* who applies for classification of property under this class must make an affidavit to the department of revenue, on a form provided by the department without cost to the applicant, as to his income, marital status, the fact that *the applicant* actually occupies or maintains *such land and improvements* as his or her primary residential dwelling, *and such other information as is relevant to the applicant's eligibility. This application must be made before March 1 of the year after the applicant becomes eligible under this classification.* For the purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

(b) A capital investment in a building for an energy conservation purpose, to the extent provided under 84-7403.

Class Nine. The incremental increase in the value of real estate attributable to repairing, maintaining, or improving existing improvements.

Class Ten. The annual gross proceeds of coal mines using the strip mining method.

Class Eleven. Centrally assessed utility allocations after deductions of locally assessed properties and except as provided in Class Two for rural telephones and Class Five (a) for cooperatives, and all other property not included in the 10 preceding classes."

Section 2. In the event House Bill 70 is enacted into law and repeals section 84-301, R.C.M. 1947, then in lieu of section 1 of this act, section 84-301.16, R.C.M. 1947, as enacted by House Bill 70, shall be further amended by this act to read as follows:

"**84-301.16. Class fifteen property — description — taxable percentage.** (1) Class fifteen property includes:

(a) a capital investment in a building for an energy conservation purpose, to the extent provided under 84-7403; and

(b) so much of the market value of any improvement on real property, a trailer affixed to land, or mobile home and appurtenant land not exceeding 5 acres, as does not exceed $35,000, when such dwelling and land are owned or under contract for deed and are actually occupied for at least 10 months per year as the primary residential dwelling of:

(i) a widow or widower 62 years of age or older who qualifies under the income limitations of (iii) of this subsection;

(ii) a widow or widower of any age with dependent children who qualifies under the income limitations of (iii) of this subsection; or

HeinOnline -- 1977 vol. II 1603 1977

(iii) a recipient or recipients of retirement or disability benefits whose total income from all sources is not more than *$7,000* for a single person or *$8,000* for a married couple.

(2) (a) A person applying for classification of property under this class must make an affidavit to the department of revenue on a form provided by the department without cost as to:

(i) his income, if applicable;

(ii) his retirement benefits, if applicable;

(iii) his marital status, if applicable;

(iv) the fact that he maintains the land and improvements as his primary residential dwellings; and

(v) such other information as is relevant to the applicant's eligibility.

(b) This application must be made before March 1 of the year after the applicant becomes eligible under this classification.

(c) For the purpose of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 94-7-203, relating to the criminal offense of false swearing.

(3) Class fifteen property is taxed at 6% of its market value, or in the case of property classified under (1)(b) of this section, so much of 6% as is determined under 84-309, whichever is less.

Section 3. **Statement of intent.** It is intended, by section 2 of this act, to conform the substantive policies which House Bill 215 enacts into the format which House Bill 70 will create. Section 2 further reflects House Bill 70, as amended, in that it deletes the prohibition against reappraising class fifteen property during the occupancy of the dwelling by a qualified taxpayer or taxpayers. Reappraisal of class fifteen property would be permitted, and the taxable percentage of that reappraised value would then fall to a figure below 6%, as set forth in the Senate amendments to House Bill 70. If reappraisal brings the value above $35,000 the first $35,000 would be taxed in this class and the excess taxed on other real property. The publisher of the 1977 Supplements to the Revised Codes of Montana 1947, is directed to publish section 2 of this act as the official version of section 84-301.16 in the event House Bill 70 is enacted.

Section 4. **Effective date.** This act is effective on its passage and approval.

Approved April 26, 1977.

HeinOnline -- 1977 vol. II 1604 1977

CHAPTER NO. 500

AN ACT TO PROVIDE FOR AN INCOME TAX EXEMPTION FOR PARENTS OF A DEPENDENT CHILD WITH A HANDICAP.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-4910.1 that reads as follows:

84-4910.1. Additional exemption for a dependent child with handicap. (1) In lieu of the exemption in 84-4910(3)(e), an exemption for twice the amount allowed for dependents shall be allowed for taxable years beginning after December 31, 1976, for each dependent child with a handicap.

(2) In order to be eligible for the exemption, a dependent child with a handicap must, for the taxable year of the taxpayer, have as his principal place of abode the home of the taxpayer, and have a permanent handicap of great enough severity that it constitutes not less than 50% disability to the body as a whole. An exemption may be allowed for a dependent with a permanent handicap after he reaches the age of majority if he continues to be a dependent.

Section 2. There is a new R.C.M. section numbered 84-4910.2 that reads as follows:

84-4910.2. Physician's verification of handicap required. A taxpayer claiming the exemption provided for in 84-4910.1 must provide with his income tax statement written documentation by a licensed physician that the handicap qualifies under section 1 herein.

Section 3. **Effective date.** This act applies to taxable years beginning after December 31, 1976.

Approved April 26, 1977.

CHAPTER NO. 501

AN ACT TO PROVIDE A DEDUCTION FOR UNITED STATES OBLIGATIONS FOR BANK SHARE TAX PURPOSES; PROVIDING A PERIOD OF EFFECTIVENESS; AMENDING SECTION 84-307, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-307, R.C.M. 1947, is amended to read as follows:

"**84-307. Assessment and valuation of shares of banks — deductions.** *(1)* The shares of all banking corporations engaged in the banking business in Montana shall be valued for the purpose of taxation at the full cash value thereof *as shown on the books of the bank, less:*

(a) the book value of the real estate, moneyed capital and other prop-

erty of any such bank assessed and taxed as the property of said bank; *and*

(b) that portion of the book value of United States obligations owned by the bank as bears the same ratio to the value of such United States obligations as the stock equity of such bank bears to the total assets of such bank as shown on the books of the bank.

(2) Valuation and assessment of such shares for the purposes of taxation shall be made as provided in Title 84, chapter 46, except that, for purposes of computing the deduction allowed by subsection (1)(b) of this section, the book value of United States obligations owned by a bank shall be the average of the book values of the United States obligations owned by the bank on the last banking day of each of the 12 months of the preceding taxable year."

Section 2. **Period of effectiveness.** This act is effective upon its passage and approval and is effective for all valuation, assessment, and taxation of the specified property for the taxable years 1977 and 1978.

Approved April 26, 1977.

CHAPTER NO. 502

AN ACT TO AMEND SECTIONS 84-301 AND 84-302, R.C.M. 1947, TO PROVIDE FOR CLASSIFICATION AND BASIS FOR TAXATION OF RECREATIONAL VEHICLES OWNED BY CERTAIN SENIOR CITIZENS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-301, R.C.M. 1947, is amended to read as follows:

"**84-301. Classification of property for taxation.** For the purpose of taxation the taxable property in the state shall be classified as follows:

Class One. The annual net proceeds of all mines and mining claims, except coal mines, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (a) of

HeinOnline -- 1977 vol. II 1606 1977

this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 ¼) miles.

Class Three. Livestock, poultry, and unprocessed products of both; furniture and fixtures used in commercial activities; the annual gross proceeds of underground coal mines; and all office or hotel furniture and fixtures, except improvements included in Class Nine.

Class Four. (a) All land, town and city lots, with improvements, except improvements included in Class Nine, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (a) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

(b) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(c) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the surviving spouse remains unmarried and the owner and occupant of the property, shall remain within this classification.

HeinOnline -- 1977 vol. II 1607 1977

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; industries that engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual, prepared by the United States office of management and budget; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. New industrial property does not include a plant which will create an adverse impact on existing state, county, or municipal services. The department shall promulgate regulations for the determination of what constitutes an adverse impact taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then upon proper notice hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing, and it also may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during construction period.

In the event of a prepayment of taxes, the maximum amount or prepayment shall be the amount without the application of the Class 7(a) to such property.

If a major new industrial facility qualifies under Class 7(a) the reduction of its yearly payment of property taxes for reimbursement of its prepaid taxes as provided for in section 84-41-105, R.C.M. 1947, shall not begin until the Class 7 qualification expires. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

HeinOnline -- 1977 vol. II 1608 1977

(b) Business inventories. Business inventories shall include goods intended for sale or lease in the ordinary course of business, and shall include raw materials and work in progress with respect to such goods, but shall not include goods actually leased or rented on the lien date, or mobile homes held by a dealer or distributor as a part of his stock in trade.

(c) Air pollution control equipment as defined in section 69-3923.

(d) A capital investment in a recognized nonfossil form of energy generation, to the extent provided under section 84-7403.

Class Eight. (a) Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, with appurtenant land not exceeding five (5) acres, which together have a market value of not more than twenty-seven thousand five hundred dollars ($27,500), which dwelling is owned or under a contract for deed, and which is actually occupied for at least ten (10) months per year as the primary residential dwelling of:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow or widower with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient or recipients of retirement or disability benefits whose income from all sources is not more than six thousand dollars ($6,000) for a single person and six thousand eight hundred dollars ($6,800) for a married couple total per annum whether said dwelling is occupied by a single person or a married couple. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant, as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies or maintains as his or her primary residential dwelling, such land and improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, the assessed value of said property shall not be increased during the life of the recipient of retirement benefits or widow or widower covered under this class, unless the owner-resident makes a substantial improvement in the dwelling. For the purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This

HeinOnline -- 1977 vol. II 1609 1977

signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

(b) A capital investment in a building for an energy conservation purpose, to the extent provided under section 84-7403.

Class Nine. The incremental increase in the value of real estate attributable to repairing, maintaining or improving existing improvements.

Class Ten. The annual gross proceeds of coal mines using the strip mining method.

Class Eleven. Centrally assessed utility allocations after deductions of locally assessed properties and except as provided in Class Two for rural telephones and Class Five (a) for cooperatives, and all other property not included in the ten (10) preceding classes.

Class Twelve. (a) A pickup camper, travel trailer including a fifth wheel trailer or motor home which is owned and is actually used primarily by a person 60 years of age or older who is retired from full employment and whose total income each year from all sources does not exceed the income limitations set in class eight of this section for a single person or married couple, whichever is applicable.

(b) A person who applies for this classification must file an affidavit with the department of revenue as to his income as set forth in Class Eight herein."

Section 2. Section 84-302, R.C.M. 1947, is amended to read as follows:

"**84-302. Basis for imposition of taxes.** As a basis for the imposition of taxes upon the different classes of property specified in the preceding section, a percentage of the true and full value of the property of each class shall be taken as follows:

Class 1. One hundred per cent (100%) of its true and full value.

Class 2. Twenty per cent (20%) of its true and full value.

Class 3. Thirty-three and one-third per cent (33 ⅓ %) of its true and full value.

Class 4. Thirty per cent (30%) of its true and full value.

Class 5. Seven per cent (7%) of its true and full value.

Class 6. As specified in section 84-308, R.C.M. 1947.

Class 7. Seven per cent (7%) of its true and full value.

Class 8. Fifteen per cent (15%) of its true and full value.

Class 9. Six percent (6%) of the true and full value for the first full year following completion of the repair, maintenance or improving of existing improvements; twelve percent (12%) of the true and full value for the second full year following completion of the repair, maintenance or improving of existing improvements; eighteen percent (18%) of the true

HeinOnline -- 1977 vol. II 1610 1977

and full value for the third full year following completion of the repair, maintenance or improving of existing improvements; twenty-four percent (24%) of the true and full value for the fourth full year following completion of the repair, maintenance or improving of existing improvements; and thirty percent (30%) for the fifth full year following completion of the repair, maintenance or improving of existing improvements and for every year thereafter.

Class 10. Forty-five per cent (45%) of its true and full value.

Class 11. Forty per cent (40%) of its true and full value.

Class 12. Ten per cent (10%) of its true and full value."

Section 3. If House Bill 70 is enacted into law, then in lieu of sections 1 and 2 of this act, there is a new R.C.M. section that reads as follows:

Class of property — certain recreational vehicles. (1) There is a class of property which includes a pickup camper, travel trailer, including a fifth wheel trailer, or motor home which is owned by and is actually used primarily by a person 60 years of age or older who is retired from full employment and whose total income each year from all sources does not exceed the income limitations set in Class Fifteen of this section for a single person or married couple, whichever is applicable.

(2) A person who applies for this classification must file an affidavit with the department of revenue as to his income, as set forth in Class Fifteen herein.

(3) This class of property is taxed at 6% of market value.

Approved April 26, 1977.

CHAPTER NO. 503

AN ACT AUTHORIZING THE USE OF ELECTRONIC BANKING FACILITIES AND ELECTRONIC TRANSFERS OF FUNDS BY BANKS, SAVINGS AND LOAN ASSOCIATIONS, AND CREDIT UNIONS; AMENDING SECTION 5-1028, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 5-1701 that reads as follows:

5-1701. Short title. This act shall be known and may be cited as the "Montana Electronic Funds Transfer Act".

Section 2. There is a new R.C.M. section numbered 5-1702 that reads as follows:

5-1702. Findings and purpose. (1) The legislature has determined that development of electronic funds transfer systems is a technology which promises convenience and efficiency for all types of financial

HeinOnline -- 1977 vol. II 1611 1977

depository institutions and their customers. The legislature further finds that this technology threatens to proliferate rapidly; that there presently exists no adequate governmental regulation, federal or state, to control orderly development of this technology to prevent market domination and monopolies, to provide parity for all financial depository institutions, to provide mandatory sharing of such systems, and to assure nondiscriminatory access to such systems at nondiscriminatory rates on the part of all who are involved in the use of this technology. This act shall apply to financial institutions chartered under the United States Code, to the extent permitted by such code.

(2) The legislature finds need to control location and structural placement of electronic terminals in order to:

(a) assure access, protection, and convenience to the public using them;

(b) assure that structural placement of automated teller machines are designed to provide maximum protection to the terminal and its contents from vandalism, tampering, and theft and, since such machines shall be unmanned, to locate them in a manner designed to permit maximum protection of the public using them;

(c) prevent traffic congestion at vehicle parking lots and pedestrian concourses and sidewalks;

(d) prevent vehicle backup onto public highways;

(e) prevent undue interference with nearby businesses;

(f) locate automated teller machines in places permitting maximum sharing of their use to all operators desiring to use them under conditions herein stated.

(3) The legislature further finds that in the present state of the technology there is substantial potential for error and misuse and that these systems, including various types of terminals, telecommunications between them and computer and switching equipment, or transport of electronically recorded materials from the terminals to such equipment, and the computers and switches themselves are subject to malfunction, vandalism, fraud, theft, and other abuses and accidents, all indicating the obvious need for the exercise of the police power of this state to protect its citizens and their property in the use of this technology. Location of terminals is an important factor in such protection.

(4) The legislature further finds that commercial banks, savings and loan associations, and credit unions, chartered by both federal and state governments, are in competition for deposits, share accounts, and loans and other financial business of the state's citizens; that each has the capability of utilizing electronic funds transfer systems; and that unless there is controlled use of these systems there will be strong potentials for destructive competition and market domination by some financial institutions over others, increasing the likelihood for misuse and error, duplication and waste, and resulting increased costs.

(5) To meet these needs, the legislature finds that state authority must provide for authorizing such systems; for speedy and fair remedies for

HeinOnline -- 1977 vol. II 1612 1977

losses resulting from malfunction, misuse, or error; and for penalties for violation of this act.

Section 3. There is a new R.C.M. section numbered 5-1703 that reads as follows:

5-1703. Definitions. As used in this act, the following definitions shall apply unless the context otherwise requires:

(1) "Electronic funds transfer" means debiting or crediting a depositor's account or otherwise transacting any business in a financial institution by electronic impulse messages, authorized under this act, transmitted directly by wire or otherwise or stored on magnetic tape or equivalent technologies, or otherwise, and processing the adjustments without regular and customary direct human intervention. Nothing in this subsection prevents a financial institution from processing its bookkeeping entries through normal human intervention.

(2) "Financial institution" means a bank chartered under Title 5 of this code, a bank chartered under the National Banking Acts in Title 12 of the United States Code, a building and loan association chartered under Title 7 of this code, a savings and loan association chartered under the Home Owners' Loan Act in Title 12 of the United States Code, a credit union chartered under Title 14, chapter 6, of this code, or a credit union chartered under the Federal Credit Union Act in Title 12 of the United States Code. For purposes of this act only, a consumer loan company licensed under Title 47, chapter 2, shall be considered a financial institution.

(3) (a) "Satellite terminal" means any machine or device located off the premises of a financial institution which a financial institution or its customers may use to carry out electronic funds transfers.

(b) "Satellite terminal" includes:

(i) automated teller machine, which means a satellite terminal to make electronic funds transfers, located off the premises of financial institutions, operated by customers of financial institutions without assistance, activated by a unique identification device and personal identification number;

(ii) point-of-sale terminal, which means a satellite terminal located on the premises of a merchant, operated by a merchant or his employees solely to debit a customer's deposit or share account in a financial institution and solely to credit the merchant's account commensurately for transactions in goods or services. A point-of-sale terminal need not be activated by a unique personal identification device. A merchant has the option, provided that the necessary computer capability exists at a reasonable cost, of selling goods or services by point-of-sale terminals with the electronic fund transfer taking effect at the time of the transaction or at a stated time after the transaction.

(c) The definition of "satellite terminal" does not include, and nothing in this act may be construed to apply to:

(i) an automated teller machine located on the premises of a financial institution;

HeinOnline -- 1977 vol. II 1613 1977

(ii) an automated clearinghouse or any equivalent system designed to transfer funds between financial institutions; or

(iii) a point-of-sale terminal which is utilized by a merchant in the merchant's business only and does not provide access to a financial institution.

(4) "Premises" means those locations where by applicable law financial institutions are authorized to maintain a principal place of business and other offices for the conduct of their respective businesses; the term includes a detached drive-in or walk-up facility approved under 5-1028.

(5) "Personal identification number" means a combination of numerals or letters selected for a customer of a financial institution and used, in conjunction with a unique identification device, to initiate a request for an electronic funds transfer.

(6) "Customer", in relation to a financial institution, means a holder of a demand or time account or a membership share in the institution or a person who is a borrower or a mortgagor; in relation to a merchant, it means a purchaser of goods or services.

(7) "Merchant" means a natural person, corporation, partnership, or association engaged in buying and selling goods or services, except that a financial institution is not a merchant.

(8) "Department" means the department of business regulation.

(9) "Person" means an individual, partnership, corporation, association, or any other business organization.

(10) "Unique identification device" means a magnetic encoded plastic card or equivalent device containing a number unique to a customer with relation to a financial institution.

Section 4. There is a new R.C.M. section numbered 5-1704 that reads as follows:

5-1704. Satellite terminals — permitted uses. Satellite terminals may be employed in the state only in the following capacities:

(1) as an automated teller machine to make electronic funds transfers as defined in this act, off the premises of a financial institution, operated by the customers of financial institutions without assistance;

(2) as a point-of-sale terminal, operated by a merchant or his employees solely to debit a customer's deposit or share account in a financial institution and solely to credit the merchant's account commensurately for transactions in goods or services.

Section 5. There is a new R.C.M. section numbered 5-1705 that reads as follows:

5-1705. Authorization for certain satellite terminals required. (1) Subject to the limitation expressed in 5-1708 and to the other requirements of this act, a business entity owned by a financial institution or financial institutions may install and maintain satellite terminals located

HeinOnline -- 1977 vol. II 1614 1977

within or not more than 3 miles beyond the incorporated municipality where each participating institution maintains its office or, if the financial institution is located outside an incorporated municipality, then not more than 3 miles from its principal place of business, after first obtaining authorization from the department of business regulation pursuant to rules adopted by the department. Business organizations other than financial institutions may own satellite terminals, provided, however, that such organizations shall not engage in the business of a financial institution and that ownership and possession of such satellite terminals shall be regulated by the department of business regulation and they shall not be used for any purpose other than is authorized in this act.

(2) A merchant may install and operate a point-of-sale terminal. A merchant may utilize a machine as a point-of-sale terminal, which machine performs functions in addition to electronic funds transfer if such other functions do not violate the provisions of this act.

Section 6. There is a new R.C.M. section numbered 5-1706 that reads as follows:

5-1706. Consumer information. A financial institution or its affiliate engaging in electronic funds transfers with its customers shall, prior to authorizing a customer to make electronic funds transfers, provide the customer an itemized statement clearly setting forth, without limitation:

(1) the specific transactions which may be performed through satellite terminals;

(2) the charges, if any, for individual transactions engaged in through a satellite terminal;

(3) minimum balance requirements, if any;

(4) the liability of the various parties for unauthorized transactions made by electronic funds transfer, with special emphasis upon the liability when the customer makes his personal identification number readily available for discovery in connection with theft or loss of the unique identification device and upon the importance of immediate notification to the institution of such theft or loss;

(5) the legal status of receipts issued from a satellite terminal;

(6) the right of the customer to a description of transactions performed by satellite terminal on any periodic statement of account furnished the customer;

(7) the right of the customer to seek correction of any errors he believes have been made in his account by electronic funds transfer;

(8) instructions in maintaining customer records and reconciling balances and in the importance of retaining receipts of electronic funds transfers; and

(9) the economic significance of having no "float" time and no stop-payment authority.

(a) The customer shall then sign a statement acknowledging his accep-

HeinOnline -- 1977 vol. II 1615 1977

tance of these terms and conditions and give the statement to the financial institution. A copy of the statement, countersigned by an officer of the financial institution, shall be provided the customer. In addition, the information set forth in subsection (4) of this section shall be specifically acknowledged by the customer. The customer shall verify his acknowledgement by signing his initials immediately adjacent to the information provided.

Section 7. There is a new R.C.M. section numbered 5-1707 that reads as follows:

5-1707. Institutional access requirements. (1) A satellite terminal used by a financial institution must be made available, on a nondiscriminatory basis, to all financial institutions or branches thereof located within the geographic area that may use each type of satellite terminal, as defined and outlined in 5-1708, and that may want to participate in using this satellite terminal. In addition, each customer authorized by any financial institution may use the satellite terminal, with the limitations on the transactions imposed and outlined in 5-1708. The charges required to be paid by any financial institution which utilizes the satellite terminal may not exceed a pro rata portion of the cost, determined in accordance with generally accepted accounting principles, and a reasonable return on the owner's equity. The costs for the use of an automated teller machine chargeable to a financial institution for a financial transaction may not exceed 125% of the average transaction cost for the use of automated teller machines in Montana. A financial institution may contract with a merchant for the operation of point-of-sale terminals. The contract shall specify the conditions upon which the merchant will make the point-of-sale terminal(s) available to customers of the financial institution and shall include terms covering connection charge, fees, format code and security provisions. A point-of-sale terminal shall be available for use by all financial institutions upon such contractual terms as may be commercially reasonable.

(2) A financial institution may invest in, acquire, or hold shares in a corporation engaged solely in operating and owning satellite terminals. A financial institution may utilize, establish, or own, either alone or with one or more financial institutions, satellite terminals and related communication equipment associated with electronic funds transfers. Other business organizations may also own satellite terminals and lease or otherwise permit financial institutions to use the satellite terminals, provided these other businesses comply with the provisions of this act and agree to come under the supervision of the department. Such other business organizations may not engage in the business of a financial institution.

Section 8. There is a new R.C.M. section numbered 5-1708 that reads as follows:

5-1708. Geographical restrictions on certain satellite terminals. (1) If a financial institution is a bank, savings and loan association, or a credit union, it may engage in electronic funds transfers by means of an automated teller machine located within or not more than 3 miles beyond the municipality where its office is located or, if the financial institution is located outside any incorporated municipality, not more than 3 miles from its principal place of business.

HeinOnline -- 1977 vol. II 1616 1977

(2) The department may authorize the operation of an automatic teller machine which a financial institution uses only if such institution complies with this act and regulations adopted by the department.

(3) No out-of-state financial institution may establish a satellite terminal within the state or lease through other businesses satellite terminals within Montana. An out-of-state financial institution may not engage in electronic funds transfers within the state, except that a customer of an out-of-state financial institution may debit his account in an out-of-state financial institution at an in-state satellite terminal to pay for merchandise and services, provided the merchant credits an account in a financial institution whose principal place of business is located within the state.

(4) Point-of-sale terminals may be available to all customers authorized by in-state financial institutions for debiting accounts to pay for merchandise and services.

Section 9. There is a new R.C.M. section numbered 5-1709 that reads as follows:

5-1709. Protection of privacy. (1) No information relating to any transaction by electronic funds transfer, or application therefor, between a financial institution and its customer or prospective customer may be disclosed by the financial institution to any person or government entity without consent of the customer or, if the customer refuses to so consent, under subpoena issued by a court of record.

(2) This section does not prevent:

(a) the examination of financial institutions by duly authorized regulatory authority or the transfer of information by a financial institution to a clearinghouse which administers transactions between financial institutions; or

(b) the access by a party to a transaction to information relating to a specific transaction.

Section 10. There is a new R.C.M. section numbered 5-1710 that reads as follows:

5-1710. Unauthorized disclosure of electronic funds transfer records. (1) A person commits the offense of unauthorized disclosure of electronic funds transfer records if he has lawful access to such records by virtue of office or employment and:

(a) permits another, who lacks lawful access to such records, to inspect, copy, or read such records; or

(b) transfers such records to another who lacks lawful access thereto.

(2) A person convicted of the offense of unauthorized disclosure of electronic funds transfer records shall be imprisoned in the state prison for any term not to exceed 1 year, be fined not more than $5,000, or be punished by both such imprisonment and fine.

Section 11. There is a new R.C.M. section numbered 5-1711 that reads as follows:

HeinOnline -- 1977 vol. II 1617 1977

5-1711. Records of electronic funds transfers. (1) A satellite terminal shall be operated so as to produce a humanly readable record of any transaction and to provide a copy of this record to the person initiating the transaction as soon as the transaction is complete.

(2) The receipt provided to the person initiating an electronic funds transfer shall be admissible as evidence in any legal proceeding and constitutes prima facie proof of the transaction which it records.

(3) (a) A financial institution shall provide each of its customers utilizing electronic funds transfer services with a periodic account statement containing a brief description of all electronic funds transfers sufficient to enable the customer to identify any transaction and relate the transaction to the receipt provided under subsection (1) of this section.

(b) When a periodic account statement includes both electronic funds transfers and other transactions, all electronic funds transfers shall be identified as such and be furnished in compliance with this subsection.

Section 12. There is a new R.C.M. section numbered 5-1712 that reads as follows:

5-1712. Verification of statement — procedure for discrepancies. (1) If, upon receipt of a periodic statement of account, a customer of a financial institution believes the statement contains an error with respect to an electronic funds transfer, the customer shall notify the institution within 60 days after the day the institution delivered the statement. In this notification, the customer shall identify himself and the foundation of his belief regarding the error.

(2) Within 10 days after a customer has notified a financial institution of a possible error under subsection (1), the institution shall either:

(a) correct the account in question, giving the customer a description of the correction (if the correction is not in the exact amount of the alleged error, the description shall explain the difference); or

(b) after investigating the matter, give the customer an explanation of the reasons the institution believes the statement to be correct. If requested in writing by the customer, a written explanation, documented by the institution's record of the transaction in question, shall be furnished the customer.

(3) A financial institution receiving notice under subsection (1) may not close the account concerning which the dispute exists or restrict transactions in such account affecting the portion not in dispute, until it complies with subsection (2). A financial institution which has once complied with subsection (2) with respect to an alleged error is not required to respond under subsection (2) to repeated allegations of the same error.

Section 13. There is a new R.C.M. section numbered 5-1713 that reads as follows:

5-1713. Unauthorized transactions — liability. (1) A customer whose account is debited by an electronic funds transfer without his authorization is not liable for the amount of such transaction, and the

HeinOnline -- 1977 vol. II 1618 1977

amount shall be recredited to his account as provided under 5-1712, unless:

(a) the financial institution has provided the customer a unique identification device for initiating electronic funds transfer requests and transactions are made as a result of the theft or loss of that device, in which case the customer is liable for the first $50 of any consequent transactions made prior to the time the financial institution is notified of such loss or theft; or

(b) the financial institution has provided the customer a unique identification device for initiating, in conjunction with a personal identification number separate from the device, electronic funds transfer requests, and the customer attaches the personal identification number to the device by writing or otherwise or in any way makes the number readily available for discovery in connection with the theft or loss of the device, and transactions are made as a result of the theft or loss of the device, in which case the customer is liable for one-half the value of all consequent transactions made until the financial institution is notified of such theft or loss.

(2) A customer who willingly gives his unique identification device and personal identification number to another is presumed to have authorized any electronic funds transfers requested by such other person.

(3) A merchant who makes electronic funds transfer services available on his premises is liable for the amount of an unauthorized electronic funds transfer requested from his premises only if:

(a) he or his agent is negligent in requiring a user of electronic funds transfer services to furnish adequate self-identification;

(b) he fails to retain a physical record of the transaction for 1 year following the transaction; or

(c) he breaches the warranty required by subsection (4) of this section.

(4) A merchant operating a point-of-sale terminal shall warrant to the financial institution that an order for an electronic funds transfer emanating from the terminal is part of a commercial transaction in which the customer receives goods or services of commensurate value.

(5) The liability for any unauthorized or erroneous electronic funds transfer which does not fall upon a customer or a merchant under this section falls upon the financial institution which carries out the transfer.

Section 14. There is a new R.C.M. section numbered 5-1714 that reads as follows:

5-1714. Automatic teller machines — additional standards. Before the department authorizes an automatic teller machine, the owner must certify to the department that the machine complies with the provisions of this chapter and is:

(1) equipped with adequate security provisions;

(2) activated by a unique identification device;

HeinOnline -- 1977 vol. II 1619 1977

(3) designed so as to produce the transaction record required by 5-1711(1).

Section 15. There is a new R.C.M. section numbered 5-1715 that reads as follows:

5-1715. Point-of-sale terminals — additional standards. (1) Before the department approves a point-of-sale terminal, it must find that the merchant demonstrates on his application that:

(a) he will use acceptable procedures for customer self-identification;

(b) he will use a draft and receipt system, on which the customer's signature acknowledges receipt of the goods or services paid for by electronic funds transfer;

(c) he will institute a procedure whereby he keeps one copy of each such draft and receipt for 1 year following the date of transaction, he gives one copy to the customer in satisfaction of 5-1711(1), and he forwards one copy to the customer's financial institution. The requirement of a copy to the financial institution may be waived by the department by rule if the point-of-sale terminal is activated by a customer's unique identification device.

(2) A financial institution involved in an electronic funds transfer initiated from a point-of-sale terminal may inspect the merchant's copy of the transaction record for any purpose consistent with the privacy provisions of 5-1709.

Section 16. There is a new R.C.M. section numbered 5-1716 that reads as follows:

5-1716. Personal identification number — restrictions. (1) A financial institution may not assign a personal identification number to a customer which is identical to that customer's social security account number, driver's license number, or any other number assigned for other purposes to that customer.

(2) A satellite terminal may not be operated so as to print a customer's personal identification number on the humanly readable receipt furnished at the time of a transaction.

Section 17. There is a new R.C.M. section numbered 5-1717 that reads as follows:

5-1717. Advertising — restrictions. Advertising on satellite terminals shall be restricted to a common symbol or to identification of each participating financial institution in characters of equal size and prominence. This section does not restrict the right of financial institutions to advertise electronic funds transfer services in other media.

Section 18. There is a new R.C.M. section numbered 5-1718 that reads as follows:

5-1718. Standard format code. All satellite terminals in the state shall be operated by a standard format code compatible with that used in other states. If cards are used as unique identification devices, the department may, by rule, prescribe a standard size.

HeinOnline -- 1977 vol. II 1620 1977

Section 19. There is a new R.C.M. section numbered 5-1719 that reads as follows:

5-1719. Conventional checking option preserved. A financial institution may not require any customer to deal with or through it by means of electronic funds transfer in lieu of writing checks in the usual manner upon a conventional checking account and may not impose any extraordinary charge upon customers who choose to write checks in the usual manner upon a conventional checking account maintained at that financial institution. Nothing in this section prohibits a financial institution from charging a reasonable fee to cover the expenses of providing a checking account to a customer or from realizing a reasonable profit for providing that service.

Section 20. There is a new R.C.M. section numbered 5-1720 that reads as follows:

5-1720. Rule-making authority delegated. The department may adopt, amend, or repeal rules reasonably necessary to implement this act and effectuate its purposes.

Section 21. There is a new R.C.M. section numbered 5-1721 that reads as follows:

5-1721. Enforcement. (1) Upon petition of the department and opportunity for a hearing under the Montana Administrative Procedure Act, the department may revoke or suspend authorization to operate a satellite terminal or to participate in its operation on the grounds that the person holding such authority has violated a provision of this act or a rule validly adopted.

(2) The department may bring an action in district court to enjoin a person from operating or participating in the operation of a satellite terminal without authority.

Section 22. Section 5-1028, R.C.M. 1947, is amended to read as follows:

"**5-1028. Branch bank prohibited — exceptions.** *(1)* No bank *may* maintain any branch bank, receive deposits, or pay checks except over the counter of and in its own banking house. Provided, that nothing in this section *prohibits* ordinary clearinghouse transactions between banks.

(2) With the prior approval of the *department*, any bank doing business in this state may establish and maintain not more than one detached drive-in and walk-up facility consisting of one or more *teller* windows. The distance of the facility from the main banking house *may* not exceed 1,000 feet measured in a straight line from the closest point of the main banking house to the farthest point of the detached facility. The facility *may* not be closer than 200 feet to a facility operated by any other bank *or* closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the

HeinOnline -- 1977 vol. II 1621 1977

banks involved to not closer than 150 feet to a facility operated by any other bank *or* closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line from the closest points of the closest structures involved. The service of the facility shall be limited to receiving deposits of every kind, cashing checks or orders to pay, receiving payments payable at the bank, and such other transactions as are normally and usually conducted or handled at *teller* windows in the main banking house.

(3) (a) Any bank authorized to do banking business in this state may utilize a satellite terminal as defined in the Montana Electronic Funds Transfer Act and at any location permitted by the Montana Electronic Funds Transfer Act. The use of satellite terminals hereby authorized shall not be subject to the restrictions on location, transaction, or number applicable to detached drive-in, walk-up, or teller facilities.

(b) A satellite terminal other than a point of sales terminal may not be closer than 200 feet to a facility operated by any other bank or closer than 300 feet to the main banking house of any other bank, the measurement to be made in a straight line between the closest points of the closest structures involved. The distances herein specified in relation to a facility operated by any other bank and in relation to the main banking house of any other bank may be decreased by mutual written agreement of the banks involved to not closer than 150 feet to a facility operated by any other bank or closer than 200 feet to the main banking house of any other bank, the measurement to be made in a straight line between the closest points of the closest structures involved."

Section 23. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 24. **Effective date.** This act is effective on January 1, 1978.

Approved April 28, 1977.

CHAPTER NO. 504

AN ACT PROVIDING FOR THE CONSOLIDATION OF ADMINISTRATIVE FUNCTIONS REGARDING BUILDING CODES; PROVIDING FOR PROMULGATION OF CODES BY THE DEPARTMENT OF ADMINISTRATION; AMENDING SECTIONS 66-2416, 66-2417, 66-2427, 66-2802, 66-2805.1, 69-2105, 69-2111, 69-2112, 69-2124, 75-8206, 75-8207, AND 82A-1607, R.C.M. 1947; AND REPEALING SECTIONS 69-4117 AND 69-5507, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-2105, R.C.M. 1947, is amended to read as follows:

"**69-2105. Definitions.** As used in this chapter, unless the context requires otherwise:

HeinOnline -- 1977 vol. II 1622 1977

(1) "Municipality" means any incorporated city or town and its jurisdictional area as defined by subsection (12) of this section.

(2) "Building regulations" means any law, rule, resolution, regulation, ordinance, or code, general or special, or compilation thereof enacted or adopted by the state or any municipality, including departments, boards, bureaus, commissions, or other agencies of the state or a municipality relating to the design, construction, reconstruction, alteration, conversion, repair inspection, or use of buildings and installation of equipment in buildings. The term does not include zoning ordinances.

(3) "Department" means the department of administration provided for in Title 82A, chapter 2.

(4) "Local building department" means the agency or agencies of any municipality charged with the administration, supervision, or enforcement of building regulations, approval of plans, inspection of buildings, or the issuance of permits, licenses, certificates and similar documents, prescribed or required by state or local building regulations.

(5) "State agency" means any state officer, department, board, bureau, commission, or other agency of this state.

(6) "Building" means a combination of any materials, whether mobile, portable, or fixed to form a structure and the related facilities for the use or occupancy by persons, or property. The word "building" shall be construed as though followed by the words "or part or parts thereof."

(7) "Equipment" means plumbing, heating, electrical, ventilating, air conditioning, and refrigerating equipment, elevators, dumb-waiters, escalators, and other mechanical additions or installations.

(8) "Construction" means the original construction, and equipment of buildings, and requirements or standards relating to or affecting materials used including provisions for safety and sanitary conditions.

(9) "Owner" means the owner or owners of the premises or lesser estate, a mortgagee or vendee in possession, assignee of rents, receiver, executor, trustee, lessee or other person, firm, or corporation, in control of a building.

(10) "Local legislative body" means the council or commission charged with governing the municipality.

(11) "State building code" means the state building code provided for in section 69-2111 or any portion of the code of limited application, and any of its modifications or amendments.

(12) "Municipal jurisdictional area" means the area within the limits of an incorporated municipality unless the area is extended at the written request of a municipality. Upon request the council may approve extension of the jurisdictional area to include: (a) all or part of the area within 4 ½ miles of the corporate limits of a municipality; (b) all of any platted subdivision which is partially within 4 ½ miles of the corporate limits of a municipality; and (c) all of any zoning district adopted pursuant to Title 16, chapter 41 or 47, which is partially within 4 ½ miles of the

HeinOnline -- 1977 vol. II 1623 1977

corporate limits of a municipality. Distances shall be measured in a straight line in a horizontal plane.

(13) "Public place" means any place which a municipality or state maintains for the use of the public, or a place where the public has a right to go and be.

(14) "Recreational vehicle" means anything defined as a recreational vehicle in the edition of NFPA No. 501C or ANSI A119.2 most recently adopted by the state in accordance with 69-2122."

Section 2. Section 69-2111, R.C.M. 1947, is amended to read as follows:

"69-2111. Adoption of rules by department. (1) The department shall adopt by reference nationally recognized building codes in whole or in part, amend and repeal rules relating to the construction of all buildings or classes of buildings or the installation of equipment in those buildings, and may by rule prescribe standards or requirements for materials to be used in buildings including provisions dealing with safety, sanitation and conservation of energy. The rules, when adopted as provided in this chapter, constitute the "state building code" and shall be acceptable for the buildings to which it is applicable.

(2) The department may hold hearings relating to the administration of this act in accordance with the Montana Administrative Procedure Act.

(3) Except as provided in subsection (4) of this section, no rule and no amendment or repeal of the state building code shall take effect until after a public hearing by the department.

(4) If a hearing has been held by the department of justice with respect to its duties contained in Title 82, chapter 12, the board of plumbers, the department of health and environmental sciences, board of warm air heating, ventilation, and air conditioning, or state electrical board, on a proposed rule relating to building and equipment standards in their respective fields, a public hearing by the department is not required. The proposed rule is effective upon approval of the department and filing with the secretary of state as a part of the state building code."

Section 3. Section 69-2112, R.C.M. 1947, is amended to read as follows:

"69-2112. Municipal building codes — applicability of state code. (1) The local legislative body of a municipality *or county* may adopt a municipal building code by ordinance to apply to the municipal *or county* jurisdictional area. *A municipal or county building code may include only codes adopted by the department.*

(2) If a municipality *or county* does not adopt a building code as provided in subsection (1) of this section, the state building code applies within the municipal *or county* jurisdictional area *and the state will enforce the code in these areas.*

(3) *A county or municipality may not enforce a building code unless the code adopted and a plan for enforcement of the code have been filed with the department.*

HeinOnline -- 1977 vol. II 1624 1977

(4) *The department shall set forth rules and standards governing the certification of municipal and county building code programs as required in subsection (3).*"

Section 4. Section 69-2124, R.C.M. 1947, is amended to read as follows:

"**69-2124. Fees.** The department shall establish a schedule of fees *and may collect fees for the inspection of plans and specifications and for the inspection of buildings, factory-built buildings, recreational vehicles, tramways, or any other facility or structure.* The department may utilize independent testing laboratories or the agencies of other states to determine if approved models of *factory-built buildings* or recreational vehicles are being constructed in accordance with the approved plans and specifications for said models."

Section 5. Section 66-2416, R.C.M. 1947, is amended to read as follows:

"**66-2416. Minimum standards — state plumbing code — fee for copy of code.** The *department of administration* shall by rule prescribe minimum standards which are uniform and which are thereafter effective for all plumbing installations or maintenance, except where exempt by 66-2426."

Section 6. Section 66-2417, R.C.M. 1947, is amended to read as follows:

"**66-2417. District court — jurisdiction — restraining orders.** The district court of any county has jurisdiction in equity, on application of the *department of administration*, to restrain from connection any new plumbing installations, on finding, after hearing, that the plumbing is inferior to the standards of the state plumbing code."

Section 7. Section 66-2427, R.C.M. 1947, is amended to read as follows:

"**66-2427. Permit fee — payment — penalties.** (1) It is unlawful for any person to engage in the business, trade, or work having to do with the installation, removal, alteration, or repair of plumbing and drainage systems or parts thereof without first obtaining a permit from the *department of administration.*

A separate permit shall be obtained for each building or structure.

No person may allow any other person to do or cause to be done any work under a permit secured by the permittee except persons in his employ.

(2) No permit is required for any minor replacement or repair work, the performance of which does not have a significant potential for creating a condition hazardous to public health and safety. No permit is required where the installation is exempt under the provisions of 66-2426 or 66-2401. Nothing contained in this act shall prohibit the owner of residential property from making an installation for all sanitary plumbing and potable water supply piping without a permit providing he does the work

HeinOnline -- 1977 vol. II 1625 1977

himself. The provisions of this act do not apply to regularly employed maintenance personnel doing maintenance work on the business premises of their employer unless work is subject to the permit provisions of this act.

(3) Persons required by this section to apply for a permit shall make application on forms provided by the *department of administration* or authorized representative. He shall give a description of the character of the work proposed to be done, and the location, ownership, occupancy and use of the premises in connection therewith. The *department of administration* or its authorized representative may require sketches, specifications or drawings and such other information it deems necessary in order to determine the scope of the work contemplated.

If the *department of administration* determines that the sketches, specifications, drawings, descriptions and information furnished by the applicant are in compliance with the state plumbing code, it shall issue the permit applied for upon payment of the required fee as established by the *department of administration.*

(4) Any person who commences any work for which a permit is required without first obtaining a permit shall, if subsequently permitted to obtain a permit, pay double the permit fee for the work, except that this provision does not apply to emergency work when it is proved to the satisfaction of the *department of administration* or its authorized representative that the work was urgently necessary and that it was not practical to obtain a permit before the commencement of the work. In all such cases, a permit shall be obtained as soon as it is practical to do so, and if there is unreasonable delay in applying for the permit, a double fee shall be charged.

For the purpose of this section, a sanitary plumbing outlet on or to which a plumbing fixture or appliance may be set or attached shall be construed to be a fixture. Fees for reconnection and retest of plumbing systems in relocated buildings shall be based on the number of plumbing fixtures, gas systems, water heaters, and the like involved.

When a permit has been obtained to connect an existing building or existing work to the public sewer or to connect to a new private disposal facility, backfilling of private sewage disposal facilities abandoned consequent to the connection is included in the permit.

The *department of administration* shall establish permit fees in accordance with the Montana Administrative Procedure Act and the fees shall be deposited to the earmarked revenue fund of the *department of administration* for use in the administration and enforcement of this act and the Montana state plumbing code.

(5) All plumbing and drainage systems may be inspected by the *department of administration* or their authorized representative to insure compliance with the requirements of the state plumbing code.

(6) It is the duty of the person doing work authorized by the permit to notify the *department of administration* orally or in writing, that the work is ready for inspection. The notification shall be given not less than 24 hours before the work is to be inspected.

HeinOnline -- 1977 vol. II 1626 1977

It is the duty of the person doing the work authorized by the permit to ensure that the work performed before notification and after notification pending inspection complies with the state plumbing code.

(7) Whenever any work is being done contrary to the provisions of the state plumbing code; the *department of administration* or its authorized representative may, after a hearing conducted under the provisions of the Montana Administrative Procedure Act, order work stopped by notice in writing served on any person engaged in the work.

(8) The *department of administration* may suspend or revoke a permit, whenever it is issued in error or on the basis of incorrect information supplied, or work performed thereunder is in violation of any of the provisions of Title 66, chapter 24."

Section 8. Section 66-2802, R.C.M. 1947, is amended to read as follows:

"**66-2802. Purpose.** (1) The purpose of this act is to protect the health and safety of the people of this state from the danger of electrically caused shocks, fires, and explosions; to protect property from the hazard of electrically caused fires and explosions; to establish a procedure for determining where and by whom electrical installations are to be made; to assure the public that persons making electrical installations are qualified; and to insure that the electrical installations and electrical products made and sold in this state meet minimum safety standards. All installations in this state of wires and equipment to convey electric current and installations of apparatus to be operated by current, except as provided in 66-2812, shall be made substantially in accord with *building codes adopted by the department of administration.*

(2) Rules and standards relating to buildings and equipment *shall be promulgated by the department of administration.*"

Section 9. Section 66-2805.1, R.C.M. 1947, is amended to read as follows:

"**66-2805.1. Department — inspections — tags.** (1) The department *of administration* shall make inspections of electrical installations, issue inspection tags for these installations, and establish and charge a reasonable and uniform fee for the inspections, which may not exceed the expense of providing the inspection.

(2) Individuals, firms, cooperatives, corporations, or municipalities selling electricity are power suppliers. Power suppliers may not connect with or energize an electrical installation, under this act, unless the owner or a licensed electrical contractor has delivered to the power supplier an inspection tag covering the installation, issued by the department *of administration.*

(3) Immediately after an installation has been energized, the power supplier shall deliver to the department *of administration* the inspection tag covering the installation.

(4) It is unlawful for a person, partnership, company, firm, association,

HeinOnline -- 1977 vol. II 1627 1977

or corporation, other than a power supplier, to energize an electrical installation under this act, unless an application for an inspection tag covering the installation, together with the inspection fee, has been forwarded to the department *of administration.*"

Section 10. Section 82A-1607, R.C.M. 1947, is amended to read as follows:

"**82A-1607. Electrical inspections and code making.** The functions of the department of law enforcement and public safety of making inspections of electrical installations and issuing tags and charging fees therefor as set forth in 66-2805(c)(i) and of establishing an electrical code as set forth in 66-2802(i), which were transferred to the department in 82A-1203, are transferred to the department of *administration.*"

Section 11. Section 75-8206, R.C.M. 1947, is amended to read as follows:

"**75-8206. Review and approval of school building plans and specifications.** *(1)* No school building in the state, either publicly or privately owned or operated, shall be built, enlarged, remodeled, or repaired until the plans and specifications for such construction have been submitted to *and approved by the department of administration.*

(2) The plans and specifications shall show in detail the proposed construction of the building and shall illustrate and indicate conformity with the *rules promulgated by the department of administration.*

(3) As a service to districts, the superintendent of public instruction *may* review the plans and specifications submitted to the *department of administration* to assist the districts in designing facilities for optimum utilization."

Section 12. Section 75-8207, R.C.M. 1947, is amended to read as follows:

"**75-8207. Regulations of board of health.** *(1)* The state board of health shall adopt regulations prescribing the requirements for school sites, water supply, sewage and waste disposal, and any other matters pertinent to the health and physical wellbeing of the pupils, teachers, and others who frequent schools.

(2) The state board of health shall furnish to the districts copies of such regulations."

Section 13. There is a new R.C.M. section numbered 69-2125 that reads as follows:

69-2125. Department of administration — authority to promulgate building regulations. No state agency except the department of administration may promulgate building regulations as defined in 69-2105, except the state fire marshal may promulgate regulations relating to use of buildings and installation of equipment. The state fire marshal shall review building plans and regulations for conformity with rules promulgated by the department of administration.

Section 14. **Saving clause.** This act does not affect rights and duties

HeinOnline -- 1977 vol. II 1628 1977

that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

Section 15. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 16. **Repealer.** Section 69-4117 and 69-5507 are repealed.

Approved April 28, 1977.

CHAPTER NO. 505

AN ACT RELATING TO THE SCHOOL FOUNDATION PROGRAM; PROVIDING FOR CHANGES IN THE FINANCIAL SCHEDULES FOR THE MAXIMUM GENERAL FUND BUDGETS FOR ELEMENTARY AND HIGH SCHOOL DISTRICTS; AMENDING SECTION 75-6905, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-6905, R.C.M. 1947, is amended to read as follows:

"**75-6905. Maximum-general-fund-budget-without-a-voted-levy schedules for elementary and high schools.** The total amount of the general fund budget of any district shall not be greater than the general fund budget amount specified in the following schedules, except when a district has adopted an emergency general fund budget under the provisions of section 75-6727 or when a district has voted an additional levy under the provisions of section 75-6923.

Elementary School Schedule for 1977-78

(1) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be *$10,386* if said school is approved as an isolated school.

(2) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be *$10,386* plus *$434* per pupil on the basis of the average number belonging over nine.

(3) For schools with an ANB of 18 pupils and employing one teacher, the maximum shall be *$14,292* plus *$434* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(4) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be *$22,818* plus *$271.80* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(5) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

HeinOnline -- 1977 vol. II 1629 1977

For a school having an ANB of more than 40 and employing a minimum of three teachers, the maximum of *$1,008* shall be decreased at the rate of *98 cents* for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils. For a school having an ANB of more than 100 pupils, the maximum of *$949.60* shall be decreased at the rate of *90 cents* for each additional pupil until the ANB shall have reached 300 pupils. For a school having an ANB of more than 300 pupils, the maximum shall not exceed *$770.60* for each pupil.

(6) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

High School Schedule for 1977-78

(7) For each high school having an ANB of 24 or fewer pupils, the maximum shall be *$59,166*.

(8) For a secondary school having an ANB of more than 24 pupils, the maximum *$2,465* shall be decreased at the rate of *$13.45* for each additional pupil until the ANB shall have reached a total of 40 such pupils. For a school having an ANB of more than 40 pupils, the maximum of *$2,250* shall be decreased at the rate of *$13.45* for each additional pupil until the ANB shall have reached 100 pupils. For a school having an ANB of more than 100 pupils, a maximum of *$1,443* shall be decreased at the rate of *$2.25* for each additional pupil until the ANB shall have reached 200 pupils. For a school having an ANB of more than 200 pupils, the maximum of *$1,218* shall be decreased by *$1.24* for each additional pupil until the ANB shall have reached 300 pupils. For a school having an ANB of more than 300 pupils, the maximum of *$1,095* shall be decreased at the rate of *23 cents* until the ANB shall have reached 600 pupils. For a school having an ANB over 600 pupils, the maximum shall not exceed *$1,027* per pupil.

(9) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

Elementary School Schedule for 1978-79 and Succeeding Years

(10) For each elementary school having an ANB of nine or fewer pupils, the maximum shall be *$11,113* if said school is approved as an isolated school.

(11) For schools with an ANB of 10 pupils but less than 18 pupils, the maximum shall be *$11,113* plus *$464.40* per pupil on the basis of the average number belonging over nine.

(12) For schools with an ANB of 18 pupils and employing one teacher,

HeinOnline -- 1977 vol. II 1630 1977

the maximum shall be *$15,292* plus *$464.40* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 25.

(13) For schools with an ANB of 18 pupils and employing two full-time teachers, the maximum shall be *$24,415* plus *$290.90* per pupil on the basis of the average number belonging over 18, not to exceed an ANB of 50.

(14) For schools having an ANB in excess of 40, the maximum on the basis of the total pupils (ANB) in the district for elementary pupils will be as follows:

For a school having an ANB of more than 40 and employing a minimum of 3 teachers, the maximum of *$1,079* shall be decreased at the rate of *$1.05* for each additional pupil until the total number (ANB) shall have reached a total of 100 pupils. For a school having an ANB of more than 100 pupils, the maximum of *$1,016* shall be decreased at the rate of *96 cents* for each additional pupil until the ANB shall have reached 300 pupils. For a school having an ANB of more than 300 pupils, the maximum shall not exceed *$824.60* for each pupil.

(15) The maximum per pupil for all pupils (ANB) and for all elementary schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All elementary schools operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

High School Schedule for 1978-79 and Succeeding Years

(16) For each high school having an ANB of 24 or fewer pupils, the maximum shall be *$63,308.*

(17) For a secondary school having an ANB of more than 24 pupils, the maximum *$2,638* shall be decreased at the rate of *$14.39* for each additional pupil until the ANB shall have reached a total of 40 such pupils. For a school having an ANB of more than 40 pupils, the maximum of *$2,408* shall be decreased at the rate of *$14.39* for each additional pupil until the ANB shall have reached 100 pupils. For a school having an ANB of more than 100 pupils, a maximum of *$1,544* shall be decreased at the rate of *$2.41* for each additional pupil until the ANB shall have reached 200 pupils. For a school having an ANB of more than 200 pupils, the maximum of *$1,304* shall be decreased by *$1.32* for each additional pupil until the ANB shall have reached 300 pupils. For a school having an ANB of more than 300 pupils, the maximum of *$1,171* shall be decreased at the rate of *24 cents* until the ANB shall have reached 600 pupils. For a school having an ANB over 600 pupils, the maximum shall not exceed *$1,098* per pupil.

(18) The maximum per pupil for all pupils (ANB) and for all high schools shall be computed on the basis of the amount allowed herein on account of the last eligible pupil, ANB. All high schools and junior high schools which have been approved and accredited as junior high schools, operated within the incorporated limits of a city or town shall be treated as one school for the purpose of this schedule.

HeinOnline -- 1977 vol. II 1631 1977

(19) The general fund budget amount for an approved and accredited junior high school shall be prorated between the elementary district general fund budget and the high school district general fund budget in the following manner:

(a) determine the per-ANB schedule amount for the school, as defined by this section, from the high school schedule;

(b) calculate the ANB for the regularly enrolled full-time pupils enrolled in the 7th and 8th grades of the junior high school;

(c) multiply the per-ANB schedule amount determined in subsection (a) by the ANB calculated in subsection (b) to determine the authorized general fund budget amount which shall be available for the elementary district general fund budget; and

(d) subtract the amount determined in subsection (c) from the total authorized general fund budget amount for the school to determine the authorized general fund budget amount which shall be available for the high school district general fund budget.

The general fund budget amount determined for each school of a district under the schedules provided in this section shall be totaled to determine the maximum-general-fund-budget-without-a-voted-levy for such district.

(20) For the purpose of establishing the maximum-budget-without-a-vote amount for current year special education program for a school district, the superintendent of public instruction will determine the total estimated cost of the special education program for the school district on the basis of a special education program budget submitted by the district. The budget will be prepared on forms provided by the superintendent of public instruction and will set out for each program

(a) the estimated allowable costs associated with operating the program where allowable costs are as defined in section 75-7813.1;

(b) the number of pupils expected to be enrolled in the program; and

(c) any other data required by the superintendent of public instruction for budget justification purposes and to administer the provisions of this *section.* The total amount of allowable costs approved by the superintendent of public instruction shall be the special education maximum-budget-without-a-vote amount for current year special education program purposes. The total amount of allowable costs that are approved for the special education budget shall not, under any condition, be less than the maximum-budget-without-a-vote amount for one regular ANB for each special full-time pupil in the school district.

(21) If a special education program is implemented or expanded during a given school term too late to be included in the determination of the district maximum-budget-without-a-vote for the school year as prescribed in this chapter, then subject to the approval of the program by the superintendent, under the emergency budget provisions of section 75-6723 (5), allowable costs approved under the budgeting provisions of section 75-6905 (20) for the operation of the program during the given year may

HeinOnline -- 1977 vol. II 1632 1977

be added to the maximum-budget-without-a-vote amount for special education for the subsequent school year. Such costs must be recorded as "previous year special education expenses" in the school district budget for the subsequent school year.

(22) The sum of the previous year special education expenses as defined in subsection (21) above, and the maximum-budget-without-a-vote for current year special education as defined in subsection (20) shall be the special education budget for accounting purposes.

The maximum-budget-without-a-vote for special education will be added to the maximum-budget-without-a-vote of the regular program ANB defined in sections 75-6902 and 75-6903 to obtain the total maximum-budget-without-a-vote for the district."

Approved April 28, 1977.

CHAPTER NO. 506

AN ACT ESTABLISHING PILOT SERVICE PROGRAMS FOR DISPLACED HOMEMAKERS; PROVIDING AN APPROPRIATION OF $30,000 FOR THE BIENNIUM; PROVIDING A 2-YEAR PERIOD OF EFFECTIVENESS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative policy.** (1) The legislature finds that there is an ever-increasing number of persons in this state who, having fulfilled a role as homemaker, find themselves "displaced" in their middle years through divorce, death of spouse, or other loss of family income. As a consequence, displaced homemakers are very often without any source of income; they are ineligible for categorical welfare assistance; they are subject to the highest unemployment rate of any sector of the work force; they face continuing discrimination in employment because they are older and have no recent paid work experience; they are ineligible for unemployment insurance because they have been engaged in unpaid labor in the home; they are ineligible for social security because they are too young, and many will never qualify for social security because they have been divorced from the family wage earner; they have often lost their rights as beneficiaries under employers' pension and health plans through divorce or death of spouse, despite many years of contribution to the family well-being; and they are often ineligible for medicaid and are generally unacceptable to private health insurance plans because of their age.

(2) The legislature further finds that homemakers are an unrecognized part of the work force who make an invaluable contribution to the welfare of the society as a whole.

(3) It is the intention of the legislature to provide the necessary counseling, training, jobs, services, and health care for displaced homemakers so that they may enjoy the independence and economic security vital to

HeinOnline -- 1977 vol. II 1633 1977

a productive life and to improve the health and welfare of this ever-growing group of citizens.

Section 2. **Definitions.** As used in this act, the following definitions apply:

(1) "Displaced homemaker" means a person who:

(a) worked in a home for at least 7 years providing unpaid household services for a family member or family members;

(b) is not gainfully employed;

(c) has had or would have difficulty finding paid employment; and

(d) was dependent on the income of another family member but is no longer supported by that income or was dependent on federal assistance but is no longer eligible for that assistance.

(2) "Director" means the director of the department of labor and industry.

(3) "Grantee" means a nonprofit agency or organization designated to administer a multipurpose service center.

Section 3. **Pilot service programs.** In order to enable the displaced homemaker to contribute to society and maintain independence and economic security, the director shall establish two pilot multipurpose service centers for displaced homemakers, one in the Missoula County area and one in the Yellowstone County area. To the greatest extent possible, the director shall make the grants funding these centers to nonprofit agencies or organizations whose major emphasis of service has been to serve women.

Section 4. **Responsibilities of director to establish centers.** The director shall:

(1) within 1 month of the passage of this act, begin a search for grantees to carry out the programs described in [section 5 of this act];

(2) within 4 months of the passage of this act, designate the grantees who will establish the multipurpose service centers;

(3) within 6 months of the passage of this act, draw up a contract with the grantees and begin to provide the necessary funds to the grantees to set up and begin the operation of the multipurpose service centers; and

(4) when the centers are operational, provide the remaining funds to the grantees to continue the operation of the centers.

Section 5. **Programs to aid displaced homemakers.** (1) The centers shall develop job counseling and placement services by cooperating with federal, state, and local governmental agencies and private employers in order to avoid unnecessary duplication of services. The services shall:

(a) counsel displaced homemakers with respect to appropriate job opportunities;

(b) identify community needs and seek funding for new public and private sector jobs;

HeinOnline -- 1977 vol. II 1634 1977

(c) provide displaced homemakers with the necessary counseling, training, skills, and referral services to become gainfully employed, healthy, and independent;

(d) develop plans to include more displaced homemakers in existing training and placement programs;

(e) refer displaced homemakers to agencies which may provide information and assistance with respect to health care, financial matters, education, nutrition, and legal problems; and

(f) take into account and build upon the skills and experiences of the displaced homemaker.

(2) The Montana state employment service shall specifically work with the centers to secure employment for displaced homemakers.

Section 6. **Service to surrounding rural areas.** To the greatest extent possible, the centers shall serve the surrounding rural areas through a rural outreach effort.

Section 7. **Rules.** The director, with the advice of the staff at the centers, shall adopt rules concerning the eligibility of persons for the job training and other programs of the multipurpose service centers, the level of subsistence provided by the job training programs, and a sliding fee scale for the service programs.

Section 8. **Evaluation of service centers and reports to director.** (1) The administrator of each center shall report to the director as prescribed by rule and shall evaluate the effectiveness of the job training, placement, and service to displaced homemakers, including the number of persons trained, the number of persons placed in employment, follow-up data on those persons, the number of persons served by the various service programs, and cost effectiveness of the various components of the center.

(2) The administrator of each center shall provide the director with a monthly accounting of all expenditures.

Section 9. **In-kind contributions.** The administrator of each center may accept, use, and dispose of contributions of money, services, and property for the purpose of aiding displaced homemakers. Either the grantees or communities served, or both, shall provide a total of 5% in-kind contributions of services, equipment, supplies, and other necessary items contributing to the cost of the operation of the centers as an addition to the money appropriated by the legislature for the implementation and operation of the centers.

Section 10. **Staff of centers.** To the extent possible, supervisory, technical, and administrative positions in the multipurpose service programs within the centers shall be filled by displaced homemakers.

Section 11. **Appropriation.** There is appropriated from the general fund to the department of labor and industry the sum of $30,000, for the biennium ending June 30, 1979, to fund the pilot multipurpose service centers to aid displaced homemakers.

HeinOnline -- 1977 vol. II 1635 1977

Section 12. **Recommendations to the legislature.** Two years after the effective date of this act, the director shall report to the legislature on the effectiveness of this program.

Section 13. **Period of effectiveness.** This act shall remain in effect only until June 30, 1979, and as of that date is repealed.

Section 14. **Subject to federal funding.** The appropriation made by this act is subject to receipt of federal funds. If federal funds are not received, the moneys appropriated in section 11 of this act shall revert to the general fund.

Section 15. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 28, 1977.

CHAPTER NO. 507

AN ACT AUTHORIZING THE BOARD OF EXAMINERS TO ISSUE AND SELL LONG-RANGE BUILDING BONDS FOR A PHYSICAL EDUCATION FACILITY AT MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY AND APPROPRIATING $2,275,000 FOR THAT PURPOSE FROM THE PROCEEDS OF THE SALE OF THOSE BONDS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 78-1401 that reads as follows:

78-1401. Bonds for Montana college of mineral science and technology. (1) The board of examiners is authorized to issue and sell long-range building program bonds upon the conditions and in the manner stated in Title 79, chapter 22, in an amount not exceeding $2,275,000, over and above the amount of the long-range building program bonds outstanding on January 1, 1977, for the purpose of paying costs of acquiring, constructing, and equipping a physical education facility for and to be located at Montana college of mineral science and technology. The issuance and sale of the bonds shall be subject to an undertaking by the board of regents to pay to the state treasurer for deposit in the sinking fund account established pursuant to section 79-2203, from the sources hereinafter defined, amounts sufficient to pay as due the principal of and interest on the bonds; provided, however, this undertaking shall be enforceable only by the state treasurer and shall not be enforceable by the holders of such bonds. The payments by the board of regents shall be made from available revenues derived from resident and nonresident student building fees charged to students enrolled at Montana college of mineral science and technology, interest and income from lands granted by the United States of America to the state pursuant to 25 Stat. 676 for the

HeinOnline -- 1977 vol. II 1636 1977

establishment and maintenance of the college and the operation of the physical education facility, and other revenue producing residence and student union facilities at the college, subject to the prior pledge and appropriation of such revenues to the payment of other obligations of the board of regents.

(2) The proceeds of the bonds authorized by subsection (1) of this section shall be deposited in the clearance fund account created by section 79-2201(4). There is hereby appropriated from the clearance fund account the sum of $2,275,000 for the purpose of paying costs of acquiring, constructing, and equipping the physical education facility described in subsection (1) of this section.

Approved April 28, 1977.

CHAPTER NO. 508

AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO GAMBLING.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 62-706, R.C.M. 1947, is amended to read as follows:

"**62-706. Gambling on cash basis.** (1) In every *authorized card game* the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the game at the time the game is played. No check, credit card, note, *IOU,* or other evidence of indebtedness *may* be offered or accepted as part of the price of participating in a *card* game or as payment of a debt *incurred therein.*

(2) No action based on *such* a debt is maintainable in a court of this state."

Section 2. Section 62-707, R.C.M. 1947, is amended to read as follows:

"**62-707. Local governing bodies may issue licenses.** (1) Any city, town, or county may issue licenses for the games provided for in this act to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town, or county, no game as provided for in this act shall be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this act, which license fee, if any, shall expire on June 30 of each year, and such fee shall be prorated.

HeinOnline -- 1977 vol. II 1637 1977

(3) Any license issued pursuant to this act shall be deemed to be a revocable privilege, and no holder thereof *may* acquire any vested rights therein or thereunder."

Section 3. Section 62-708, R.C.M. 1947, is amended to read as follows:

"**62-708. Governing body may establish regulations.** The governing body authorized to issue gambling licenses pursuant to this act *may* establish by ordinance or resolution regulations governing the qualifications for and the issuing, suspension, and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license *may* be issued to:

(1) a person who has been convicted of being the keeper or is keeping a house of *prostitution;*

(2) a person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States;

(3) a person whose license issued under this act has been revoked for cause;

(4) a person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

(5) a person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least 1 year immediately preceding the filing of the application for license;

(6) a person who is not the owner and operator of the business. Additional regulations may also be adopted for the purpose of the protection of the public health, welfare, and safety of the citizens of the state of Montana and to assure compliance with the intent of this act."

Section 4. Section 62-709, R.C.M. 1947, is amended to read as follows:

"**62-709. Minors may not participate.** No person under the age of 18 years *may* be permitted to participate in any *card* game held, operated, or conducted pursuant to this act."

Section 5. Section 62-710, R.C.M. 1947, is amended to read as follows:

"**62-710. Cheating unlawful.** It shall be unlawful to conduct or participate in a *card* game authorized by this act in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the game."

Section 6. Section 62-713, R.C.M. 1947, is amended to read as follows:

"**62-713. Jurisdiction.** *Jurisdiction* for all cases involving violations of this act is in the district court."

Section 7. There is a new R.C.M. section numbered 62-715.1 that reads as follows:

HeinOnline -- 1977 vol. II 1638 1977

62-715.1. Bingo and raffles authorized. Conducting or participating in games of chance as defined in 62-716 and in accordance with the provisions of 62-715 through 62-726 is lawful.

Section 8. Section 62-719, R.C.M. 1947, is amended to read as follows:

"**62-719. Local governing bodies may issue licenses.** (1) Any city, town, or county may issue licenses for games *of chance* provided for in this act to be conducted on premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable products. Within the cities or towns, such licenses may be issued by the city or town council or commission. Licenses for games conducted on premises outside the limits of any city or town may be issued by the county commissioners of the respective counties. When a license has been required by any city, town, or county, no game *of chance* as provided for in this act *may* be conducted on any premises which have been licensed for the sale of liquor, beer, food, cigarettes, or any other consumable product without such license having first been obtained.

(2) Any governing body may charge an annual license fee for each license so issued under this act, which license fee, if any, shall expire on June 30 of each year, and such fee shall be prorated.

(3) Any license issued pursuant to this act shall be *considered* to be a revocable privilege, and no holder thereof *may* acquire any vested rights therein or thereunder."

Section 9. Section 62-720, R.C.M. 1947, is amended to read as follows:

"**62-720. Governing body may establish regulations.** *(1)* The governing body authorized to issue gambling licenses pursuant to this act *may* establish by ordinance or resolution regulations governing the qualifications for the *issuance*, suspension, and revocation of such gambling licenses. These regulations, in addition to any other requirements, shall provide that no license *may* be issued to:

(a) a person who has been convicted of being the keeper or is keeping a house of *prostitution;*

(b) a person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States;

(c) a person whose license issued under this act has been revoked for cause;

(d) a person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

(e) a person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least 1 year immediately preceding the filing of the application for license;

(f) a person who is not the owner and operator of the business.

(2) Additional regulations may also be adopted for the purpose of the

protection of the public health, welfare and safety of the citizens of the state of Montana and to assure compliance with the intent of this act."

Section 10. Section 62-724, R.C.M. 1947, is amended to read as follows:

"**62-724. Gambling on cash basis.** (1) In every game *of chance* the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play the game at the time the game is played. No check, credit card, note, *IOU,* or other evidence of indebtedness shall be offered or accepted as part of the price of participation in *such* game or as payment of a debt *incurred therein.*

(2) No action based on *such* a debt is maintainable in a court of this state."

Section 11. Section 62-725, R.C.M. 1947, is amended to read as follows:

"**62-725. Cheating unlawful.** It shall be unlawful to conduct or participate in a game *of chance* authorized by this act in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the game."

Section 12. There is a new R.C.M. section numbered 62-727.1 that reads as follows:

62-727.1. Sports pools authorized. Conducting or participating in sports pools as defined and governed in 62-727 through 62-736 is lawful.

Section 13. Section 62-729, R.C.M. 1947, is amended to read as follows:

"**62-729. Gambling on cash basis.** (1) In every *sports pool* the consideration paid for the chance to play shall be strictly cash. Every participant must present the money with which he intends to play at the time the *pool* is *entered.* No check, credit card, note, *IOU,* or other evidence of indebtedness shall be offered or accepted as part of the price of participating in a *pool.*

(2) No action based on a debt *incurred in a sports pool* is maintainable in a court of this state."

Section 14. Section 62-730, R.C.M. 1947, is amended to read as follows:

"**62-730. Minors may not participate.** No person under the age of 18 years *may* be permitted to participate in any *sports pool* held, operated, or conducted pursuant to this act."

Section 15. Section 62-731, R.C.M. 1947, is amended to read as follows:

"**62-731. Cheating unlawful.** It shall be unlawful to conduct or participate in a *sports pool* authorized by this act in any manner which results in cheating, misrepresentation, or other such disreputable tactics which distract from a fair and equal chance for all participants or which otherwise affects the outcome of the *pool.*"

HeinOnline -- 1977 vol. II 1640 1977

Section 16. Section 62-735, R.C.M. 1947, is amended to read as follows:

"**62-735. Jurisdiction.** *Jurisdiction* for all violations of this act is in the district court."

Section 17. Section 94-8-301, R.C.M. 1947, is amended to read as follows:

"**94-8-301. Lottery defined.** A lottery is any scheme for the disposal or distribution of property by chance among persons who have paid or promised to pay any valuable consideration for the chance of obtaining such property or a portion of it or for any share or interest in such property upon any agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance, whether called a lottery, gift enterprise, or by whatever name the same may be known."

Section 18. Section 94-8-302, R.C.M. 1947, is amended to read as follows:

"**94-8-302. Application.** This *part* shall not apply to the *provisions of 62-715 through 62-726 or to the* giving away of cash or merchandise attendance prizes or premiums by public drawings at agricultural fairs or rodeo associations in this state, and the county fair commissioners of agricultural fairs or rodeo associations in this state may give away at such fairs cash or merchandise attendance prizes or premiums by public drawings."

Section 19. Section 94-8-401, R.C.M. 1947, is amended to read as follows:

"**94-8-401. Gambling prohibited — penalty.** *Except as otherwise provided by law, a person who engages in gambling in any form with cards, dice, or other implements or devices of any kind wherein anything valuable may be wagered upon the outcome or who keeps any establishment, place, equipment, or apparatus for such gambling or any agents or employees for such purpose is guilty of a misdemeanor and is punishable by a fine of not less than $100 or more than $1,000 or imprisonment not less than 3 months or more than 1 year or by both such fine and imprisonment.*"

Section 20. Section 94-8-404, R.C.M. 1947, is amended to read as follows:

"**94-8-404. Possession of gambling implements prohibited.** Any person who has in his possession or under his control or who permits to be placed, maintained, or kept in any room, space, inclosure, or building owned, leased, or occupied by him or under his management or control any faro box, faro layout, roulette wheel, roulette table, crap table, *punchboard,* or any machine or apparatus of the kind mentioned in *94-8-401* is punishable by a fine of not less than *$100 or* more than *$1,000* and may be imprisoned for not less than *3* months *or* more than *1* year in the discretion of the court, provided that this section shall not apply to a public officer or to a person coming into possession thereof in or by reason of the performance of an official duty and holding the same to be disposed of according to law."

HeinOnline -- 1977 vol. II 1641 1977

Section 21. Section 94-8-411, R.C.M. 1947, is amended to read as follows:

"94-8-411. **Duty of magistrate to retain gambling implement or apparatus for trial.** The magistrate before whom any machine, apparatus, or instrument is brought pursuant to *94-8-410* must, if there *is* a prisoner and if he *holds* such prisoner, cause the machine, apparatus, or instrument to be delivered to the county attorney to be used as evidence on the trial of such prisoner. If there *is* no prisoner or if the magistrate does not hold the prisoner, *the magistrate* must cause the immediate and public destruction of the machine, apparatus, or instrument in *his own* presence. No person owning or claiming to own any such machine, apparatus, or instrument so destroyed *has* any right of action against any person or against the state, county, or city for the value of such article or for damages. It *is* the duty of the county attorney to produce such articles in court on the trial of the case. It *is* the duty of the trial court, after the disposition of the case and whether the defendant *is* convicted, acquitted, or fails to appear for trial, to cause the immediate and public destruction of any such article by the sheriff or any other officer or person designated by the court."

Section 22. Section 94-8-422, R.C.M. 1947, is amended to read as follows:

"94-8-422. **Lessor of buildings used for gambling purposes treated as principal.** Whenever premises are occupied for the doing of any of the things or running any of the games prohibited by this *part*, the lease or agreement under which they are so occupied shall be absolutely void at the instance of the lessor, who may at any time obtain possession by civil action or by action of *unlawful* detainer. *If* any person *leases* premises for any such purpose or knowingly permits them to be used or occupied for such purpose or purposes or, knowing them to be so occupied or used, fails immediately to prosecute in good faith an action or proceeding for the recovery of the premises, such lessor shall be considered in all cases, civil and criminal, as a principal in running the games or doing the things run or done in such building in violation of this *part* and shall be dealt with and punished accordingly."

Section 23. Section 94-8-424, R.C.M. 1947, is amended to read as follows:

"94-8-424. **Ordinances concerning gambling.** *No* ordinance regarding gambling or gambling houses *may* be passed by any city, town, *county, or other political subdivision of the state except in compliance with 62-701 through 62-736.*"

Section 24. Section 94-8-429, R.C.M. 1947, is amended to read as follows:

"94-8-429. **Slot machine defined.** A slot machine is defined as a machine operated by inserting a coin, token, chip, trade check, *or paper currency* therein by the player and from the play of which he obtains or may obtain money, checks, chips, tokens, *or paper currency* redeemable in money. Merchandise vending machines where the element of chance

HeinOnline -- 1977 vol. II 1642 1977

does not enter into their operation are not within the provisions of this *part.*"

Section 25. Section 94-8-430, R.C.M. 1947, is amended to read as follows:

"**94-8-430. Person or persons defined.** In addition to their ordinary meaning, the word "person" or "persons", as used in this *part, includes* both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious, fraternal, and charitable organizations."

Section 26. Section 94-8-431, R.C.M. 1947, is amended to read as follows:

"**94-8-431. Penalty for possession or permitting use of slot machine.** Any person, partnership, club, society, fraternal order, corporation, *cooperative* association or any other person, individual, or organization who violates any of the provisions of this act or who permits the use of any slot machine, as herein defined, on any place or premises owned, occupied, or controlled by him or it *is* guilty of a misdemeanor and *is* punishable by a fine of not less than $100 *or* more than *$1,000* or by imprisonment in the county jail for not less than *3 months or* more than *1 year* or by both such fine and imprisonment."

Section 27. **Repealer.** Sections 84-5703 through 84-5719, 94-8-402, 94-8-403, 94-8-413, 94-8-425, 94-8-426, and 94-8-427, R.C.M. 1947, are repealed.

Approved April 29, 1977.

CHAPTER NO. 509

AN ACT TO INCREASE FEES WHICH LOCAL GOVERNMENTS MAY CHARGE THE HOLDER OF A LICENSE UNDER THE ALCOHOLIC BEVERAGE CODE TO THE LEVEL OF SUCH FEES PRIOR TO 1975; AMENDING SECTION 4-4-406, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 4-4-406, R.C.M. 1947, is amended to read as follows:

"**4-4-406. City and county licenses — fees.** The city council of any incorporated town or city or the county commissioners outside of any incorporated town or city may provide for the issuance of licenses to persons to whom a retail license has been issued under the provisions of this code and may fix license fees, not to exceed a sum equal to *five-eighths* of the fee *for an all-beverage license or 100% of the fee for a beer or beer-and-wine license* collected by the department from such licensee under this code."

Approved April 29, 1977.

CHAPTER NO. 510

AN ACT TO AMEND SECTION 11-403, R.C.M. 1947, BY REQUIRING THAT NOTICE BE GIVEN TO ALL FREEHOLDERS PRIOR TO ANNEXATION OF PLATTED OR UNPLATTED TRACTS TO A CITY OR TOWN OF THE FIRST CLASS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-403, R.C.M. 1947, is amended to read as follows:

"**11-403. Extension of boundaries to include contiguous platted tracts or other parcels of land.** (1) Cities or towns of the first class. Any tracts or parcels of land, which have been or may hereafter be platted into lots or blocks, streets, and alleys, or platted for parks, and the map or plat thereof filed in the office of the county clerk and recorder of the county in which the same are situated, or any unplatted land that has been surveyed and for which a certificate of survey has been filed, as provided in these codes, and which platted or unplatted land shall be contiguous to any incorporated city of the first class, may be embraced within the corporate limits thereof, and the boundaries of such city of the first class extended so as to include the same in the following manner: When, in the judgment of any city council of a city of the first class, expressed by a resolution duly and regularly passed and adopted, it will be to the best interest of such city and the inhabitants of any contiguous platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, that the boundaries of such city shall be extended, so as to include the same within the corporate limits thereof, the city clerk of such city shall *immediately notify in writing addressed to the address to which tax notices are sent all owners of property in the territory to be embraced and shall* cause to be published in the newspaper published nearest such platted tracts or parcels of land, or unplatted land for which a certificate of survey has been filed, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed, and that for a period of twenty (20) days after the first publication of such notice, such city clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city of the first class, from freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city council of such city of the first class after the expiration of said twenty (20) days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city of the first class shall be extended so as to embrace and include such platted tracts or parcels of land or unplatted land for which a certificate of survey has been filed, the time when the same shall go into effect to be fixed by such resolution; provided however, that land used for industrial or manufacturing purposes shall not be included in such city under the provisions of this section without the consent in writing of the owners of such land, and further provided, that such resolution shall not be adopted by such council if disapproved, in writing, by a majority of the resident freeholders of the territory proposed to be embraced and no further resolutions relat-

HeinOnline -- 1977 vol. II 1644 1977

ing to the annexation of said territory or any portion thereof may be considered or acted upon by the council on its own initiative and without petition, for a period of one year from the date of disapproval.

Provided also, that cities of the first class may include as part of such city any platted or unplatted tract or parcel of land that is wholly surrounded by such city upon passing a resolution advertising and upon passing a further resolution or following such advertising, all in the manner aforesaid, and such land shall be annexed, if so resolved, whether or not a majority of the resident freeholders of the land to be annexed object; provided, however, that land used for agricultural, mining, smelting, refining, transportation, or any industrial or manufacturing purpose or for the purpose of maintaining or operating a golf or country club, an athletic field or aircraft landing field, a cemetery or a place for public or private outdoor entertainment or any purpose incident thereto, shall not be annexed under this provision.

(2) Cities and towns of the second and third class. Any tracts or parcels of land, which shall be contiguous to any incorporated cities or towns of the second and third class, may be embraced within the corporate limits thereof and the boundaries of such cities or towns of the second and third class extended so as to include the same in the following manner: When, in the judgment of any such city or town council, expressed by resolution duly and regularly passed and adopted, it will be to the best interest of such city, or town and the inhabitants thereof, and of the inhabitants of any contiguous tracts or parcels of land, as aforesaid, that the boundaries of such city or town shall be extended, so as to include the same within the corporate limits thereof, the city or town clerk of such city or town shall forthwith notify in writing all property holders within the boundaries of the territory proposed to be embraced, and cause to be published in the newspaper published nearest such tracts or parcels of land, at least once a week for two successive weeks, a notice which shall be to the effect that such resolution has been duly and regularly passed and that for a period of twenty (20) days after the first publication of such notice, such city or town clerk will receive expressions of approval or disapproval, in writing, of the proposed extensions of the boundaries of such city or town, from freeholders of the territory proposed to be embraced therein. The clerk shall, at the next regular meeting of the city or town council after the expiration of said twenty (20) days, lay before the same all communications in writing by him so received for its consideration, and if, after considering the same, such council shall duly and regularly pass and adopt a resolution to that effect, the boundaries of such city or town of the second or third class, shall be extended so as to embrace and include such tracts or parcels of land, the time when the same shall go into effect to be fixed by such resolution; provided, that such resolution shall not be adopted by such council, if disapproved, in writing, by a majority of the freeholders of the territory proposed to be embraced.

(3) Whenever two or more adjacent tracts taken as a whole shall adjoin the city, they may be included in one resolution under subdivision (2) hereof, although one or more of said tracts taken alone may not be adjacent to the corporate limits as then existing."

Approved April 29, 1977.

HeinOnline -- 1977 vol. II 1645 1977

CHAPTER NO. 511

AN ACT TO AMEND SECTION 82A-1602.8, R.C.M. 1947, TO PROVIDE FOR THE REDUCTION OF MEMBERS ON THE BOARD OF COSMETOLOGISTS; PROVIDING QUALIFICATIONS FOR BOARD MEMBERSHIP.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-1602.8, R.C.M. 1947, is amended to read as follows:

"82A-1602.8. Board of cosmetologists — appointment — qualifications — term. (1) There is a board of cosmetologists.

(2) The board consists of *three* members *who may be* appointed by the governor from a list of *six* persons recommended by the Montana state hairdressers' association. Each member *appointed* shall have actively engaged in the profession of cosmetology for at least 5 years before his appointment and have been a resident of this state for at least 5 years immediately before his appointment. Each member shall be at least *18* years old and a graduate of a high school or its equivalent. No two members of the board *may* be members of or affiliated with a school of cosmetology.

(3) Each member shall serve for a term of 4 years."

Approved April 29, 1977.

CHAPTER NO. 512

AN ACT TO ALLOW AN OPTICIAN TO PERFORM MECHANICAL WORK ON AN OPHTHALMIC LENS ORDERED ON A PRESCRIPTION SIGNED BY A REGISTERED OPTOMETRIST, REGARDLESS OF WHO EMPLOYS THE OPTICIAN; AMENDING SECTION 66-1316, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-1316, R.C.M. 1947, is amended to read as follows:

"66-1316. Act not to apply to physicians, surgeons, opticians, officers of the armed forces, and certain other persons. Nothing in this act shall be construed to apply to physicians and surgeons authorized to practice under the laws of the state of Montana nor to an optician performing the required mechanical work under an order or prescription signed by a duly licensed physician, surgeon, *or optometrist,* nor to commissioned officers of the armed forces of the United States performing functions of this act in the line of their regular duty, nor to persons who

HeinOnline -- 1977 vol. II 1646 1977

sell spectacles or eyeglasses without attempting to traffic upon assumed skill in adapting them to the eye."

Approved April 29, 1977.

CHAPTER NO. 513

AN ACT TO PROVIDE FUNDING BY VOTED BOND ISSUES FOR COUNTY HOSPITAL PURPOSES, AMENDING SECTIONS 16-1045 AND 16-1047, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 16-1045, R.C.M. 1947, is amended to read as follows:

"**16-1045. Bonds and other obligations.** (1) Notwithstanding any limitation imposed by law upon the bonded indebtedness of a county, a county constructing a hospital or nursing home under section 16-1008A may borrow money and issue its bonds therefor, including refunding bonds, in such form and upon such terms as it may determine, payable out of any revenues of the facility, including revenues derived from:

(a) fees and payments for hospital or nursing home services,

(b) taxes levied under section 16-1046,

(c) grants or contributions from the federal government, or

(d) any other sources.

(2) The bonds may be issued by resolution or resolutions of the county governing body without any limitation of amount except as follows:

(a) no such bonds may be issued at any time if the total amount of principal and interest to become due in any year on such bonds, and on any then outstanding bonds for which revenues from the same source or sources are pledged, exceeds the amount of such revenues to be received in that year as estimated in the resolution authorizing the issuance of the bonds; and

(b) the county shall be obligated to take all action necessary and possible to impose, maintain and collect rates, charges, rentals and taxes, if any are pledged, sufficient to make the revenues from the pledged source or sources in such year at least equal to the amount of such principal and interest due in that year.

They may be sold at public or private sale and shall bear interest at a rate or rates not exceeding 10% a year. Except as otherwise provided herein, any bonds issued pursuant to this act by a county shall be payable as to principal and interest solely from revenues of the county, and shall state on their face the applicable limitations or restrictions regarding the source or sources from which such principal and interest are payable.

(c) No such bonds may be issued by any county until the question of

approval of the issuance of such bonds has been submitted to the qualified electors of the county at a general election or a special election called for that purpose by the governing body of the county and the majority of the electors voting on the question have voted in favor thereof. The notice and conduct of the election shall be governed to the extent applicable by sections 16-2024 and 16-2026. If a majority of the electors voting thereon vote against the issuance of such bonds the county shall have no authority to issue such bonds under this act.

(3) Bonds issued by a county pursuant to the provisions of this act are declared to be issued for an essential public and governmental purpose by a political subdivision within the meaning of section 84-4905(2)(a). The bonds may be for a 40 year period.

For the security of any such bonds, the county may by resolution make and enter into any covenant, agreement, or indenture and exercise any additional powers authorized to be made, entered into or exercised by a county. The sums required from time to time to pay principal and interest and to create and maintain a reserve for the bonds may be made payable from any and all revenues referred to in this act, prior to the payment of current costs of operation and maintenance of the facilities.

(4) The governing body of any county may, with respect to bonds issued pursuant to this act by the county, by resolution covenant that, in the event that at any time all revenues, including taxes, appropriated and theretofore collected for such bonds are insufficient to pay principal or interest then due, it will levy a general tax upon all of the taxable property in the county for the payment of such deficiency and may further covenant that at any time a deficiency is likely to occur within 1 year for the payment of principal and interest due on such bonds, it will levy a general tax upon all the taxable property in the county for the payment of such deficiency, and such taxes shall not be subject to any limitation of rate or amount applicable to other county taxes but shall be limited to a rate estimated to be sufficient to produce the amount of the deficiency. In the event more than one county is included in an authority issuing bonds pursuant to this act, the counties may apportion the obligation to levy taxes for the payment of or in anticipation of a deficiency in the revenues appropriated for such bonds in such manner as the counties shall determine. The resolution shall state the principal amount and purpose of the bonds and the substance of the covenant respecting deficiencies."

Section 2. Section 16-1047, R.C.M. 1947, is amended to read as follows:

"**16-1047. Limitation.** The authority granted under this act is available only to counties in which no hospital exists or in which the only existing hospital has been ordered closed or cannot be reasonably brought into compliance with the standards established by the department of health and environmental sciences under chapter 52, Title 69, R.C.M. 1947."

Approved April 29, 1977.

HeinOnline -- 1977 vol. II 1648 1977

CHAPTER NO. 514

AN ACT AMENDING THE DEFINITION OF AN INCAPACITATED PERSON IN THE MONTANA UNIFORM PROBATE CODE; AMENDING SECTIONS 91A-5-101 AND 91A-5-303, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 91A-5-101, R.C.M. 1947, is amended to read as follows:

"91A-5-101. Definitions and use of terms. Unless otherwise apparent from the context, in this code:

(1) "incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person *or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment*;

(2) "protective proceeding" means a proceeding under the provisions of section 91A-5-401 to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise inconvenienced, or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief;

(3) "protected person" means a minor or other person for whom a conservator has been appointed or other protective order has been made;

(4) "ward" means a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority."

Section 2. Section 91A-5-303, R.C.M. 1947, is amended to read as follows:

"91A-5-303. Procedure for court appointment of a guardian of an incapacitated person. (1) The incapacitated person or any person interested in his welfare, *including the county attorney,* may petition for a finding of incapacity and appointment of a guardian.

(2) Upon the filing of a petition, the court shall set a date for hearing on the issues of incapacity and unless the allegedly incapacitated person has counsel of his own choice, it shall appoint an appropriate official or attorney to represent him in the proceeding, who shall have the powers and duties of a guardian ad litem. The person alleged to be incapacitated shall be examined by a physician appointed by the court who shall submit his report in writing to the court and be interviewed by a visitor sent by the court. The visitor also shall interview the person seeking appointment as guardian, and visit the present place of abode of the person alleged to be incapacitated and the place it is proposed that he will be detained or reside if the requested appointment is made and submit his report in writing to the court. The person alleged to be incapacitated is

HeinOnline -- 1977 vol. II 1649 1977

entitled to be present at the hearing in person, and to see or hear all evidence bearing upon his condition. He is entitled to be present by counsel, to present evidence, to cross-examine witnesses, including the court-appointed physician and the visitor, and to trial by jury. The issue may be determined at a closed hearing without a jury if the person alleged to be incapacitated or his counsel so requests."

Section 3. There is a new R.C.M. section numbered 91A-5-314 that reads as follows:

91A-5-314. Court order for evaluation or treatment. If a guardian believes his ward should receive medical treatment for a mental disorder and the ward refuses, the court may, upon petition by the guardian, grant an order for evaluation or treatment, provided that no such order shall forcibly detain the ward against his will for more than 72 hours. The ward is entitled to an appointment of counsel and a hearing along with all the other rights guaranteed seriously mentally ill persons under 38-1304.

Approved April 29, 1977.

CHAPTER NO. 515

AN ACT TO ESTABLISH A RESIDENT STUDENT FINANCIAL ASSISTANCE PROGRAM.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 75-9401 that reads as follows:

75-9401. Short title. This act may be cited as "The Montana Resident Student Financial Assistance Program".

Section 2. There is a new R.C.M. section numbered 75-9402 that reads as follows:

75-9402. Purpose. The purpose of this act is to establish a program to provide financial assistance to resident Montana postsecondary students.

Section 3. There is a new R.C.M. section numbered 75-9403 that reads as follows:

75-9403. Definitions. As used in this act: (1) "resident student" means a person who was a resident of Montana prior to enrolling and who is attending a qualified postsecondary institution within Montana;

(2) "postsecondary institution" includes the units of the university system and any postsecondary institution accredited or licensed under Title 75, chapter 92, R.C.M. 1947.

Section 4. There is a new R.C.M. section numbered 75-9404 that reads as follows:

75-9404. Resident student financial assistance program created.

HeinOnline -- 1977 vol. II 1650 1977

There is a resident student financial assistance program administered by the commissioner of higher education in consultation with the program advisory council.

Section 5. There is a new R.C.M. section numbered 75-9405 that reads as follows:

75-9405. Program advisory council. (1) There is a resident student financial assistance program advisory council appointed by the board of regents.

(2) The advisory council consists of:

(a) three practicing financial aid officers;

(b) one chief administrator of a postsecondary educational institution;

(c) one chief fiscal officer of a postsecondary educational institution; and

(d) one student enrolled full time at a postsecondary educational institution.

(3) No more than one member of the advisory council may be from the same postsecondary institution.

(4) The advisory council serves at the pleasure of the board of regents.

Section 6. There is a new R.C.M. section numbered 75-9406 that reads as follows:

75-9406. Program administration. In consultation with the program advisory council, the commissioner of higher education shall:

(1) adopt rules to administer the resident student financial assistance program, including the establishment of criteria for student eligibility which shall consider financial need;

(2) determine the amount of individual grants;

(3) establish procedures for fiscal control, fund accounting, and necessary reports; and

(4) apply for, receive, and administer federal and private moneys.

Section 7. There is a new R.C.M. section numbered 75-9407 that reads as follows:

75-9407. Deposit of moneys. Funds received by the commissioner of higher education for the resident student financial assistance program, including funds for the administration of this act, shall be deposited in the state treasury.

Section 8. There is a new R.C.M. section numbered 75-9408 that reads as follows:

75-9408. Administrative costs. Administration costs not provided by the federal grant that are attributable to this act shall be negotiated and charged to the individual participants.

Approved April 29, 1977.

HeinOnline -- 1977 vol. II 1651 1977

CHAPTER NO. 516

AN ACT TO REVISE LICENSE RENEWAL AND DISCIPLINARY PROVISIONS RELATING TO THE PRACTICE OF CHIROPRACTIC; PROHIBITING MUNICIPALITIES AND OTHER POLITICAL SUBDIVISIONS OF THE STATE FROM IMPOSING LICENSE FEES OR TAXES FOR THE PRACTICE OF CHIROPRACTIC; AMENDING SECTION 66-512, R.C.M. 1947; AND REPEALING SECTION 66-510, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-512, R.C.M. 1947, is amended to read as follows:

"**66-512. Renewal of license.** *(1)* A license expires on September 1 of each year, and shall be renewed by the department, on payment of a renewal fee of not more than *$50*, as set by the board, and the presentation of evidence satisfactory to the board that the licensee, in the year preceding the application for renewal, attended *and successfully completed a postgraduate* educational program for chiropractors *consisting of monitored classroom time conducted by instructors from accredited colleges of chiropractic in subjects designated and* approved by the board. However, the board may authorize the department to issue renewals, but not consecutive renewals, on a showing satisfactory to the board that attendance at the educational programs was unavoidably prevented; and new licensees during the six (6) months preceding September 1, by examination, shall be granted renewal licenses without attending the educational programs.

(2) No license fee or license tax may be imposed upon doctors of chiropractic as a condition to the practice of their profession by a municipality or any other political subdivision of the state."

Section 2. There is a new R.C.M. section numbered 66-510.1 that reads as follows:

66-510.1. Unprofessional conduct. As used in this chapter, "unprofessional conduct" means:

(1) resorting to fraud, misrepresentation, or deception in applying for or securing a license or in taking the examination provided for in this chapter;

(2) obtaining any form of compensation, directly or indirectly, by the misrepresentation that a manifestly incurable disease, injury, or condition can be cured;

(3) practicing chiropractic under a false or assumed name or impersonating another practitioner of like or different name;

(4) knowingly disobeying a rule of the board;

(5) conviction of a criminal offense involving moral turpitude. A certi-

HeinOnline -- 1977 vol. II 1652 1977

fied copy of the judgment of conviction is conclusive evidence of the conviction. This subsection is subject to Title 66, chapter 40.

(6) habitual intemperance or excessive use of narcotic drugs, alcohol, or any other substance to the extent that such use impairs the user's physical or mental professional capability;

(7) administering, dispensing, or prescribing a narcotic or hallucinatory drug, as defined by the federal food and drug administration or successors;

(8) resorting to fraud, misrepresentation, or deception in the examination or treatment of a person or in billing or reporting to a person, company, institution, or organization;

(9) testifying in court on a contingency basis;

(10) conspiring to misrepresent or knowingly misrepresenting physical conditions in order to increase or decrease a settlement or award;

(11) aiding or abetting, in the practice of chiropractic, a person not licensed to practice chiropractic or a person whose license is suspended;

(12) practicing chiropractic as the partner, agent, or employee of or in joint venture with a person not licensed to practice chiropractic in this state. However, this does not prohibit incorporation as a professional service corporation under Title 15, chapter 21, or prevent a single consultation with or a single treatment by a person licensed to practice chiropractic in another state or territory of the United States or a foreign country.

(13) violating, attempting or conspiring to violate, or aiding or abetting in the violation of this chapter or the rules adopted under it; or

(14) conduct unbecoming a person licensed to practice chiropractic or detrimental to the best interests of the public.

Section 3. There is a new R.C.M. section numbered 66-510.2 that reads as follows:

66-510.2. Revocation or suspension of license. (1) The board may make an investigation whenever it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

(a) has a mental or physical condition such that he is unable to safely engage in the practice of chiropractic;

(b) has been declared incompetent or seriously mentally ill by a court of competent jurisdiction and thereafter has not been declared competent or released from supervision;

(c) has procured his license through mistake;

(d) has been guilty of unprofessional conduct;

(e) has practiced chiropractic while his license was suspended or revoked;

(f) has, while under probation, violated its terms.

HeinOnline -- 1977 vol. II 1653 1977

(2) The investigation shall be for the purpose of determining the probability of the existence of these conditions or the commission of these offenses and may include requiring the person to submit to a physical or mental examination, or both, by a physician or physicians selected by the board, if it appears to be in the best interests of the public that this evaluation be secured. The board may examine the hospital records and reports of the licensee as part of the examination and copies of these shall be released to the board on written request. If the board has reasonable cause to believe that this probability exists, the department shall mail to the person, at his last address of record with the department, a specification of the charges against him, together with a written notice of the time and place of the hearing on such charges, advising him that he may be present in person and with counsel if he so desires to offer evidence and be heard in his defense. The time fixed for hearing may not be less than 30 days from the date of mailing the notice.

(3) Any person, including a member of the board, may file a sworn complaint with the department against a licensed chiropractor charging him with any of the offenses or conditions set forth in 66-510.1 or subsection (1) of this section, which complaint shall set forth a specification of the charges. When the complaint has been filed, the board may make an investigation as provided by this section or may proceed to hearing. The department shall mail a copy of the complaint to the person charged, together with notice of hearing as provided in subsection (2) of this section.

(4) After the hearing the board shall adopt a resolution finding that the offenses charged have or have not been committed or that the conditions charged do or do not exist. If the finding is in the negative, the board shall dismiss the charges. If the finding is in the affirmative, the board shall:

(a) revoke the license;

(b) suspend the licensee's right to practice for a period not to exceed 1 year;

(c) suspend its judgment of revocation on terms and conditions determined by the board;

(d) place the licensee on probation; or

(e) take any other disciplinary action which the board in its discretion considers proper.

(5) In cases of revocation, suspension, or probation, the department shall record the facts of the case and all actions of the board in relation thereto.

(6) On the expiration of a term of suspension, the licensee shall be reinstated by the board if he furnishes evidence, satisfactory to the board, that he is then of good moral character and conduct or restored to good health and that he has not practiced chiropractic during the term of suspension. If the evidence fails to establish such facts to the satisfaction of the board, the board shall proceed to hearing on revocation with notice as provided in subsection (2) of this section.

HeinOnline -- 1977 vol. II 1654 1977

Section 4. There is a new R.C.M. section numbered 66-510.3 that reads as follows:

66-510.3. Reconsideration of board action — fee for restoration of license. (1) At any time after refusal, suspension, or revocation of license or placement on probation or any other disciplinary action, the board may, on its own motion or on application, reconsider its prior action and reverse, rescind, or modify such action.

(2) A person whose license has been revoked and later restored shall pay a fee of $50 for the restoration.

Section 5. **Repealer.** Section 66-510, R.C.M. 1947, is repealed.

Approved April 29, 1977.

CHAPTER NO. 517

AN ACT TO CREATE A NEW JUDICIAL DISTRICT, ALTER CERTAIN JUDICIAL DISTRICT BOUNDARIES, AND CHANGE THE NUMBER OF JUDGES IN CERTAIN JUDICIAL DISTRICTS; AMENDING SECTIONS 93-301 AND 93-302, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 93-301, R.C.M. 1947, is amended to read as follows:

"**93-301. Judicial districts defined.** In this state there are *19* judicial districts, distributed as follows:

First district: Lewis and Clark and Broadwater counties.

Second district: Silver Bow *County*.

Third district: Deer Lodge, Granite, and Powell counties.

Fourth district: Missoula, Mineral, Lake, Ravalli, and Sanders counties.

Fifth district: Beaverhead, Jefferson, and Madison counties.

Sixth district: Park and Sweet Grass counties.

Seventh district: Dawson, McCone, Richland, and Wibaux counties.

Eighth district: Cascade and Chouteau counties.

Ninth district: Teton, Pondera, Toole, and Glacier counties.

Tenth district: Fergus, Judith Basin, and Petroleum counties.

Eleventh district: Flathead *County*.

Twelfth district: Liberty, Hill, and Blaine counties.

Thirteenth district: Yellowstone, Big Horn, Carbon, Stillwater, and Treasure counties.

HeinOnline -- 1977 vol. II 1655 1977

Fourteenth district: Meagher, Wheatland, Golden Valley, and Musselshell counties.

Fifteenth district: Roosevelt, Daniels, and Sheridan counties.

Sixteenth district: Custer, Carter, Fallon, Prairie, Powder River, Garfield, and Rosebud counties.

Seventeenth district: Phillips and Valley counties.

Eighteenth district: Gallatin *County.*

Nineteenth district: Lincoln County."

Section 2. Section 93-302, R.C.M. 1947, is amended to read as follows:

"**93-302. Number of judges.** In each judicial district there must be the following number of judges of the district court, who must be elected by the qualified voters of the district and whose term of office must be 6 years: *in* the first, second, eleventh, sixteenth, *and eighteenth,* two judges each*;* in the *fourth and eighth,* three judges*; in the thirteenth, four judges;* and in all other districts, one judge each."

Section 3. New judges — how selected. The judgeships created by this act in previously existing districts shall be filled initially at the 1978 general election and shall take office on January 1, 1979. The judge in the 19th judicial district shall be appointed by the governor under the provisions of 93-705 through 93-717.

Approved April 29, 1977.

CHAPTER NO. 518

AN ACT FOR THE RECODIFICATION AND GENERAL REVISION OF CHAPTERS 1 AND 4 OF TITLE 51, R.C.M. 1947, RELATING TO UNFAIR TRADE PRACTICES, AND TO AMEND SECTIONS 8-103.4, 82A-401.1, 82A-404, AND 84-2412, R.C.M. 1947, TO STRIKE THE REFERENCE TO THE UNFAIR PRACTICES ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 51-117, R.C.M. 1947, is renumbered 51-501, and is amended to read as follows:

"**51-501. Purpose.** The legislature declares that the purpose of this *chapter* is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This *chapter* shall be literally construed *so* that its beneficial purposes may be subserved."

Section 2. There is a new R.C.M. section numbered 51-502 that reads as follows:

51-502. Definitions. As used in this chapter, unless the context indicates otherwise, the following definitions apply:

HeinOnline -- 1977 vol. II 1656 1977

(1) "Department" means the department of business regulation provided for in 82A-401.

(2) "Article of commerce" includes but is not limited to any commodity, product, service or output of a service trade or any product of the soil. A product or service of a public utility is not included within the term "article of commerce".

(3) "Cost" as applied to production includes the cost of raw materials, labor, and all overhead expenses of the producer.

(4) "Cost" as applied to distribution means either the invoice price of the article or product sold or the cost to the dealer or vendor for replacing the article or product in the quantity last purchased within 90 days prior to the sale of the article or product, whichever is lesser, less all trade discounts except customary cash discounts, plus the cost of doing business by the vendor.

(5) "Customary cash discount" means any allowance not exceeding 2%, whether a part of a larger discount or not, made to a wholesale or retail vendor when such vendor pays for merchandise within a limited or specified time.

(6) "Cost of doing business" or "overhead expense" includes all costs of doing business incurred in the conduct of a business and includes, without being limited to, the following items of expense:

(a) labor (including salaries of executives and officers);

(b) rent;

(c) interest on borrowed capital;

(d) depreciation;

(e) selling cost;

(f) maintenance of equipment;

(g) delivery costs;

(h) credit losses;

(i) all types of licenses;

(j) taxes;

(k) insurance and advertising.

(7) "Person" includes any person, partnership, firm, corporation, joint-stock company, or other association engaged in business within this state.

(8) "Vendor" includes not only any person acting as one known generally and legally as a vendor but also any person who performs work upon, renovates, alters, or improves any personal property belonging to another person.

(9) "Business" includes any person, as defined in (7), domestic or foreign, engaged in the production, manufacture, distribution, purchasing, or sale of any article of commerce within the state of Montana.

HeinOnline -- 1977 vol. II 1657 1977

Section 3. Section 51-102, R.C.M. 1947, is renumbered 51-503, and is amended to read as follows:

"**51-503. Persons responsible.** Any person who, either as director, officer, or agent of any firm or corporation or as agent of any person, assists or aids, directly or indirectly, in *a* violation *of this chapter is* responsible therefor equally with the person, firm, or corporation for whom or which he acts."

Section 4. There is a new R.C.M. section numbered 51-504 that reads as follows:

51-504. Proof of intent. In an injunction proceeding or in the prosecution of a person acting as an officer, director, or agent, it is sufficient to allege and prove the unlawful intent of the person, firm, or corporation for whom or which he acts.

Section 5. There is a new R.C.M. section numbered 51-505 that reads as follows:

51-505. Unlawful restraint of trade. It is unlawful for a person or group of persons, directly or indirectly:

(1) to enter an agreement for the purpose of fixing the price or regulating the production of an article of commerce;

(2) for the purpose of creating or carrying out any restriction in trade, to:

(a) limit productions;

(b) increase or reduce the price of merchandise or commodities;

(c) prevent competition in the distribution or sale of merchandise or commodities;

(d) fix a standard or figure whereby the price of an article of commerce intended for sale, use, or consumption will be in any way controlled;

(e) agree to add to a bid for any contract an amount, fixed by percentage or otherwise, for the purpose of making a refund or sharing costs of bidding with any other bidder;

(f) return a part of any amount added to a bid by collusive agreement among bidders to any person;

(g) create a monopoly in the manufacture, sale, or transportation of an article of commerce;

(h) enter into an agreement which binds any person not to manufacture, sell, or transport an article of commerce below a common standard or figure or which keeps such article or transportation at a fixed or graduated figure or by which the price of such article is settled so as to preclude unrestricted competition.

Section 6. Section 51-402, R.C.M. 1947, is renumbered 51-506, and is amended to read as follows:

HeinOnline -- 1977 vol. II 1658 1977

"**51-506. Labor excepted.** The provisions of *51-505* do not apply to any arrangements, agreement, or combination between laborers made with the object of lessening the number of hours of labor or increasing wages."

Section 7. There is a new R.C.M. section numbered 51-507 that reads as follows:

51-507. Unfair competition in sales. (1) It is unlawful for any business, with the intent to destroy the competition of any regular established dealer of any article of commerce or to prevent the competition of any person who in good faith intends or attempts to become such dealer, to discriminate between different localities in this state by selling or furnishing such article at a lower rate in one locality than in another, after making allowance for difference, if any, in the grade, quality, quantity, and actual cost of transportation from the point of production or manufacture of the article.

(2) This section does not prohibit the meeting in good faith of a competitive rate or prevent a reasonable classification of service by public utilities for the purpose of establishing rates.

(3) The prohibition against locality discrimination includes any scheme of special rebates, collateral contracts, or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this section.

(4) Willfully and knowingly advertising, offering for sale, or selling any commodity at less than the price stipulated in a contract entered into under this section, whether or not the person so advertising, offering for sale, or selling is a party to such contract, is unfair competition, and a person damaged thereby may bring an action.

Section 8. There is a new R.C.M. section numbered 51-508 that reads as follows:

51-508. Unfair competition in purchasing. (1) Any business which, for the purpose of creating a monopoly or destroying the business of a regularly established dealer or preventing the competition of any person who in good faith intends or attempts to become such dealer discriminates between different persons or localities of this state by purchasing any article of commerce at a higher rate or price in one locality than in another, after making due allowance for the difference in the actual cost of transportation from the point of purchase to the point of manufacture, sale, storage, or distribution and for the difference in the grade and quality of such article, is guilty of unfair discrimination, which is prohibited and unlawful.

(2) Proof that any person has paid a higher rate or price for any article of commerce in one locality than in another, after making due allowance for the difference in the actual cost of transportation and for the difference in the grade and quality of such article, shall be prima facie evidence of a violation of this section.

(3) The payment of a higher rate or price in one locality than in another, after making such allowance provided above, is not unfair dis-

HeinOnline -- 1977 vol. II 1659 1977

crimination provided such higher rate or price is paid for the purpose of meeting the rate or price set by a competitor in such locality. The burden of proof of such fact is upon the person charged with unfair discrimination.

Section 9. There is a new R.C.M. section numbered 51-509 that reads as follows:

51-509. Sales at less than cost forbidden. It is unlawful for a vendor to sell, offer for sale, or advertise for sale any article of commerce at less than the cost thereof to the vendor, or to give, offer to give, or advertise the intent to give away any article of commerce for the purpose of injuring competitors and destroying competition.

Section 10. There is a new R.C.M. section numbered 51-510 that reads as follows:

51-510. Cost survey as evidence of cost. Whenever a particular trade or industry, of which the person complained against is a member, has an established cost survey for the locality in which the offense is committed, such cost survey is competent evidence to be used in proving the costs of the person complained against.

Section 11. Section 51-114, R.C.M. 1947, is renumbered 51-511, and is amended to read as follows:

"**51-511. Establishing cost survey.** (1) The department shall, whenever application has been made by 10 or more persons within a particular trade or business, establish the cost survey provided for in *51-510*. When petition for a cost survey has been so presented to the department, the department shall, as soon as possible, fix a time for a public hearing upon the question of whether the cost survey should be established, *and if so, upon the matter of establishing such cost survey*. The hearing shall be held at the office of the department and upon that notice which the department may require *by rule*. However, notice of the hearing shall be published for at least 2 successive weeks in the daily newspaper or newspapers as the department may designate as most commonly circulated in the counties to be affected by the cost survey. The notice shall further state the locality or area in respect to which the cost survey is proposed to be established and the particular trade or business to be affected by it.

(2) At the time fixed in the notice any person may appear and be heard by the department upon all questions to be determined by it as provided in this section. If the department determines that a cost survey *should* be established, it shall at the same hearing proceed to classify and define the particular trade or business, or parts thereof, to be affected, determine and delimit the particular area within which the trade or business *will* be affected, and find and determine the probable "cost of doing business" or "overhead expense", stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the trade or business within the area.

(3) *If* the department determines that the probable "cost of doing business" or "overhead expense" stated in percentage of invoice or replacement cost which would probably be incurred by the most efficient person in the

HeinOnline -- 1977 vol. II 1660 1977

trade or business is the same for the entire state, then the department may, upon proper notice given as provided in this section, create one trade area embracing the entire state.

(4) The percentage so determined shall be presumed to be the actual "cost of doing business" and "overhead expense" of any person in the trade or business and within the area affected by the cost survey."

Section 12. Section 51-104, R.C.M. 1947, is renumbered 51-512, and is amended to read as follows:

"**51-512. Forced sales not basis of cost price.** In establishing the cost of a given article or product to the distributor and vendor, the invoice cost of *the* article or product purchased at a forced, bankrupt, closeout, or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of *the* date of sale of *the* article or product replaced through the ordinary channels of trade, unless:

(1) the article or product is kept separate from goods purchased in the ordinary channels of trade;

(2) the article or product is advertised and sold as merchandise purchased at a forced, bankrupt, *or* closeout sale or by means other than through the ordinary channels of trade, and *such* advertising *states* the conditions under which *the* goods were purchased and the quantity of merchandise to be sold or offered for sale."

Section 13. Section 51-107, R.C.M. 1947, is renumbered 51-513, and is amended to read as follows:

"**51-513. Sales excepted.** *Sections 51-509, 51-510, and 51-512 do* not apply to any sale made:

(1) in closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any *article of commerce;*

(2) of seasonal goods;

(3) in good faith of perishable goods to prevent loss to the vendor by spoilage or depreciation, provided notice is given to the public thereof;

(4) when the goods are damaged or deteriorated in quality and notice is given to the public thereof;

(5) by an officer acting under the orders of any court;

(6) in a good faith endeavor to meet the legal prices of a competitor selling the same article *of commerce* in the same locality or trade area; *or*

(7) to the state of Montana or any of its institutions."

Section 14. Section 51-106, R.C.M. 1947, is renumbered 51-514, and is amended to read as follows:

"**51-514. Fair price for agricultural products.** (1) The following method shall be used in determining fair prices for agricultural products

HeinOnline -- 1977 vol. II 1661 1977

sold on local markets in a trade area, district, or city in which the major portion of an agricultural commodity or product is produced within or adjacent to the trade area, city, or district:

(a) When 75% of *the* producers of an agricultural product or commodity marketing those products or commodities within a trade area, district, or city determine what is a fair price based upon competitive and other factors for their product or commodity, it shall be the fair price for that product or commodity under the terms of this *chapter.*

(b) Those producers through their agents shall file with the department the fair price and request a hearing for the establishment of fair prices to jobbers, wholesalers, retailers, and consumers of the agricultural products or commodities. *An* organization representing consumers may not be denied representation at the *hearing.*

(2) After the establishment of a schedule of fair prices for the agricultural products or commodities, it is a violation of this *chapter* for a producer, jobber, wholesaler, or retailer to sell or buy an agricultural commodity or product below the price established by the department. *Such* action is punishable under the terms provided in this *chapter.*"

Section 15. Section 51-108, R.C.M. 1947, is renumbered 51-515, and is amended to read as follows:

"**51-515. Rebates forbidden.** *(1)* The secret payment or allowance of rebates, refunds, commissions, or unearned discounts, whether in the form of money or otherwise, or secretly extending to certain purchasers special services or privileges not extended to all purchasers purchasing upon like terms and conditions, to the injury of a competitor and *when* such payment or allowance tends to destroy competition, is an unfair trade practice and any person resorting to such trade practice *is* guilty of a misdemeanor and on conviction *is* subject to the penalties set out in *51-524.*

(2) However, nothing in this *section prevents* a *cooperative* association, organized and operating on a true *cooperative* basis, from returning to the members, producers, or consumers the whole or any part of the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to, or through the association."

Section 16. Section 51-411, R.C.M. 1947, is renumbered 51-516, and is amended to read as follows:

"**51-516. Pooling of grain prohibited.** *(1)* It *is* unlawful for any person engaged in the buying, selling, or handling of grain in any public local warehouse in this state or for the local agent in charge of such warehouse or any other agent of the person operating the same to enter into *a* contract, agreement, or understanding with any other person owning or operating any other public local warehouse at any railway station *or with* its agent whereby*:*

(a) the amount of grain to be received or handled by *the* warehouses at such station *is to* be equalized or pooled between *the* warehouses;

(b) the profits or earnings derived from *the* warehouses *are to* be divided, pooled, or apportioned in any manner*;* or

HeinOnline -- 1977 vol. II 1662 1977

(c) the price to be paid for any kind of grain at such station *is to* be fixed or in any manner affected.

(2) Each day of the continuance of any such agreement, contract, or understanding *constitutes* a separate offense."

Section 17. Section 51-413, R.C.M. 1947, is renumbered 51-517, and is amended to read as follows:

"**51-517. Destruction of food.** It *is* unlawful for any person to destroy or to withhold from sale for a period of time which makes it necessary to destroy, in restraint of trade, any fish, fowl, animal, vegetable, or other *product* or *article* which *is* customary or proper food for human beings and *is* in fit sanitary condition to be used as such."

Section 18. Section 51-116, R.C.M. 1947, is renumbered 51-518, and is amended to read as follows:

"**51-518. Alteration of invoices prohibited.** It is unlawful for a person to change, alter, substitute, or falsify an invoice *if* the practice tends to injure a competitor, destroy competition, or mislead a court or the department. *Such* practice is unfair trade practice and a person resorting to that trade practice is guilty of a misdemeanor and is subject to the penalties provided in *51-524*."

Section 19. Section 51-113, R.C.M. 1947, is renumbered 51-519, and is amended to read as follows:

"**51-519. Enforcement by department.** (1) The department shall prevent a person from violating any of the provisions of this chapter.

(2) Upon receiving notice that a person is violating or has violated any of the provisions of this chapter, the department shall immediately *direct* the person giving *the* notice either to appear before the director of the department or to make a written reply to show probable cause of *a* violation. If probable cause is shown, the department *shall:*

(a) make its own investigation;

(b) within 60 days of the finding of probable cause make a written report of its investigation; and

(c) mail a copy of its findings to the person initially giving notice of a violation.

(3) *(a)* If the department, *after an investigation,* has reason to believe that the person has been or is engaging in any course of conduct or doing any act in violation of this chapter and if it appears to the department that a proceeding by it would be *in* the interest of the public, it shall issue and serve upon the person a complaint stating *the* charges and containing a notice of a hearing at a place *and upon a day* not less than 5 days after the service of the complaint.

(b) A complaint may be amended by the department in its discretion at any time 5 days prior to the issuance of an order based on it.

(c) The person so complained *against* may appear at the place and time

HeinOnline -- 1977 vol. II 1663 1977

so fixed and show cause why an order should not be entered by the department requiring *such* person to stop the violation of the law charged in the complaint.

(d) Any person may make application and upon good cause shown may be allowed by the department to intervene and appear in the proceeding by counsel or in person.

(e) The testimony in the proceeding shall be reduced to writing and filed *with* the department.

(f) If upon the hearing the department believes that the act or conduct in question is prohibited by this chapter, it shall make *findings of fact* in writing and issue and cause to be served on *the* person *charged* an order requiring *such* person to stop the acts or conduct.

(g) Until a transcript of the record in the hearing has been filed in a district court, the department may at any time, upon the notice and in the manner it considers proper, modify or set aside, in whole or in part, *a* report or *an* order made or issued by it under this section.

(4) A court reviewing an order of the department may issue such writs as are ancillary to its jurisdiction or are necessary in its judgment to prevent injury to the public or to competitors pending *the outcome of* the suit.

(5) To the extent that the order of the department is affirmed, the court shall thereupon issue its own order commanding obedience to the terms of the order of the department.

(6) Proceedings *under this section* shall be given precedence over other civil cases pending *in the district court* and shall be in every way expedited.

(7) A person who violates an order of the department after it has become final and while the order is in effect shall forfeit and pay to *the* state a penalty of not more than $1,000 for each violation.

(8) The remedies and method of enforcement of this chapter provided for in this section are concurrent and in addition to the other remedies provided in this chapter."

Section 20. Section 51-115, R.C.M. 1947, is renumbered 51-520, and is amended to read as follows:

"**51-520. Investigations.** *(1)* The department, for the purpose of conducting hearings and investigations which in the opinion of the department are necessary and proper for the exercise of the powers vested in it by this chapter, shall at all reasonable times have access to any evidence *concerning* a person being investigated or proceeded against that relates to any matter under investigation or in question *and the right to copy such evidence. The* department may issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under investigation or in question before the department or before its duly authorized agent conducting the investigation. An agent, duly authorized by the department for those purposes, may administer oaths and affirmations, examine witnesses, and receive

HeinOnline -- 1977 vol. II 1664 1977

evidence. The attendance of witnesses and the production of evidence may be required from any place in this state at any designated place of hearing.

(2) *Upon application by the department in a* case of contumacy or refusal to obey a subpoena issued to a person, *a* district court of this state, within *the* district where the inquiry is carried on or where a person guilty of contumacy or refusal to obey is found, resides, or transacts business, has jurisdiction to issue to that person an order requiring him to appear before the department or its duly authorized agent and to produce evidence if so ordered or to give testimony regarding the matter under investigation. Failure to obey the order of the court may be punished by the court as a contempt.

(3) A person may not be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpoena of the department on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. An individual may not be prosecuted or subjected to a penalty or forfeiture for or on account of a transaction, matter, or thing concerning which he is compelled *to testify or produce evidence,* after having claimed his privilege against *self-incrimination. An* individual so testifying is not exempt from prosecution and punishment for perjury committed in testifying."

Section 21. Section 51-111, R.C.M. 1947, is renumbered 51-521, and is amended to read as follows:

"**51-521. Injunctions — damages — production of evidence.** *(1)* Any person *if injured thereby, or the attorney general,* may maintain an action to enjoin a continuance of *an* act in violation of *51-505 through 51-518, and* for the recovery of damages. If in such action the court *finds* that the defendant is violating or has violated any of the provisions of *51-505 through 51-518,* it shall enjoin the defendant from a continuance thereof. It *is* not necessary *to allege or prove* actual damages to the plaintiff.

(2) In addition to such injunctive relief, the plaintiff *is* entitled to recover from the defendant three times the amount of actual damages sustained.

(3) A defendant in an action brought under this section may be required to testify under the *Montana Rules* of Civil Procedure. *In* addition the books and records of any such defendant may be brought into court and introduced *into evidence by reference. No* information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under *51-505 through 51-518 and 51-524.*"

Section 22. Section 51-110, R.C.M. 1947, is renumbered 51-522, and is amended to read as follows:

"**51-522. Recovery on illegal contracts forbidden.** *A* contract, express or implied, made by *a* person in violation of any of the provisions of *51-505 through 51-518* is an illegal contract and no recovery thereon *may* be had."

HeinOnline -- 1977 vol. II 1665 1977

Section 23. Section 51-109, R.C.M. 1947, is renumbered 51-523, and is amended to read as follows:

"**51-523. Department to institute suit.** Upon the third violation of any of the provisions of *51-505 through 51-518* by any corporation, the *department shall* institute proper suits or quo warranto proceedings in *a* court of competent jurisdiction for the forfeiture of its charter, rights, franchises or privileges, and powers exercised by such corporation and to permanently enjoin it from transacting business in this state. If in such action the court *finds* that *the* corporation is violating or has violated any of the provisions of *51-505 through 51-518,* it *shall* enjoin *the* corporation from doing business in this state permanently or for such time as the court *orders,* or *shall* annul the charter or revoke the franchise of such corporation."

Section 24. There is a new R.C.M. section numbered 51-524 that reads as follows:

51-524. Penalties. (1) Except as otherwise provided in this section, a person, whether as principal, agent, officer, or director, who violates any of the provisions of 51-505 through 51-518, is guilty of a misdemeanor for each single violation and upon conviction thereof shall be fined not less than $100 or more than $1,000 or imprisoned for a term not to exceed 6 months or both.

(2) A violation of 51-505 is punishable by imprisonment in the county jail for a period not less than 24 hours or more than 1 year or by fine not exceeding $25,000 or both.

(3) When there is a violation of 51-516, in addition to the penalty specified in (1), the court before which a conviction is had shall, within 10 days after judgment of conviction is given, forward a certified copy of the judgment to the department of agriculture, and that department shall revoke any license issued to the person so convicted. In such case no new license may be granted to the person whose license is revoked, nor to anyone either directly or indirectly engaged with him in such business, for a period of 1 year.

Section 25. Section 8-103.4, R.C.M. 1947, is amended to read as follows:

"**8-103.4. Approval of carrier agreements.** (1) Any carrier as defined in 8-101(h) which is a party to an agreement between or among two or more carriers relating to rates, fares, classifications, divisions, allowances, or charges (including charges between carriers and compensation paid or received for the use of facilities and equipment), or rules pertaining thereto, or procedures for the joint consideration, initiation or establishment thereof, may, under such rules as the commission prescribes, apply to the public service commission for approval of the agreement and the commission shall by order approve any agreement, if approval thereof is not prohibited by subsections (3), (4), or (5) of this section. The approval of the commission shall be granted only upon such terms and conditions as the commission may prescribe as necessary to enable it to grant its approval in accordance with this subsection.

HeinOnline -- 1977 vol. II 1666 1977

(2) Each conference, bureau, committee, or other organization established or continued pursuant to any agreement approved by the commission and the provisions of this section, shall maintain such accounts, records, files, and memoranda and shall submit to the commission such reports, as may be prescribed by the commission, and all such accounts, records, files, and memoranda shall be subject to inspection by the commission or its duly authorized representative.

(3) The commission may not approve under this section any agreement between a carrier by highway and a carrier by rail unless it finds that such agreement is of the character described in this section and is limited to matters relating to the transportation under joint rates or over through routes.

(4) The commission may not approve under this section any agreement which it finds is an agreement with respect to pooling or division of traffic, service, or earnings.

(5) The commission may not approve under this section any agreement which establishes a procedure for the determination of any matter through joint consideration unless it finds that under the agreement there is accorded to each party the free and unrestrained right to take independent action either before or after any determination arrived at through such procedure.

(6) The commission may, upon complaint or upon its own initiative without complaint, investigate and determine whether any agreement previously approved by it under this section, or any terms or conditions upon which such approval was granted, is not in conformity with this section or whether any such *terms* or conditions *are* not necessary for the purpose of conformity with this section. After such investigation, the commission may by order terminate or modify its approval of such agreement if it finds such action necessary to insure conformity with this section, and may modify the terms and conditions upon which such approval was granted to the extent it finds necessary to insure conformity with this section or to the extent it finds its terms and conditions unnecessary to insure such conformity. The effective date of any order terminating or modifying approval, or modifying terms and conditions, may be postponed for such period as the commission determines is reasonably necessary to avoid undue hardship.

(7) No order may be entered under this section except after interested parties have been afforded reasonable opportunity for hearing.

(8) The parties to any agreement approved by the commission under this section and other persons are, if the approval of such agreement is not prohibited by subsections (3), (4), or (5) of this section, hereby exempted from Montana antitrust laws with respect to such agreement, including *chapter 5, Title 51* or any other statutes prohibiting monopolies, price fixing, or restraint of trade.

(9) Any action of the commission under this section in approving an agreement, or in denying an application for such approval, or in terminating or modifying its approval of an agreement, or in prescribing terms

HeinOnline -- 1977 vol. II 1667 1977

and conditions upon which its approval is to be granted, or in modifying such terms and conditions, shall be construed as having effect solely with reference to the applicability of subsection (8)."

Section 26. Section 82A-401.1, R.C.M. 1947, is amended to read as follows:

"**82A-401.1. Functions of department.** The department and its units are responsible for administering laws pertaining to business regulation, including, but not limited to, laws pertaining to:

(1) *banks* and banking (Title 5, chapters 1 through 14);

(2) *building* and loan associations (Title 7, chapter 1);

(3) *credit* unions (Title 14, chapter 1);

(4) *consumer* protection (Title 85, chapter 4);

(5) *supervision* of the milk industry (Title 27, chapter 4);

(6) *consumer* loans (Title 47, chapter 2);

(7) *sale* and marketing of coal (Title 50, chapter 6);

(8) *unfair* business practices (Title 51, chapter *5*);

(9) *regulation* of petroleum products (Title 60, chapter 2);

(10) *retail* installment sales (Title 74, chapter 6);

(11) *standard* weights and measures (Title 90, chapter 1);

(12) *proprietary postsecondary* educational institutions (Title 75, chapter 92)."

Section 27. Section 82A-404, R.C.M. 1947, is amended to read as follows:

"**82A-404. Board of trade abolished — functions transferred.** (1) The board of trade, provided for in *Title* 27, chapter 3, is abolished and its functions in *Title* 51, chapter *5* are transferred to the department of business regulation. Unless inconsistent with this act, any reference in the Revised Codes of Montana, 1947, to the Montana state board of food distributors or the board of trade means the department of business regulation."

Section 28. Section 84-2412, R.C.M. 1947, is amended to read as follows:

"**84-2412. Employment of help — disposal of license money.** The department of revenue is hereby authorized to employ such clerical and field assistance as necessary to carry out and to administer the provisions of this act. All money collected under the provisions of this act shall be paid into the state treasury, with $5 of the fee collected from each store license sold credited to an earmarked revenue fund for administration of *chapter 5, Title 51,* by the department of business regulation and the rest to the credit of the general fund."

Section 29. **Repealer.** Sections 51-101, 51-101.1, 51-103, 51-105,

HeinOnline -- 1977 vol. II 1668 1977

51-112, 51-118, 51-401, 51-403, 51-404, 51-405, 51-406, 51-407, 51-408, 51-409, 51-410, 51-412, and 51-414, R.C.M. 1947, are repealed.

Approved April 29, 1977.

CHAPTER NO. 519

AN ACT TO REVISE AND CLARIFY CERTAIN LAWS GOVERNING THE FIRE MARSHAL BUREAU; DIRECTING ESTABLISHMENT OF A FIRE MARSHAL ADVISORY COUNCIL; AMENDING SECTIONS 82-1201 AND 82-1202, R.C.M. 1947; AND REPEALING SECTION 82A-1208, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-1201, R.C.M. 1947, is amended to read as follows:

"**82-1201. Fire marshal — fire prevention advisory commission.** (1) There is *a* fire marshal *bureau in the department of justice* which is under the supervision and control of the *attorney general.*

(2) The *chief of the* fire marshal *bureau* shall be appointed by the *attorney general* add shall serve at his pleasure. *The chief of the fire marshal bureau is the state fire marshal.*

(3) A person appointed state fire marshal shall *have*:

(a) at least 10 years of progressively responsible experience in fire protection;

(b) a *2-year associate* degree in *fire protection* engineering from a recognized institution of higher education and 2 years' experience in fire protection; or

(c) a degree from a recognized institution of higher education in fire protection engineering or fire protection technology.

(4) *The attorney general shall create a fire marshal advisory council in accordance with procedures provided in 82A-110.*"

Section 2. Section 82-1202, R.C.M. 1947, is amended to read as follows:

"**82-1202. Powers and duties of state fire marshal.** *(1) For the purpose of reducing the state's fire loss, the* state fire marshal shall:

(a) make at least one inspection *a* year of each state institution and submit a copy of the report to the department of institutions with recommendations in regard to fire prevention, fire protection, and public safety;

(b) make at least one inspection *a* year of each unit of the Montana university system and submit a copy of the report to the *commissioner of higher education* with recommendations in regard to fire prevention, fire protection, and public safety;

HeinOnline -- 1977 vol. II 1669 1977

(c) inspect public, business, or industrial buildings and require conformance to law or rules promulgated under the provisions of this *chapter;*

(d) assist local fire and law enforcement authorities in arson investigations and supervise such investigations when, in his judgment, supervision is necessary;

(e) review all training programs on investigation of accidental and incendiary fires;

(f) provide fire prevention and fire protection information to public officials and the general public;

(g) encourage and assist local fire authorities in fire prevention programs and adopt standards and implement a program to encourage fire departments to meet such standards;

(h) be the state entity primarily responsible for promoting fire safety at the state level, and to represent the state in structural fire matters;

(i) encourage coordination of all services and agencies in structural fire matters to reduce duplication and fill voids in services;

(j) establish rules concerning responsibilities and procedures to be followed when there is a threat of explosive material in a building housing state offices.

(2) The state fire marshall may:

(a) adopt rules necessary for safeguarding life and property from the hazards of fire and explosion and carrying into effect the fire prevention laws of this state; and

(b) if necessary to safeguard life and property under rules promulgated pursuant to this section, maintain an action to enjoin the use of all or a portion of a building or restrain a specific activity until there is compliance with the rules.

(3) Rules relating to building and equipment standards covered by the state or a municipal building code are effective after approval by the department of administration and filing with the secretary of state.

(4) Rules shall be adopted as prescribed in the Montana Administrative Procedure Act."

Section 3. **Repealer.** Section 82A-1208, R.C.M. 1947, is repealed.

Approved April 29, 1977.

CHAPTER NO. 520

AN ACT TO REVISE THE MEMBERSHIP OF THE BOARD OF TRUSTEES OF THE MONTANA HISTORICAL SOCIETY; AMENDING SECTION 44-520, R.C.M. 1947.

HeinOnline -- 1977 vol. II 1670 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 44-520, R.C.M. 1947, is amended to read as follows:

"44-520. Qualifications of trustees. *(1)* Trustees shall be appointed because of their special interest in the accomplishment of the purposes of the society, their fitness for discharging these duties, and their willingness to devote time and effort in the public interest and to serve without compensation. The governor shall *insofar* as possible, appoint trustees from the various geographical areas of the state.

(2) Of the 15 trustees, at least one shall be a recognized historian and at least one shall be a recognized archeologist.

(3) The governor shall appoint these professionals to the board of trustees as vacancies occur."

Approved April 29, 1977.

CHAPTER NO. 521

AN ACT TO INCLUDE MOTOR VEHICLES USED IN STATE-APPROVED TRAFFIC EDUCATION PROGRAMS BY SCHOOL DISTRICTS UNDER THE DEFINITION OF NEW MOTOR VEHICLES FOR PURPOSES OF IMPOSITION OF THE NEW MOTOR VEHICLE SALES TAX; AMENDING SECTION 53-114, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-114, R.C.M. 1947, is amended to read as follows:

"53-114. Application for registration of motor vehicles and payment of license fees thereon — assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise. (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer wherein such motor vehicle is owned or taxable, an application for registration or reregistration, upon blank form to be prepared and furnished by the registrar of motor vehicles, which application shall contain:

(a) Name and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable.

(b) Name and address of conditional sales vendor, mortgagee, or holder of other lien against said motor vehicle, with statement of amount owing under such contract or lien.

(c) Description of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity.

(d) In case of reregistration, the license number for the preceding year.

HeinOnline -- 1977 vol. II 1671 1977

(e) Such other information as the registrar of motor vehicles may require.

(2) Whoever files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 84-101 shall before filing such application with the county treasurer submit the same to the county assessor of said county and said county assessor shall enter on said application in a space to be provided for that purpose the full and true and the assessed valuation of said vehicle for the year for which said application for registration is made.

(3) Whoever files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 84-101 shall upon the filing of said application *(a)* pay to the county treasurer the registration fee, as provided in 53-122 and 53-115, and shall also at such time *(b)* pay the personal property taxes assessed or the new motor vehicle sales tax against said vehicle for the current year of registration (unless the same shall have been theretofore paid for said year) before the application for registration or reregistration may be accepted by the county treasurer. The county treasurer is hereby empowered to make full and complete investigation of the tax status of said vehicle, and any applicant for registration or reregistration must submit proof with respect thereto from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on said motor vehicle, except a mobile home as defined in 84-101 shall be computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration and such determination shall be entered on the application form in a space provided therefor.

(5) Motor vehicles, except mobile homes as defined in 84-101 are hereby declared to be assessable for taxation as of and on the first day of January in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether or not the levy and tax may be a lien upon real property within the state of Montana, provided that in no event shall any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(6) The applicant for original registration of any wholly new and unused motor vehicle *or new motor vehicle furnished without charge by the dealer to the school district for use as a traffic education motor vehicle by a school district operating a state-approved traffic education program within the state of Montana, whether or not previously licensed or titled to the school district,* except a mobile home as defined in 84-101 acquired by original contract after the first day of January of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by 32-3315 irrespective of whether or not such vehicle was in the state of Montana on the first day of January of such year.

(7) Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1 in any year and upon payment of taxes, the county treasurer shall stamp on said application: "taxes on this vehicle due January 1 of current year

HeinOnline -- 1977 vol. II 1672 1977

paid by applicant, prior applicant, or owner, and this vehicle is eligible for registration".

Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January 1st in any year, the county treasurer shall indicate such fact by proper entry on said application.

(8) The registrar of motor vehicles shall have authority to make proper entry on any certificate of title to any motor vehicle respecting payment of taxes in accord with the facts.

(9) Motor vehicles subject to anniversary date registration as provided in 53-154 through 53-162 are exempt from the provisions of *subsections* (5), (6), and (7) of this section."

Approved April 29, 1977.

CHAPTER NO. 522

AN ACT REQUIRING THE DEPARTMENT OF JUSTICE TO COMPILE AND MAKE AVAILABLE IN PAMPHLET FORM ALL MONTANA STATUTES RELATING TO FIRE PROTECTION AND TO REVISE AND REPUBLISH THE SAME WITHIN 90 DAYS AFTER THE END OF EACH LEGISLATIVE SESSION.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82-425 that reads as follows:

82-425. Fire code. Within 90 days after the effective date of this act, the department of justice shall compile, index, and publish all Montana statutes relating to fire protection in the form of a pamphlet to be entitled "Fire Codes of Montana". The pamphlet shall be revised and republished within 90 days after the close of any regular legislative session in which an act relating to fire protection is adopted.

Section 2. There is a new R.C.M. section numbered 82-426 that reads as follows:

82-426. Distribution. Upon completion, a copy of the pamphlet, as amended, shall be mailed to each fire and sheriff department within Montana without charge. The department of justice shall make copies of the pamphlet and subsequent revisions available to the public.

Approved April 29, 1977.

CHAPTER NO. 523

AN ACT TO PROVIDE FOR UNEMPLOYMENT INSURANCE COVERAGE OF EMPLOYEES OF CERTAIN AGRICULTURE, DOMESTIC,

HeinOnline -- 1977 vol. II 1673 1977

AND NONPROFIT EMPLOYERS AS REQUIRED BY PUBLIC LAW 94-566 OF OCTOBER 20, 1976.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-148, R.C.M. 1947, is amended to read as follows:

"**87-148. Definitions.** As used in this act, unless the context clearly requires otherwise:

(a) "Annual payroll" means the total amount of wages paid by an employer (regardless of the time of payment) for employment during a calendar year.

(b) "Benefits" means the money payments payable to an individual, as provided in this act, with respect to his unemployment.

(c) "Base period" means the first four (4) of the last five (5) completed calendar quarters immediately preceding the first day of an individual's benefit year provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(d) "Benefit year" with respect to any individual means, the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files a valid claim, and thereafter the fifty-two (52) consecutive-week period beginning with the first day of the calendar week in which such individual files his next valid claim after the termination of his last preceding benefit year, provided that if such filing shall result in an overlapping of benefit years the new benefit year shall begin upon the first Sunday following the expiration of his last preceding benefit year provided, however, that in the case of a combined-wage claim pursuant to the arrangement approved by the secretary of labor of the United States, the base period shall be that applicable under the unemployment law of the paying state.

(e) "Calendar quarter" means the period of three (3) consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(f) "Division" means the employment security division of the department of labor and industry provided for in Title 82A, chapter 10, R.C.M. 1947.

(g) "Contributions" means the money payments to the state unemployment compensation fund required by this act.

(h) "Employing unit" means any individual or type of organization, including the state government, any of its political subdivisions or instrumentalities, any partnership, association, trust, estate, joint-stock company, insurance company or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor thereof, or the legal representative of a deceased person, which has or subsequent to January 1, 1936, had in its employ one (1) or more individuals performing

HeinOnline -- 1977 vol. II 1674 1977

services for it within this state; *except as provided under (i)(1)(A) and (B) of this section;* and all individuals performing services within this state for any employing unit which maintains two (2) or more separate establishments within this state shall be deemed to be employed by a single employing unit for all the purposes of this act. Each individual employed to perform or assist in performing the work of any agent or employee of an employing unit shall be deemed to be employed by such employing unit for the purposes of this act, whether such individual was hired or paid directly by such employing unit or by such agent or employee, provided the employing unit has actual or constructive knowledge of the work.

(i) "Employer" means:

(1) Any employing unit whose total annual payroll within either the current or preceding calendar year, exceeds the sum of five hundred dollars ($500); *except:*

(A) Agricultural labor exempted under (j)(9) of this section shall be considered employment subject to this act effective January 1, 1978, whenever the employing unit pays $40,000 or more in cash to workers for agricultural labor in any quarter in the current or preceding calendar year or employs 20 or more workers in agricultural labor on 20 days in 20 different weeks during the current or preceding calendar year. If an employer is otherwise subject to the act and has agricultural employment, all employees are covered under the act regardless of the amount of moneys expended for agricultural purposes.

(B) Domestic service exempted under (j)(9)(B) of this section shall be considered employment subject to this act, effective January 1, 1978, whenever the employing unit pays $1,000 or more in cash for domestic service in any quarter during the current or preceding calendar year. If an employer is otherwise subject to the act and has domestic employment, all employees are covered under the act regardless of the amount of moneys expended for domestic purposes.

(2) Any individual or employing unit which acquired the organization, trade or business, or substantially all of the assets thereof, of another which at the time of such acquisition was an employer subject to this act;

(3) Any individual or employing unit which acquired the organization, trade, or business, or substantially all the assets thereof, of another employing unit (not an employer subject to this act), and which, if subsequent to such acquisition it were treated as a single unit with such other employing unit would be an employer under paragraph (1) of this subsection;

(4) Any employing unit not an employer by reason of any other paragraph of this subsection for which, within either the current or preceding calendar year, service is or was performed with respect to which such employing unit is liable for any federal tax against which credit may be taken for contributions paid into a state unemployment fund, or an employing unit, which, as a condition for approval of this act for full tax credit against the tax imposed by the Federal Unemployment Tax Act, is required, pursuant to such act, to be an "employer" under this act.

HeinOnline -- 1977 vol. II 1675 1977

(5) Any employing unit which, having become an employer under paragraph (1), (2), or (3), or (4), has not, under section 87-110, ceased to be an employer subject to this act; or

(6) For the effective period of its election pursuant to section 87-110 (c) and (d) any other employing unit which has elected to become fully subject to this act.

(j) (1) "Employment" subject to other provisions of this subsection means service by an individual or by an officer of a corporation, including service in interstate commerce, performed for wages or under any contract of hire, written or oral, express or implied.

(A) For the purposes of this subsection any individual who is a member of a crew furnished by a crew leader to perform service in agricultural labor for any other person shall be treated as an employee of such crew leader:

(1) if such crew leader holds a valid certificate of registration under the Farm Labor Contractor Registration Act of 1963, or substantially all the members of such crew operate or maintain tractors, mechanized harvesting or cropdusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(2) if such individual is not an employee of such other person within the meaning of (i)(1) of this section.

(B) In the case of any individual who is furnished by a crew leader to perform service in agricultural labor for any other person and who is not treated as an employee of such crew leader under subsection (A):

(1) such other person and not the crew leader shall be treated as the employer of such individual; and

(2) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his own behalf or on behalf of such other person) for the service in agricultural labor performed for such other person.

(C) The term "crew leader" means an individual who:

(1) furnishes individuals to perform service in agricultural labor for any other person;

(2) pays (either on his own behalf or on behalf of such other person) the individuals so furnished by him for the service in agricultural labor performed by them; and

(3) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(2) The term "employment" shall include an individual's entire service, performed within or both within and without this state if:

(A) The service is localized in this state; or

HeinOnline -- 1977 vol. II 1676 1977

(B) The service is not localized in any state but some of the service is performed in this state and (I) the base of operations, or, if there is no base of operations, then the place from which such service is directed or controlled, is in this state; or (II) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(3) Service not covered under paragraph (2) of this subsection, and performed entirely without this state with respect to no part of which contributions are required and paid under an unemployment compensation law of any other state or of the federal government, shall be deemed to be employment subject to this act if the individual performing such services is a resident of this state and the division approves the election of the employing unit for whom such services are performed that the entire service of such individual shall be deemed to be employment subject to this act.

(4) Service shall be deemed to be localized within a state if—

(A) The service is performed entirely within such state; or

(B) The service is performed both within and without such state, but the service performed without such state is incidental to the individual's service within the state, for example, is temporary or transitory in nature or consists of isolated transactions.

(5) Services performed by an individual for wages shall be deemed to be employment subject to this act unless and until it is shown to the satisfaction of the division that:

(A) Such individual has been and will continue to be free from control or direction over the performance of such services, both under his contract and in fact; and

(B) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed; and

(C) Such individual is customarily engaged in an independently established trade, occupation, profession or business.

(6) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of this state or any of its instrumentalities (or in the employ of this state and one (1) or more other states or their instrumentalities) for a hospital or institution of higher education located in this state. Effective after July 1, 1975, the term "employment" shall include service performed by all individuals including without limitations those individuals who work for the state of Montana, its university, any of its colleges, public schools, components or units thereof, or any local government unit, and one (1) or more other states or their instrumentalities or political subdivisions whose services are compensated by salary or wages. "Employment" shall not include elected public officials.

HeinOnline -- 1977 vol. II 1677 1977

(7) The term "employment" shall include service performed after December 31, 1971, by an individual in the employ of a religious, charitable, scientific, literary, or educational organization.

(A) For the purposes of paragraph (7) of this subsection the term "employment" does not apply to service performed:

(1) In the employ of a church or convention or association of churches, or an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches; or

(2) By a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order; or

(3) In the employ of a school which is not an institution of higher education, *prior to December 31, 1977*; or

(4) In a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market by an individual receiving such rehabilitation or remunerative work; or

(5) Services performed as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by a federal agency or any agency of a state or political subdivision thereof, by an individual receiving such work relief or work training; or

(6) Services performed for a state prison or other state correctional *or custodial* institution by an inmate of *that* institution.

(8) The term "employment" shall include the service of an individual who is a citizen of the United States, performed outside the United States (except in Canada), after December 31, 1971, in the employ of an American employer (other than service which is deemed "employment" under the provisions of subparagraphs (2) or (4) of this subsection or the parallel provisions of another state's law), if:

(A) The employer's principal place of business in the United States is located in this state; or

(B) The employer has no place of business in the United States, but

(1) The employer is an individual who is a resident of this state; or

(2) The employer is a corporation which is organized under the laws of this state; or

(3) The employer is a partnership or a trust and the number of the partners or trustees who are residents of this state is greater than the number who are residents of any other state; or

(C) None of the criteria of divisions (A) and (B) of this subparagraph is met but the employer has elected coverage in this state or, the employer

HeinOnline -- 1977 vol. II 1678 1977

having failed to elect coverage in any state, the individual has filed a claim for benefits, based on such service, under the law of this state.

(D) An "American employer," for purposes of this paragraph, means a person who is:

(1) An individual who is a resident of the United States; or

(2) A partnership if two-thirds (⅔) or more of the partners are residents of the United States; or

(3) A trust, if all of the trustees are residents of the United States; or

(4) A corporation organized under the laws of the United States or of any state.

(9) The term "employment" shall not include:

(A) Agricultural labor; *except as provided in (i)(1)(A) of this section. The* term "agricultural labor" includes all services performed prior to January 1, 1972, which was agricultural labor as defined in this subparagraph prior to such date, and remunerated services performed after December 31, 1971:

(1) On a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry and fur-bearing animals and wildlife.

(2) In the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of such service is performed on a farm.

(3) In connection with the production or harvesting of any commodity commonly known as agricultural commodities, or in connection with the hatching of poultry, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways used exclusively for supplying and storing water for farming purposes, *except where such ditches, canals, reservoirs, or waterways are owned and operated by government entities.*

(4) In the employ of the operator of a farm or a group of operators of farms (or a co-operative organization of which such operators are members) in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if such operator or operators produced more than one-half (½) of the commodity with respect to which such service is performed.

(5) The provisions of paragraphs (1), (2), (3), and (4) shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a termi-

HeinOnline -- 1977 vol. II 1679 1977

nal market for distribution for consumption; or on a farm operated for profit if such service is not in the course of the employer's trade or business or is domestic service in a private home of the employer.

(6) As used in this section, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, ranges, greenhouses or other similar structures used primarily for the raising of agricultural or horticultural commodities and orchards.

(B) Domestic service in a private home, local college club or local chapter of a college fraternity or sorority; *except as provided in (i)(1)(B) of this section.*

(C) Service performed as an officer or member of the crew of a vessel on the navigable waters of the United States;

(D) Service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of eighteen (18) in the employ of his father or mother;

(E) Service performed in the employ of any other state or its political subdivisions, or of the United States government, or of an instrumentality of any other state or states or their political subdivisions or of the United States, except that national banks organized under the national banking law shall not be entitled to exemption under this section and shall be subject to this act the same as state banks; *provided that such service is excluded from "employment" as defined in the Federal Unemployment Tax Act by section 3306(c)(7) of that act.*

(F) Service with respect to which unemployment compensation is payable under an unemployment compensation system established by an act of Congress; provided, that the division is hereby authorized and directed to enter into agreements with the proper agencies under such act of Congress, which agreements shall become effective ten (10) days after publication thereof in the manner in section 87-121 for general rules, to provide reciprocal treatment to individuals who have, after acquiring potential rights to benefits under this act, acquired rights to unemployment compensation under such act of Congress, or who have, after acquiring potential rights to unemployment compensation under such act of Congress, acquired rights to benefits under this act;

(G) Services performed in the delivery and distribution of newspapers or shopping news from house to house and business establishments by an individual under the age of eighteen (18) years, but not including the delivery or distribution to any point or points for subsequent delivery or distribution.

(H) Services performed by real estate, securities and insurance salesmen paid solely by commissions and without guarantee of minimum earnings.

(I) Service performed, in the employ of a school, college, or university, if such service is performed by a student who is enrolled and is regularly attending classes at such school, college or university, or by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that the employment of such spouse to

HeinOnline -- 1977 vol. II 1680 1977

perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and such employment will not be covered by any program of unemployment insurance.

(J) Service performed by an individual under the age of twenty-two (22) who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers.

(K) Service performed in the employ of a hospital, if such service is performed by a patient of the hospital.

(k) "Employment office" means a free public employment office, or branch thereof, operated by this state or maintained as a part of a state-controlled system of public employment offices, or such other free public employment offices operated and maintained by the United States government or its instrumentalities, as the division may approve.

(l) "Fund" means the unemployment compensation fund established by this act, to which all contributions and payments in lieu of contributions are required and from which all benefits provided under this act shall be paid.

(m) "State," includes, in addition to the states of the United States of America, the District of Columbia, Puerto Rico, the Virgin Islands, and the Dominion of Canada.

(n) "Institution of higher education" for the purposes of this section, means an education institution which:

(1) admits as regular students only individuals having a certificate of graduation from a high school, or the recognized equivalent of such a certificate;

(2) is legally authorized in this state to provide a program of education beyond high school;

(3) provides an educational program for which it awards a bachelor's or higher degree, or provides a program which is acceptable for full credit toward such a degree, a program of post-graduate or post-doctoral studies, or a program of training to prepare students for gainful employment in a recognized occupation; and

(4) is a public or other nonprofit institution.

(5) Notwithstanding any of the foregoing provisions of this subsection, all colleges and universities in this state are institutions of higher education for purposes of this section.

(o) "Hospital" means an institution which has been licensed, certified or approved by the state of Montana as a hospital.

HeinOnline -- 1977 vol. II 1681 1977

(p) "Board" means the board of labor appeals, provided for in Title 82A, chapter 10."

Approved April 29, 1977.

CHAPTER NO. 524

AN ACT AMENDING SECTION 82A-605 TO REQUIRE THAT A VETERINARIAN ACTIVELY ENGAGED IN FOOD ANIMAL MEDICINE BE PLACED ON THE BOARD OF HEALTH.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-605, R.C.M. 1947, is amended to read as follows:

"**82A-605. Board of health and environmental sciences creation — members — appointment — qualifications.** (1) There is a board of health and environmental sciences.

(2) The board consists of seven members appointed by the governor as follows:

(a) at least two members *having* professional qualifications in *a* human health service licensed by a board within a department of professional and occupational licenses;

(b) at least one member being a doctor of veterinary medicine licensed in this state who is engaged in food animal medicine; and

(c) the other members not holding such qualifications shall have demonstrated intelligent and active interest in the field of public health.

(3) The board is designated as a quasi-judicial board for purposes of 82A-112."

Section 2. **Implementation.** This act shall be implemented as the next vacancies occur on the board of health, provided that when a present member of the board is reappointed to a new term upon expiration of his present term, no vacancy shall be deemed to have occurred.

Approved April 29, 1977.

CHAPTER NO. 525

AN ACT CONCERNING THE PLEADING OF DAMAGES IN ACTIONS FOR PERSONAL INJURY OR WRONGFUL DEATH.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 93-2721 that reads as follows:

HeinOnline -- 1977 vol. II 1682 1977

93-2721. Claim not to be stated. In an action for the recovery of money or damages for personal injury or wrongful death, the amount thereof may not be stated in the claim for relief, whether an original claim, counterclaim, cross-claim, or third party claim.

Section 2. There is a new R.C.M. section numbered 93-2722 that reads as follows:

93-2722. Request for statement of claim. When an action is filed in the district court to recover damages for personal injury or wrongful death, the parties against whom the action is brought may at any time request a statement setting forth the nature and amount of damages being sought. The request shall be filed and served upon the claimant, who shall file and serve a responsive statement as to damages within 15 days thereafter. In the event that a response is not served, the party on notice to the claimant who may petition the court in which the action is pending to order the claimant to serve a responsive statement.

Section 3. There is a new R.C.M. section numbered 93-2723 that reads as follows:

93-2723. Claim made in certain circumstances. If no request is made for such a statement setting forth the nature and amount of damages being sought, the claimant shall give notice to the defendant of the amount of special and general damages sought to be recovered:

(1) before a default may be taken; or

(2) in the event an answer is filed, at least 45 days prior to the date set for the trial.

Section 4. There is a new R.C.M. section numbered 93-2724 that reads as follows:

93-2724. Permissive delivery of statement. A copy of the statement setting forth the nature and amount of damages being sought may be delivered to the defendant at the time of service of the summons and complaint but may not be filed for 20 days after the complaint is filed.

Approved April 29, 1977.

CHAPTER NO. 526

AN ACT PROVIDING FOR A DRIVER REHABILITATION PROGRAM IN THE DEPARTMENT OF JUSTICE; AND PROVIDING FOR PROCEDURES TO CONTRIBUTE TOWARD IMPROVING DRIVERS' DRIVING ATTITUDES, HABITS, AND TECHNIQUES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 31-191 that reads as follows:

31-191. Purpose. The toll of accidents, personal injuries, and deaths

HeinOnline -- 1977 vol. II 1683 1977

resulting from the operation of motor vehicles remains a matter of great concern to the legislature. The failure to apply proper driving techniques in the operation of vehicles and improper driving attitudes and habits on the part of operators constitute major factors in a substantial portion of both fatal and nonfatal automobile accidents. Current efforts to improve driver skills, responsibilities, attitudes, and habits have not proved adequate to stem the accident, injury, and death toll. The public interest in the cause of highway safety will be well served by additional methods of driver rehabilitation and improvement and the establishment of programs of rehabilitative instruction, driver improvement, and direction for drivers with poor driving records.

Section 2. There is a new R.C.M. section numbered 31-192 that reads as follows:

31-192. Establishment of driver improvement program — participation by offending drivers. (1) The department of justice may establish by administrative rules a driver rehabilitation and improvement program or programs which may consist of classroom instruction in rules of the road, driving techniques, defensive driving, driver attitudes and habits, actual on-the-road driver's training, and other such subjects or tasks designed to contribute to proper driving attitudes, habits, and techniques.

(2) Official participation in such driver rehabilitation and improvement program is limited to those persons whose operator's license to operate or privilege of operating a motor vehicle in the state of Montana is subject to suspension or revocation as a result of a violation of the traffic laws of this state.

(3) Notwithstanding any provision of this act inconsistent with any other law of the state of Montana, the enforcement of any suspension or revocation order which constitutes the basis for any person's participation in the driver rehabilitation and improvement program provided for herein may be stayed if that person complies with the requirements established for the driver improvement program.

(4) In the event a person's driver's license has been surrendered prior to his selection for participation in the driver rehabilitation and improvement program, the license may be returned upon receipt of his agreement to participate in the program.

(5) The stay of enforcement of any suspension or revocation order shall be terminated and the order of suspension or revocation enforced if a person declines to participate in the driver rehabilitation and improvement program or fails to meet the attendance or other requirements established for participation in the program.

(6) Nothing in this act creates a right to be included in any program established under this act.

(7) The department of justice may establish a schedule of fees which may be charged those persons participating in the driver improvement and rehabilitation program, which fees shall be used to help defray costs of maintaining the program.

HeinOnline -- 1977 vol. II 1684 1977

(8) A person may be referred to this program by a driver improvement analyst, city judge, justice of the peace, judge of a district court of the state of Montana, or a hearing examiner of the department of justice.

Approved April 29, 1977.

CHAPTER NO. 527

AN ACT TO ESTABLISH A STATE-FINANCED PROGRAM OF COMPENSATION TO PERSONS WHO SUFFER BODILY INJURY AND TO DEPENDENTS OF THOSE WHO ARE KILLED BY CRIMINALLY INJURIOUS CONDUCT OR IN ATTEMPTS TO PREVENT CRIMINAL CONDUCT OR APPREHEND CRIMINALS; AND TO APPROPRIATE MONEY THEREFOR.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 71-2601 that reads as follows:

71-2601. Short title. This act may be cited as "The Crime Victims Compensation Act of Montana".

Section 2. There is a new R.C.M. section numbered 71-2602 that reads as follows:

71-2602. Legislative purpose and intent. It is the intent of the legislature of this state to provide a method of compensating and assisting those persons within the state who are innocent victims of criminal acts and who suffer bodily injury or death. To this end, it is the legislature's intention to provide compensation for injuries suffered as a direct result of the criminal acts of other persons.

Section 3. There is a new R.C.M. section numbered 71-2603 that reads as follows:

71-2603. Definitions. As used in this act, the following definitions apply:

(1) "Claimant" means any of the following claiming compensation under this act:

(a) a victim;

(b) a dependent of a deceased victim; or

(c) an authorized person acting on behalf of any of them.

(2) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable under this act which the victim or claimant has received or which is readily available to him from:

(a) the offender;

(b) the government of the United States or any agency thereof, a state

HeinOnline -- 1977 vol. II 1685 1977

or any of its political subdivisions, or an instrumentality of two or more states, unless the law providing for the benefits or advantages makes them excess or secondary to benefits under this act;

(c) social security, medicare, medicaid, and welfare;

(d) workers' compensation;

(e) wage continuation programs of any employer;

(f) proceeds of a contract of insurance payable to the victim for loss which he sustained because of the criminally injurious conduct; or

(g) a contract, including an insurance contract, providing hospital and other health care services or benefits for disability. Any such contract in this state may not provide that benefits under this act shall be a substitute for benefits under the contract or that the contract is a secondary source of benefits and benefits under this act are a primary source.

(3) "Criminally injurious conduct" means conduct that:

(a) occurs or is attempted in this state;

(b) results in bodily injury or death; and

(c) is punishable by fine, imprisonment, or death or would be so punishable but for the fact that the person engaging in the conduct lacked capacity to commit the crime under the laws of this state. Criminally injurious conduct does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle.

(4) "Dependent" means a natural person who is recognized under the law of this state to be wholly or partially dependent upon the victim for care or support and includes a child of the victim conceived before the victim's death but born after the victim's death, including a child that is conceived as a result of the criminally injurious conduct.

(5) "Division" means the division of workers' compensation provided for in 82A-1004.

(6) "Victim" means a person who suffers bodily injury or death as a result of:

(a) criminally injurious conduct;

(b) his good faith effort to prevent criminally injurious conduct; or

(c) his good faith effort to apprehend a person reasonably suspected of engaging in criminally injurious conduct.

Section 4. There is a new R.C.M. section numbered 71-2604 that reads as follows:

71-2604. Award of compensation. The division shall award compensation benefits under this act if satisfied by a preponderance of the evidence that the requirements for compensation have been met.

Section 5. There is a new R.C.M. section numbered 71-2605 that reads as follows:

HeinOnline -- 1977 vol. II 1686 1977

71-2605. Powers and duties of the division. (1) The division shall:

(a) adopt rules to implement this act;

(b) prescribe forms for applications for compensation; and

(c) determine all matter relating to claims for compensation.

(2) The division may:

(a) request and obtain from prosecuting attorneys and law enforcement officers investigations and data to enable the division to determine whether and the extent to which a claimant qualifies for compensation. A statute providing confidentiality for a claimant's or victim's juvenile court records does not apply to proceedings under this act.

(b) subpoena witnesses and other prospective evidence, administer oaths or affirmations, conduct hearings, and receive relevant, nonprivileged evidence; and

(c) take notice of judicially cognizable facts and general, technical, and scientific facts within its specialized knowledge.

Section 6. There is a new R.C.M. section numbered 71-2606 that reads as follows:

71-2606. Application for compensation — awards — limitations on awards. (1) An applicant for an award of compensation may apply in writing in a form that conforms substantially to that prescribed by the division.

(2) Compensation may not be awarded unless the claim is filed with the division within 1 year after the day the criminally injurious conduct occurred causing the injury or death upon which the claim is based. The time for filing a claim may be extended by the division for good cause shown.

(3) Compensation may not be awarded to a claimant who is the offender or an accomplice of the offender or to any claimant if the award would unjustly benefit the offender or accomplice. Unless the division determines that the interests of justice otherwise require in a particular case, compensation may not be awarded to the spouse of or a person living in the same household with the offender or his accomplice or to the parent, child, brother, or sister of the offender or his accomplice.

(4) Compensation may not be awarded unless the criminally injurious conduct resulting in injury or death was reported to a law enforcement officer within 72 hours after its occurrence or the division finds there was good cause for the failure to report within that time.

(5) In order to be entitled to benefits under this act, a claimant must fully cooperate with all law enforcement agencies and prosecuting attorneys in the apprehension and prosecution of the offender causing the criminally injurious conduct. The division, upon finding that the claimant or victim has not fully cooperated with appropriate law enforcement agencies or prosecuting attorneys, may deny or reconsider and reduce an award of compensation.

HeinOnline -- 1977 vol. II 1687 1977

(6) Compensation otherwise payable to a claimant shall be reduced or denied to the extent the compensation benefits payable are or can be recouped from collateral sources.

(7) Persons serving a sentence of imprisonment or residing in any other public institution which provides for the maintenance of such person are not entitled to the benefits of this act.

Section 7. There is a new R.C.M. section numbered 71-2607 that reads as follows:

71-2607. Hearings and informal disposition before the division. The division may hold informal hearings in order to make determinations regarding the compensability of a claim. At such hearings, the division may subpoena witnesses and documents as set forth in 82-4220. Hearings held under this subsection are not considered contested case hearings under the Montana Administrative Procedure Act. However, the division shall adopt rules regarding its informal hearing procedures.

Section 8. There is a new R.C.M. section numbered 71-2608 that reads as follows:

71-2608. Evidence of condition. (1) There is no privilege, except privileges arising from the attorney-client relationship, as to communications or records relevant to an issue of the physical condition of the claimant or victim in a proceeding under this act in which that condition is an element.

(2) If the physical condition of a victim or claimant is material to a claim, the division may order the victim or claimant to submit from time to time to a physical examination by a physician or may order an autopsy of a deceased victim. The division shall pay for such examination or autopsy. The order shall specify the time, place, manner, conditions, and scope of the examination or autopsy and the person by whom it is to be made and shall require the person to file with the division a detailed written report of the examination or autopsy. The report shall set out his findings, including results of all tests made, diagnoses, prognoses, and other conclusions and reports of earlier examinations of the same conditions. On request of the person examined, the division shall furnish him a copy of the report. If the victim is deceased, the division, on request, shall furnish the claimant a copy of the report.

(3) The division may require the claimant to supplement the application with any reasonably available medical reports relating to the injury for which compensation is claimed.

Section 9. There is a new R.C.M. section numbered 71-2609 that reads as follows:

71-2609. Enforcement of division's orders. If a person refuses to comply with an order of the division or asserts a privilege, except privileges arising from the attorney-client relationship, to withhold or suppress evidence relevant to a claim, the division may make any just order, including denial of the claim.

HeinOnline -- 1977 vol. II 1688 1977

Section 10. There is a new R.C.M. section numbered 71-2610 that reads as follows:

71-2610. Award and payment of compensation. (1) An award may be made whether or not any person is prosecuted or convicted. Proof of conviction of a person whose acts give rise to a claim is conclusive evidence that the crime was committed unless an application for rehearing, an appeal of the conviction, or certiorari is pending or a rehearing or new trial has been ordered.

(2) The division may suspend the proceedings pending disposition of a criminal prosecution that has been commenced or is imminent and may make a tentative award under 71-2614.

Section 11. There is a new R.C.M. section numbered 71-2611 that reads as follows:

71-2611. Subrogation. (1) If a claimant seeks compensation under this act and compensation is awarded, the division is entitled to full subrogation against a judgment or recovery received by the claimant against the offender for all compensation paid under this act. The division's right of subrogation shall be a first lien on the judgment or recovery. If the claimant does not institute the action against the offender within 1 year from the date the criminally injurious conduct occurred, the division may institute the action in the name of the claimant or the claimant's personal representative.

(2) If the claimant institutes the action, the division shall pay a proportional share of costs and attorneys' fees if it recovers under its subrogation interest.

(3) If the division institutes the action in the name of the claimant or the claimant's personal representative and the recovery is in excess of the amount of compensation paid to the claimant and costs incurred by the division in pursuit of the action, the excess shall be paid to the claimant.

(4) If a judgment or recovery includes both damages for bodily injury or death for which the division has paid compensation under this act and damages for which the division has not paid compensation, then the division's subrogation interest shall apply only to that proportion of the judgment or recovery for which it has paid compensation. In a civil action in a court of this state arising out of criminally injurious conduct, the judge, on timely motion, shall direct the jury to return a special verdict indicating separately the amounts of the various items of damages awarded. A claimant may not make recoveries against the offender in such a way as to avoid and preclude the division from receiving its proper subrogation share as provided in this section. The division shall release its lien provided for in subsection (1) above upon receipt of its subrogation share.

Section 12. There is a new R.C.M. section numbered 71-2612 that reads as follows:

71-2612. Compensation benefits. (1) A claimant is entitled to weekly compensation benefits when the claimant has a total actual loss of wages

HeinOnline -- 1977 vol. II 1689 1977

due to injury as a result of criminally injurious conduct. During the time the claimant seeks such weekly benefits, the claimant, as a result of such injury, must have no reasonable prospect of being regularly employed in the normal labor market. The weekly benefit amount is 66 ⅔% of the wages received at the time of the criminally injurious conduct, subject to a maximum of $125. Weekly compensation payments shall be made at the end of each 2-week period. No weekly compensation payments may be paid for the first week after the criminally injurious conduct occurred, but if total actual loss of wages continues for 1 week, weekly compensation payments shall be paid from the date the wage loss began. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market.

(2) The claimant is entitled to be reimbursed for reasonable services by a physician or surgeon, reasonable hospital services and medicines, and such other treatment as may be approved by the division for the injuries suffered due to criminally injurious conduct.

(3) (a) The dependents of a victim who is killed as a result of criminally injurious conduct are entitled to receive, in a gross single amount payable to all dependents, weekly benefits amounting to 66 ⅔% of the wages received at the time of the criminally injurious conduct causing the death, subject to a maximum of $125 per week. Weekly compensation payments shall be made at the end of each 2-week period.

(b) Benefits under subsection (3)(a) of this section shall be paid to the spouse for the benefit of the spouse and other dependents, unless the division determines that other payment arrangements should be made. If a spouse dies or remarries, benefits under subsection (3)(a) shall cease to be paid to the spouse but shall continue to be paid to the other dependents so long as their dependent status continues.

(4) Reasonable funeral and burial expenses of the victim, not exceeding $1,100, shall be paid if all other collateral sources have properly paid such expenses but have not covered all such expenses.

(5) Compensation payable to a victim, and all of the victim's dependents in cases of the victim's death, because of injuries suffered due to an act of criminally injurious conduct may not exceed $25,000 in the aggregate.

(6) Compensation benefits are not payable for pain and suffering, inconvenience, physical impairment, or nonbodily damage.

(7) (a) A person who has suffered injury as a result of criminally injurious conduct and as a result of such injury has no reasonable prospect of being regularly employed in the normal labor market, who was employable but was not employed at the time of such injury, may in the discretion of the division be awarded weekly compensation benefits in an amount determined by the division not to exceed $100 per week. Weekly compensation payments shall continue until the claimant has a reasonable prospect of being regularly employed in the normal labor market or for a shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (2) of this section.

HeinOnline -- 1977 vol. II 1690 1977

(b) The dependents of a victim who is killed as a result of criminally injurious conduct and who was employable but not employed at the time of death may in the discretion of the division be awarded, in a gross single amount payable to all dependents, a sum not to exceed $100 per week which shall be payable in the manner and for the period provided by subsection (3)(b) of this section or for such shorter period as determined by the division. The claimant shall be awarded benefits as provided in subsection (4) of this section.

(c) Compensation payable to a victim or a victim's dependents under this subsection may not exceed $20,000, and the limitations of subsection (6) apply to compensation under this subsection (7).

Section 13. There is a new R.C.M. section numbered 71-2613 that reads as follows:

71-2613. Manner of payment — nonassignability and exemptions. (1) Amounts payable as weekly compensation may not be commuted to a lump sum and may not be paid less frequently than every 2 weeks.

(2) An award is not subject to execution, attachment, garnishment, or other process.

(3) An assignment or agreement to assign a right to compensation in the future is unenforceable except:

(a) an assignment of a right to compensation for work loss to secure payment of maintenance or child support; or

(b) an assignment of a right to compensation to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee.

Section 14. There is a new R.C.M. section numbered 71-2614 that reads as follows:

71-2614. Tentative awards. If the division determines that the claimant will suffer financial hardship unless a tentative award is made and it appears likely that a final award will be made, an amount may be paid to the claimant, to be deducted from the final award or repaid by and recoverable from the claimant to the extent that it exceeds the final award.

Section 15. There is a new R.C.M. section numbered 71-2615 that reads as follows:

71-2615. Reconsideration and review of division decisions. (1) The division on its own motion or on request of the claimant may reconsider a decision making or denying an award or determining its amount. The division shall reconsider at least annually every award being paid in installments. An order on reconsideration of an award may not require refund of amounts previously paid unless the award was obtained by fraud.

(2) The right of reconsideration does not affect the finality of a division decision for the purpose of appeal.

HeinOnline -- 1977 vol. II 1691 1977

Section 16. There is a new R.C.M. section numbered 71-2616 that reads as follows:

71-2616. Rehabilitation. The division shall refer to the department of social and rehabilitation services victims who have been permanently disabled through criminally injurious conduct, who are receiving benefits under this act and who, in the opinion of the division, may be vocationally rehabilitated. The department of social and rehabilitation services shall provide for the vocational rehabilitation of the victims under its rehabilitation programs to the extent funds are available under such programs.

Section 17. There is a new R.C.M. section numbered 71-2617 that reads as follows:

71-2617. Appeal. (1) After the division has made final determination concerning any matter relating to a claim, if the claimant disputes the division's determination, he may appeal to the workers' compensation judge for review. The judge, after a hearing, shall make a final determination concerning the dispute and issue an appropriate order affirming or modifying the division's determination.

(2) All proceedings and hearings before the workers' compensation judge shall be in accordance with the appropriate provisions of the Montana Administrative Procedure Act. However, the workers' compensation judge is not bound by common law and statutory rules of evidence.

(3) Notwithstanding 82-4216, an appeal from a final decision of the workers' compensation judge shall be filed directly with the supreme court of Montana in the manner provided by law for appeals from the district court in civil cases.

Section 18. There is a new R.C.M. section numbered 71-2618 that reads as follows:

71-2618. Attorneys' fees. (1) The division may grant attorneys' fees to attorneys for representing claimants before the division. Any attorney's fee granted by the division shall be in addition to compensation awarded the claimant under this act.

(2) The division may regulate the amount of the attorney's fee in any claim under this act when an attorney is representing a claimant.

(3) In cases under this act that go before the workers' compensation judge, the judge may grant, in addition to compensation benefits granted, attorneys' fees to attorneys for representing claimants before the judge.

(4) In no claim or case may attorney fees in excess of 5% of the amount paid to a claimant, or on his behalf, be paid directly or indirectly to a claimant's attorney.

Section 19. There is a new R.C.M. section numbered 71-2619 that reads as follows:

71-2619. Public records — right to inspect. The records the division maintains in its possession in the administration of this act are open to public inspection and disclosure in accordance with the provisions of 92-844 through 92-847.

HeinOnline -- 1977 vol. II 1692 1977

Section 20. There is a new R.C.M. section numbered 71-2620 that reads as follows:

71-2620. Limitation to benefit entitlements. Claimants receiving benefits under this act are not granted an absolute entitlement to benefits. Benefits must be paid in accordance with the amount of the legislative appropriation. If the division determines at any time that the appropriated funds for a fiscal year will not be an amount that will fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. Such reductions do not entitle claimants to future retroactive reimbursements in future fiscal years unless the legislature makes appropriations for such retroactive benefits.

Section 21. There is a new R.C.M. section numbered 71-2621 that reads as follows:

71-2621. Effect on probation and parole. (1) The court when placing any convicted person on probation may set as a condition of probation the payment to the state of an amount equal to any benefits paid by the division to a victim or a victim's dependents. The court may set a repayment schedule and modify it as circumstances change.

(2) Payment of the debt may be made a condition of parole subject to modification based on a change in circumstances.

Section 22. There is a new R.C.M. section numbered 71-2622 that reads as follows:

71-2622. Federal funding. The division may adopt appropriate rules in order to receive federal funds under federal criminal reparation and compensation acts.

Section 23. There is a new R.C.M. section numbered 71-2623 that reads as follows:

71-2623. Penalty. Any person who knowingly makes a false claim or a false statement or uses any other fraudulent device in connection with any claim is guilty of theft as provided in 94-6-302 and upon conviction shall, in addition to being punished as provided by that section, forfeit and repay any compensation paid under this act.

Section 24. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 25. There is a new R.C.M. section numbered 71-2624 that reads as follows:

71-2624. Crime victims compensation account established. There is created a crime victims compensation account in the earmarked revenue fund. There shall be paid into this account 6% of the fines assessed and bails forfeited on all offenses involving a violation of a state statute or a city ordinance relating to the operation or use of motor vehicles, except offenses relating to parking of vehicles.

HeinOnline -- 1977 vol. II 1693 1977

Section 26. **Appropriation.** There is appropriated to the department of labor and industry, division of workers' compensation, from the crime victims compensation earmarked revenue account the sum of $390,000 for the biennium ending June 30, 1979, for the purpose of administering this act.

Section 27. There is a new R.C.M. section numbered 71-2625 that reads as follows:

71-2625. Effective date. (1) Sections 1 through 24 of this act are effective on January 1, 1978, and shall apply only to injuries resulting from criminally injurious conduct which occurred on or after January 1, 1978. However, the division may, after July 1, 1977, employ personnel and pay for expenses in order to establish the administration of the act, adopt rules of procedure, and initiate publicity regarding the benefits under the act.

(2) Section 26 of this act is effective July 1, 1977.

Approved April 29, 1977.

CHAPTER NO. 528

AN ACT TO AMEND SECTIONS 87-103 AND 87-104, R.C.M. 1947, TO PROVIDE FOR NONCHARGING FOR BENEFITS PAID TO NEWLY COVERED WORKERS DURING THE TRANSITION AND PROVIDE FOR FEDERAL REIMBURSEMENT TO STATES FOR THE COST OF REGULAR BENEFITS AND THE 50% OF EXTENDED BENEFITS PAID TO THESE NEWLY COVERED WORKERS AS PROVIDED FOR IN PUBLIC LAW 94-566, AS WELL AS TO CHANGE THE DURATION OF BENEFITS, THE METHOD OF DETERMINING ON AND OFF INDICATORS FOR EXTENDED BENEFITS, AND THE BENEFIT SCHEDULE AND TO REVISE THE ORDER IN WHICH THE LAW IS WRITTEN.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 87-103, R.C.M. 1947, is amended to read as follows:

"87-103. Benefits. (a) Payment of benefits. Benefits are payable from the fund to any individual who is or becomes unemployed and eligible for benefits as is herein prescribed; provided, however, that wages earned for services performed as an employee representative as defined in the Railroad Unemployment Insurance Act (52 Stat. 1094), or for services performed for an employer, as defined in said act, shall not be included for the purposes of determining eligibility or weekly benefit amount under this act. All benefits shall be paid through public employment offices in the state of Montana, or other agencies designated by the division, in accordance with such rules and regulations as the division may prescribe.

(b) Weekly benefit amount. Any individual whose benefit year begins on or after July 1, 1971, shall receive as his weekly benefit amount, an amount equal to one twenty-sixth of his total wages for insured work paid during the calendar quarter of his base period in which his wages were

HeinOnline -- 1977 vol. II 1694 1977

highest. Such weekly benefit amount, if not a multiple of $1, shall be rounded to the nearest multiple of $1.

On or before May 31 of each year, the total wages paid by all employers as reported on contribution reports submitted on or before such date for the preceding calendar year shall be divided by the average monthly number of individuals employed during the same preceding calendar year as reported on such contribution reports. The amount thus obtained shall be divided by 52 and the average weekly wage, rounded to the nearest cent, thus determined. Fifty percent of the average weekly wage shall constitute the maximum weekly benefit amount and shall apply to all maximum weekly benefit amount claims for benefits filed to establish a benefit year commencing on or after July 1 of the same year. Such maximum weekly benefit amount if not a multiple of $1, shall be computed to the nearest multiple of $1.

Beginning on July 1, 1975, the *maximum* weekly *benefit amount shall be raised to 55% of the average* weekly wage and beginning July 1, 1976, be raised to 60% of the average weekly wage.

The minimum weekly benefit amount shall be $12.

The division shall prepare and publish annually a benefit schedule in accordance with the provisions of this subsection.

(c) Qualifying wages. To qualify as an insured worker an individual must have been paid wages for insured work in the quarters of his base period, an amount totaling not less than *1 ½ times his base period high quarter wages.*

(d) Duration of benefits. Any otherwise eligible individual shall be entitled during his benefit year to benefits for the total number of weeks appearing in the following table on the line which includes his ratio of total base period earnings to highest quarter base period earnings:

Ratio of Total Base Period Earnings to High Quarter	*Weeks Duration of Benefits*
0 to 1.75	*12*
1.76 to 1.95	*14*
1.96 to 2.15	*16*
2.16 to 2.35	*18*
2.36 to 2.55	*20*
2.56 to 2.75	*22*
2.76 to 2.95	*24*
2.96 or more	*26*

(e) Qualifying wages for regular benefits of newly covered workers during transition period on the basis of previously uncovered services—

(1) With respect to weeks of unemployment beginning on or after January 1, 1978, wages for insured work shall include wages paid for previously uncovered services. For the purposes of this subsection, the term "previously uncovered services" means services—

(A) Which were not employment as defined in 87-148(j)(9)(A) and (B) at any time during the 1-year period ending December 31, 1975; and

HeinOnline -- 1977 vol. II 1695 1977

(B) Which—

(I) are agricultural labor (as defined in 87-148(i)(1)(A)) or domestic service (as defined in 87-148(i)(1)(B)); or

(II) are services performed by an employee of this state or a political subdivision thereof, as provided in 87-148(j)(6), or by an employee of a nonprofit educational institution which is not an institution of higher education, as provided in 87-148(j)(7), except to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 was paid on the basis of such services.

(f) Wage record. The division shall maintain a record of the wages paid to an individual in accordance with wages earned by him for employment by employers during each quarter.

(g) Benefits. All accrued benefits due and payable at the time of death to any deceased claimant shall be paid to the surviving spouse, or if there be no surviving spouse, then to the surviving children, or if there be no surviving children, then to the next of kin, without the necessity of any recipient obtaining letters testamentary or of administration."

Section 2. Section 87-104, R.C.M. 1947, is amended to read as follows:

"87-104. Duration of benefits. (a) Definitions. As used in this section, unless the context clearly requires otherwise—

(1) "Extended benefit period" means a period which

(A) begins with the third week after whichever of the following weeks occurs first:

(i) a week for which there is a national "on" indicator, or

(ii) a week for which there is a state "on" indicator; and

(B) ends with either of the following weeks, whichever occurs later:

(i) the third week after the first week for which there is both a national "off" indicator and a state "off" indicator, or

(ii) the thirteenth consecutive week of such period;

Provided, that no extended benefit period may begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) There is a "national 'on' indicator" for a week if the U.S. Secretary of Labor determines that for *such week and for* each of the *immediately preceding 12 weeks*, the rate of insured unemployment (seasonally adjusted) for all states equaled or exceeded four and one-half per cent (4 ½%).

(3) There is a "national 'off' indicator" for a week if the U.S. Secretary of Labor determines that for *such week and for* each of the *immediately preceding 12 weeks*, the rate of insured unemployment (seasonally adjusted) for all states was less than four and one-half per cent (4 ½%).

HeinOnline -- 1977 vol. II 1696 1977

(4) There is a "state 'on' indicator" for this state for a week if the division determines, in accordance with the regulations of the U.S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) equaled or exceeded one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, and

(B) equaled or exceeded four per cent (4%).

(5) There is a "state 'off' indicator" for this state for a week if the division determines, in accordance with the regulations of the U.S. Secretary of Labor, that for the period consisting of such week and the immediately preceding twelve (12) weeks, the rate of insured unemployment (not seasonally adjusted) under this act—

(A) was less than one hundred and twenty per cent (120%) of the average of such rates for the corresponding thirteen (13) week period ending in each of the preceding two (2) calendar years, or

(B) was less than four per cent (4%).

(6) "Rate of insured unemployment," for purposes of paragraphs (4) and (5) of this subsection, means the percentage derived by dividing

(i) the average weekly number of individuals filing claims in this state for weeks of unemployment with respect to the most recent thirteen (13) consecutive-week period, as determined by the division on the basis of his reports to the U.S. Secretary of Labor, by

(ii) the average monthly employment covered under this act for the first four (4) of the most recent six (6) completed calendar quarters ending before the end of such thirteen (13) week period.

(7) "Regular benefits" means benefits payable to an individual under this act or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) other than extended benefits.

(8) "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to 5 U.S.C. chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in his eligibility period.

(9) "Eligibility period" of an individual means the period consisting of the weeks in his benefit year which begin in an extended benefit period and, if his benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(10) "Exhaustee" means an individual who, with respect to any week of unemployment in his eligibility period:

(A) has received, prior to such week, all of the regular benefits that were available to him under this act or any other state law (including dependents' allowances and benefits payable to federal civilian employees

HeinOnline -- 1977 vol. II 1697 1977

and ex-servicemen under 5 U.S.C. chapter 85) in his current benefit year that includes such week;

Provided, that, for the purposes of this subparagraph an individual shall be deemed to have received all of the regular benefits that were available to him although (i) as a result of a pending appeal with respect to wages that were not considered in the original monetary determination in his benefit year, he may subsequently be determined to be entitled to added regular benefits.

(B) his benefit year having expired prior to such week, has no, or insufficient, wages on the basis of which he could establish a new benefit year that would include such week; and

(C) (i) has no right to unemployment benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Trade Act of 1965 and such other federal laws as are specified in regulations issued by the U.S. Secretary of Labor; and (ii) has not received and is not seeking unemployment benefits under the unemployment compensation law of Canada; but if he is seeking such benefits and the appropriate agency finally determines that he is not entitled to benefits under such law he is considered an exhaustee.

(11) "State law" means the unemployment insurance law of any state, approved by the U.S. Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

(b) Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits.—Except when the result would be inconsistent with the other provisions of this section, as provided in the regulations of the division, the provisions of this act which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

(c) Eligibility requirements for extended benefits.—An individual shall be eligible to receive extended benefits with respect to any week of unemployment in this eligibility period only if the division finds that with respect to such week:

(1) he is an "exhaustee" as defined in subsection (a)(10),

(2) he has satisfied the requirements of this act for the receipt of regular benefits that are applicable to individuals claiming extended benefits, including not being subject to a disqualification for the receipt of benefits.

(d) Weekly extended benefit amount.—The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit amount payable to him during his applicable benefit year.

(e) Total extended benefit amount.—The total extended benefit amount payable to any eligible individual with respect to his applicable benefit year shall be the least of the following amounts:

HeinOnline -- 1977 vol. II 1698 1977

(1) fifty per cent (50%) of the total amount of regular benefits which were payable to him under this act in his applicable benefit year;

(2) thirteen (13) times his weekly benefit amount which was payable to him under this act for a week of total unemployment in the applicable benefit year.

(f) (1) Beginning and termination of extended benefit period.—Whenever an extended benefit period is to become effective in this state (or in all states) as a result of a state or a national "on" indicator, or an extended benefit period is to be terminated in this state as a result of state and national "off" indicators, the division shall make an appropriate public announcement.

(2) Computations required by the provisions of subsection (a)(6) shall be made by the division, in accordance with regulations prescribed by the U.S. Secretary of Labor."

Approved April 29, 1977.

CHAPTER NO. 529

AN ACT AMENDING SECTION 75-7018, R.C.M. 1947; TO INCREASE THE SCHEDULE OF REIMBURSEMENT FOR SCHOOL BUSES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7018, R.C.M. 1947, is amended to read as follows:

"**75-7018. Schedule of maximum reimbursement by bus mileage rates.** The following bus mileage rates for school bus transportation constitute the maximum reimbursement to districts for school bus transportation from state and county sources of transportation revenue under the provisions of sections 75-7022 and 75-7023. These rates shall not limit the amount which a district may budget in its transportation fund budget in order to provide for the estimated and necessary cost of school bus transportation during the ensuing school fiscal year. The operation of any vehicle reimbursed under the rate provisions of this schedule shall be a school bus, as defined by this Title, driven by a qualified driver on a bus route approved by the county transportation committee and the superintendent of public instruction.

(1) The rate per bus mile traveled shall be determined in accordance with the following schedule when the number of eligible transportees boarding such school bus on an approved route is not less than 75% of its rated capacity:

(a) *$.40 in fiscal 1978 and $.45 in fiscal 1979 and each year thereafter* per bus mile for a school bus with a rated capacity of not less than 12 but not more than 50 children; and

(b) when the rated capacity is more than 50 children, an additional

HeinOnline -- 1977 vol. II 1699 1977

$.02 per bus mile for each additional child in the rated capacity in excess of 50 shall be added to a base rate of *$.40 in fiscal 1978 and $.45 in fiscal 1979 and each year thereafter* per bus mile.

(2) When the number of eligible transportees boarding a school bus on an approved route is less than 75% of its rated capacity, the rate per bus mile traveled shall be computed as follows:

(a) determine the number of eligible transportees boarding the school bus on such route;

(b) multiply the number determined in subsection (2)(a) by 25% and round-off to the nearest whole number;

(c) add the amount calculated in subsection (2)(b) to the number determined in subsection (2)(a) to determine the adjusted rated capacity for the bus; and

(d) use the adjusted rated capacity determined in subsection (2)(c) as the rated capacity of such bus to determine the rate per bus mile traveled from the rate schedule in subsection (1) above.

The rated capacity shall be the number of riding positions of a school bus as determined under the policy adopted by the board of education."

Approved April 29, 1977.

CHAPTER NO. 530

AN ACT CREATING THE DIVISION OF FORENSIC SCIENCE IN THE DEPARTMENT OF JUSTICE; PROVIDING FOR ITS ADMINISTRATION, DUTIES, AND FUNCTIONS; PROVIDING FOR A LABORATORY OF CRIMINALISTICS; ALTERING THE DUTIES OF THE CORONER; AMENDING SECTIONS 16-3401, 16-3409, 95-801, AND 95-802 AND REPEALING SECTIONS 16-3402, 16-3403, 95-810, AND 95-814, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82-427 that reads as follows:

82-427. Short title. This act shall be known as the "Montana Forensic Science System Act".

Section 2. There is a new R.C.M. section numbered 82-428 that reads as follows:

82-428. Purpose. The purpose of this act is to provide the personnel, facilities, and procedures to determine the cause of certain types of deaths by such investigation and examination as are in the public interest; to analyze specimens for law enforcement officers and to provide reports, including oral testimony, concerning such investigation, examination, and analysis when in the public interest.

HeinOnline -- 1977 vol. II 1700 1977

Section 3. There is a new R.C.M. section numbered 82-429 that reads as follows:

82-429. Creation of division of forensic science — head. (1) There is a division of forensic science in the department of justice.

(2) The division head is an administrator whose title is state medical examiner and who shall be appointed by the board of forensic science. He shall be a forensic pathologist qualified or certified by the American board of pathology.

Section 4. There is a new R.C.M. section numbered 82-430 that reads as follows:

82-430. Functions of the division. The functions of the division include operation of:

(1) a laboratory of criminalistics; and

(2) an office of forensic pathology.

Section 5. There is a new R.C.M. section numbered 82-431 that reads as follows:

82-431. Authority to accept grants. The division of forensic science is authorized to accept federal and other moneys which may be made available to accomplish the purposes of this act.

Section 6. There is a new R.C.M. section numbered 82-432 that reads as follows:

82-432. Board of forensic science — establishment-composition. (1) The board of forensic science is established within the department of justice.

(2) There shall be 15 board members appointed by the attorney general.

(3) The board shall be representative of state and local governments and law enforcement agencies and the medical profession. It shall include:

(a) an incumbent mayor recommended by the Montana league of cities and towns;

(b) an incumbent county commissioner recommended by the Montana association of counties;

(c) a prosecutor recommended by the Montana association of county attorneys;

(d) the chairman of the peace officers' standards and training advisory council;

(e) an incumbent chief of police recommended by the Montana chiefs of police association;

(f) an incumbent sheriff recommended by the Montana sheriffs and peace officers association;

HeinOnline -- 1977 vol. II 1701 1977

(g) a deputy sheriff recommended by the Montana sheriffs and peace officers association;

(h) a police officer recommended by the Montana police protective association;

(i) a member recommended by the chief of the Montana highway patrol;

(j) a member recommended by the director of the department of fish and game;

(k) a member recommended by the attorney general;

(l) a medical doctor;

(m) a medical pathologist;

(n) a member possessing a graduate degree in one of the forensic sciences; and

(o) a county coroner recommended by the Montana coroners association.

Section 7. There is a new R.C.M. section numbered 82-433 that reads as follows:

82-433. Duties of board. The board of forensic science shall:

(1) establish a laboratory of criminalistics;

(2) appoint a state medical examiner and provide procedures consistent with this act for the employing of all necessary personnel; and

(3) establish policy and set all necessary procedures for the functioning of the division of forensic science.

Section 8. There is a new R.C.M. section numbered 82-434 that reads as follows:

82-434. Rules authorized. The board of forensic science is authorized to adopt rules necessary to accomplish the purposes of this act.

Section 9. There is a new R.C.M. section numbered 82-435 that reads as follows:

82-435. Termination of board. (1) All necessary functions of the board shall be completed within a 2-year period from the effective date of this act.

(2) Upon the termination of the 2-year period the board shall no longer exist. Following dissolution of the board, the attorney general is authorized to employ such personnel as may be necessary to conduct the affairs of the division of forensic science.

Section 10. There is a new R.C.M. section numbered 82-436 that reads as follows:

82-436. Duties of state medical examiner. The duties of the state medical examiner include but are not limited to the following:

HeinOnline -- 1977 vol. II 1702 1977

(1) providing assistance and consultation to associate medical examiners, coroners, and law enforcement officers;

(2) providing court testimony when necessary to accomplish the purposes of this act;

(3) stimulating and directing research in the field of forensic pathology;

(4) maintaining an ongoing educational and training program for associate medical examiners, coroners, and law enforcement officers;

(5) appointing the director of the laboratory of criminalistics;

(6) appointing one or more associate medical examiners who serve at his pleasure; and

(7) appointing, if he considers it necessary, an administrative assistant to handle administrative duties.

Section 11. There is a new R.C.M. section numbered 82-437 that reads as follows:

82-437. Associate medical examiners — qualifications — remuneration. (1) Associate medical examiners must be physicians licensed to practice in Montana and may continue their private practice during their appointment.

(2) Associate medical examiners may be paid for their services an amount which the state medical examiner considers to be reasonable compensation and may be reimbursed for expenses actually incurred in the performance of their duties.

(3) The costs of services performed by associate medical examiners are chargeable to the county for which the service is performed.

Section 12. There is a new R.C.M. section numbered 82-438 that reads as follows:

82-438. Purpose and function of laboratory. (1) The laboratory's purpose is to perform analysis of specimens submitted by all Montana state, county, or city law enforcement officers, and all state agencies, and referral specimens from other states if accepted by the laboratory director.

(2) The laboratory's functions include analysis of toxicologic and criminalistic specimens which the laboratory director considers within the performance capability of the laboratory.

(3) The laboratory may charge reasonable fees for its services, except that it may not charge state, county, city, or municipal law enforcement officers or coroners of this state for services rendered. Fees collected under this subsection shall be deposited in an account in the earmarked revenue fund in the state treasury and used to pay operation expenses of the laboratory.

Section 13. There is a new R.C.M. section 82-439 that reads as follows:

82-439. Responsibilities of laboratory director. The laboratory director shall:

HeinOnline -- 1977 vol. II 1703 1977

(1) be responsible to the state medical examiner for supervision and direction of the laboratory;

(2) appoint laboratory personnel;

(3) render decisions as to the disposition of specimens; and

(4) perform all other duties required by the rules of the division.

Section 14. There is a new R.C.M. section numbered 82-440 that reads as follows:

82-440. Removal of state medical examiner and laboratory director. The state medical examiner and the laboratory director may be removed from office only for neglect of duty, incompetency, or other good cause and only after a full hearing pursuant to 82A-1014.

Section 15. There is a new R.C.M. section numbered 82-441 that reads as follows:

82-441. Exemption from liability. No criminal or civil action may arise against a medical examiner for performing an autopsy under this act.

Section 16. There is a new R.C.M. section numbered 82-442 that reads as follows:

82-442. Property of deceased — disposition. Any property found with or upon the person of the deceased which is not considered evidence shall be relinquished by the state medical examiner or the coroner to the appropriate public administrator to be held until disposed of according to law.

Section 17. There is a new R.C.M. section numbered 82-443 that reads as follows:

82-443. Burial of corpse. (1) When a medical examiner or coroner takes custody of a body of a deceased person for purposes of examination and no other person claims the body, the coroner of the county in which the death occurred or the body was found shall cause it to be decently interred.

(2) If there is not sufficient property belonging to the estate of the deceased to pay the necessary expenses of the burial, the expenses are a charge against the county.

Section 18. There is a new R.C.M. section numbered 82-444 that reads as follows:

82-444. Appointment of deputy coroners. (1) The coroner, with approval of the county commissioners, may appoint one or more deputy coroners to assist him or act in his absence.

(2) A deputy coroner may be the coroner from another county.

Section 19. There is a new R.C.M. section numbered 82-445 that reads as follows:

HeinOnline -- 1977 vol. II 1704 1977

82-445. Penalty. A person is guilty of a misdemeanor and may be fined not more than $500 or imprisoned in the county jail for not more than one year, or both, if he:

(1) willfully fails to report or conceals a death;

(2) refuses to make available prior medical or other information in a death investigation; or

(3) without an order from the coroner or state medical examiner, willfully touches, removes, or disturbs a corpse, its clothing, or anything near the corpse under investigation with the intent to alter the evidence or circumstances surrounding the death.

Section 20. There is a new R.C.M. section numbered 82-446 that reads as follows:

82-446. Report to county attorney. When the cause of death has been established within reasonable medical certainty by the state medical examiner or his associate, whether by review of a coroner's report or by personal examination, he shall make available in writing to the county attorney his determination as to the cause of death.

Section 21. There is a new R.C.M. section numbered 82-447 that reads as follows:

82-447. Records — custodian. Copies of records and detailed findings of autopsy and laboratory investigations shall be maintained by the state medical examiner's office.

Section 22. Section 16-3401, R.C.M. 1947, is amended to read as follows:

"**16-3401. Coroner to hold inquest.** The coroner must hold inquests, as provided in *Title 95, chapter 8.*"

Section 23. Section 16-3409, R.C.M. 1947, is amended to read as follows:

"**16-3409. Inquest in case of prisoners in state prison.** When a prisoner confined in the state prison shall die, the coroner of the county wherein the state prison is located may hold an inquest as provided in *Title 95, chapter 8.*"

Section 24. Section 95-801, R.C.M. 1947, is amended to read as follows:

"**95-801. The office of the coroner.** *Whenever* a coroner is informed that a death was caused by other than natural causes or that a death has occurred under circumstances such as to afford a reasonable ground to suspect that the death is the result of criminal conduct or when no physician or surgeon licensed in the state of Montana will sign a death certificate, the coroner shall make an investigation thereof. It shall be the duty of every person acquiring knowledge of such a death to report the same forthwith to the coroner of the county in which death apparently occurred. In cases where criminal conduct is suspected, the coroner shall notify *the state medical examiner and* one or more law enforcement agen-

HeinOnline -- 1977 vol. II 1705 1977

cies having jurisdiction. The law enforcement agencies so notified shall have the responsibility to investigate the case."

Section 25. Section 95-802, R.C.M. 1947, is amended to read as follows:

"**95-802. Coroner to have autopsy — when.** *(1)* If in the opinion of the coroner an autopsy is advisable, he shall order one and shall retain a *medical examiner* to perform it. A full record of the facts found shall be made on a form provided by the *division of forensic science in triplicate,* the coroner *and medical examiner* retaining one copy and delivering the other to the county attorney. The right to conduct an autopsy shall include the right to retain such specimens as the *medical examiner* performing the autopsy deems necessary. Performance of autopsies is within the discretion of the coroner except that the county attorney or attorney general may require one. In ordering an autopsy the coroner shall order the body to be exhumed if it has been interred.

(2) The state of Montana shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the state medical examiner or attorney general. The county shall pay any expenses incurred whenever an autopsy or investigation is initiated at the request of the county attorney or county coroner."

Section 26. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 27. **Repealer.** Sections 16-3402, 16-3403, 95-810, and 95-814, R.C.M. 1947, are repealed.

Approved April 29, 1977.

CHAPTER NO. 531

AN ACT TO PROVIDE FOR COMPENSATION, INCREASED COMPENSATION, OR WHEN COMPENSATION IS PAID TO MEMBERS OF THE BOARDS OF COSMETOLOGISTS, DENTISTS, VETERINARIANS, MORTICIANS, AND SPEECH PATHOLOGISTS AND AUDIOLOGISTS OF THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING; AMENDING SECTIONS 66-809, 66-909, 66-2203, 66-2703, AND 66-3905, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-809, R.C.M. 1947, is amended to read as follows:

"**66-809. Compensation of members of board — deposit of receipts in state treasury.** Each member of the board *may* receive, as compensation for his services, the sum of $25 per day for each day in actual attendance at any meeting *of* the board. In addition, each member shall be reimbursed for travel expenses, as provided for in sections 59-538,

HeinOnline -- 1977 vol. II 1706 1977

59-539, and 59-801, necessarily incurred in the performance of official duties. All fees collected by the department under this act, shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6)."

Section 2. Section 66-909, R.C.M. 1947, is amended to read as follows:

"66-909. Compensation and expenses allowed board members — limitation on duration of examination meetings — disbursement of funds. (1) Out of the funds derived from fees collected under this act each member of the board shall be reimbursed as follows:

(a) *$25* per day for each day in actual attendance at a meeting of the board.

(b) Expenses and travel authorized under sections 59-538, 59-539, and 59-801.

(2) Meetings held for the purpose of examining candidates for a license to practice dentistry in this state may not exceed 6 days.

(3) Money collected in excess of expenses and salaries provided for shall be held by the department as a special fund for meeting the expenses of the board, the proper administration of this act and for educational purposes considered wise by the board. The department, on the written request of the board, shall set aside in a separate account in the earmarked revenue fund, the emergency moneys provided under section 66-906. This account may be expended only when the board determines that an emergency exists requiring an expenditure therefrom."

Section 3. Section 66-2203, R.C.M. 1947, is amended to read as follows:

"66-2203. Expenses and funds — records and reports. (1) Each member of the board is entitled to receive travel expenses, as provided for in sections 59-538, 59-539, and 59-801. *In addition, each member of the board may receive compensation of $25 per day for attending board meetings.*

(2) The department shall keep complete records of the board's proceedings and of its receipts and disbursements and a full and accurate list of persons licensed and registered by the board. These records are public records, and are at all times open to public inspection.

(3) Money received under this act shall be deposited in the earmarked revenue fund for the use of the board, subject to section 82A-1603(6)."

Section 4. Section 66-2703, R.C.M. 1947, is amended to read as follows:

"66-2703. Officers of board — compensation of members. The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members *may* serve *for a* compensation *of $25 per day for attending board meetings and* shall be reimbursed for travel expenses, as provided for in sections 59-538, 59-539, and 59-801, connected with attending meetings or in the discharge of other board duties."

HeinOnline -- 1977 vol. II 1707 1977

Section 5. Section 66-3905, R.C.M. 1947, is amended to read as follows:

"**66-3905. Function of the board and department.** (1) The board shall meet at least once every year at a place, day and hour determined by the board. The board shall also meet at other times and places as the bylaws of the board may provide or by call of the chairman or a majority of the members of the board. A quorum of the board shall consist of the majority of its members, but in no instance shall a meeting of three (3) board members who are exclusively speech pathologists or exclusively audiologists be considered a quorum.

(2) Each board member shall receive *travel* expenses *and mileage* incidental to board meetings and business *as provided for in section 59-538, 59-539, and 59-801. Compensation may be paid each board member, not otherwise compensated, in the amount of $25 per day when attending board meetings.*

(3) The department may employ persons it deems necessary to carry out the provisions of this act.

(4) All meetings of the board for the consideration of and action on matters coming before the board are open to the public, except:

(a) matters involving the management of internal affairs of the board may be considered and acted upon by the board in executive meetings under rules prescribed by the board;

(b) sessions to prepare, approve, grade or administer examinations;

(c) upon request of a person who has failed the licensing examinations and who is appearing to appeal the failure.

(5) The board may make all rules which are reasonable or necessary for the proper performance of its duties and for the regulation of proceedings before it.

(6) The department shall prepare a report to the governor as required by law.

(7) The board shall:

(a) administer, coordinate and enforce the provisions of this act;

(b) evaluate the qualifications of each applicant for a license as issued under this act and supervise the examination of such applicants;

(c) investigate persons engaging in practices which allegedly violate the provisions of this act;

(d) conduct hearings and keep records and minutes as the board considers necessary to an orderly dispatch of business;

(e) adopt rules including but not limited to those governing ethical standards of practice under this act;

(f) make recommendations to the governor and other state officials regarding new and revised programs and legislation related to speech

HeinOnline -- 1977 vol. II 1708 1977

pathology or audiology which could be beneficial to the citizens of the state of Montana;

(g) cause the prosecution and enjoinder of all persons violating this act, by the complaints of its secretary filed with the county attorney, in the county where the violation took place, and incur necessary expenses therefor;

(h) adopt a seal by which the board shall authenticate its proceedings. Copies of the proceedings, records, and acts of the board, signed by the chairman or secretary of the board and stamped with the seal shall be prima facie evidence of the validity of such documents."

Approved April 29, 1977.

CHAPTER NO. 532

AN ACT RELATING TO URBAN RENEWAL PROJECTS AND AUTHORIZING MEANS OF FINANCING COSTS THEREOF THROUGH ISSUANCE OF BONDS AND SEGREGATION AND APPLICATION OF TAX INCREMENT; AMENDING SECTIONS 11-3910 AND 11-3921, R.C.M. 1947; REPEALING SECTIONS 11-3922, 11-3923, 11-3924, AND 11-3925, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-3910, R.C.M. 1947, is amended to read as follows:

"**11-3910. Issuance of bonds.** (a) A municipality shall have the power to issue bonds from time to time in its discretion to finance the undertaking of any urban renewal project under this act, including, without limiting the generality thereof, the payment of principal and interest upon any advances for surveys and plans for urban renewal projects, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall not pledge the general credit of the municipality and shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from, or held in connection with, its undertaking and carrying out of urban renewal projects under this act, *including the tax increment received and pledged by the municipality pursuant to 11-3921*; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant, or contribution from the federal government or other source, in aid of any urban renewal projects of the municipality under this act.

(b) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, and shall be subject only to the provisions of the Uniform Commercial Code *and the limitations of this chapter*. Bonds issued under the provisions of this act are declared to be issued for an essential public

HeinOnline -- 1977 vol. II 1709 1977

and governmental purpose, and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(c) Bonds issued under this section shall be authorized by resolution or ordinance of the local governing body and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates *not exceeding 9% a year*, be in such denomination or denominations, be in such form either coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution, *ordinance,* or trust indenture or mortgage *authorized* pursuant thereto.

(d) Such bonds may be sold at not less than ninety-eight per cent (98%) of par at public or private sale, or may be exchanged for other bonds on the basis of par: Provided, that such bonds may be sold to the federal government at private sale at not less than par and, in the event less than all of the authorized principal amount of such bonds is sold to the federal government, the balance may be sold at public or private sale at not less than ninety-eight per cent (98%) of par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the federal government.

(e) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this act shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this act shall be fully negotiable.

(f) In any suit, action, or proceeding involving the validity or enforceability of any bond issued under this act or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located, and carried out in accordance with the provisions of this act.

(g) Bonds issued hereunder for which a tax increment is pledged pursuant to 11-3921 shall be designed to mature not later than 25 years from their date of issue and shall mature in such years and amounts that the principal and interest due on the bonds in each year shall not exceed the estimated tax increment and other estimated revenues, including proceeds of the bonds available for payment of interest thereon, pledged to their payment to be received in such year. The governing body in the resolution or ordinance authorizing the bonds shall determine the estimated tax increment and other revenues, if any, for each year the bonds are to be outstanding. In calculating the cost under 11-3921(5) for which the bonds are issued, the municipality may include an amount sufficient to pay interest on the bonds prior to receipt of tax increment pledged and sufficient

HeinOnline -- 1977 vol. II 1710 1977

for the payment thereof, and to fund any reserve fund in respect of the bonds."

Section 2. Section 11-3921, R.C.M. 1947, is amended to read as follows:

"11-3921. Tax increment financing. (1) Any urban renewal plan, as defined in section 11-3901, may contain a provision or be amended to contain a provision *for the segregation and application of tax increment, as provided in this section. Property taxes for the payment of all bonds of each taxing body other than tax increment bonds authorized in this chapter must be levied against all taxable property within the taxing body without limitation by the provisions of this section. No property taxes, except the tax increment derived from property within the urban renewal area, may be applied to the payment of bonds issued pursuant to section 11-3910 for which a tax increment has been pledged.*

(2) For purposes of this section the following definitions apply unless otherwise provided or indicated by the context:

(a) "Original taxable value" means the taxable value of all taxable property within an urban renewal area as calculated from the assessment roll last equalized prior to the effective date of a tax increment financing provision.

(b) "Actual taxable value" means the taxable value of all taxable property within an urban renewal area as calculated from the assessment roll last equalized.

(c) "Incremental taxable value" means the amount, if any, by which the actual taxable value exceeds the original taxable value of all taxable property within an urban renewal area.

(d) "Tax increment" means the collections realized from extending the tax levies, expressed in mills, of all taxing bodies in which the urban renewal area or a part thereof is located against the incremental taxable value.

(e) "Tax increment provision" means a provision for the segregation and application of tax increment as authorized by this section.

(f) "Taxes" mean all taxes levied by a taxing body against property on an ad valorem basis.

(g) "Taxing body" means any city, town, county, school district, or other political subdivision or governmental unit of the state, including the state, which levies taxes against property within the urban renewal area.

(3) The clerk of the municipality shall file a certified copy of each urban renewal plan or amendment thereto containing a tax increment provision with the state, county or city officers responsible for assessing and determining the taxable value of taxable property within the urban renewal area or any part thereof. A certified copy of the plan or amendment shall also be filed with the clerk or other appropriate officer of each of the affected taxing bodies. The officer or officers responsible for assessing and determining the taxable value of the taxable property located

HeinOnline -- 1977 vol. II 1711 1977

within the urban renewal area shall, immediately upon receipt of the tax increment provision and each year thereafter, calculate and report to the municipality and to any other affected taxing body the original, actual, and incremental taxable value of such property.

(4) Mill rates of taxing bodies for taxes levied after the effective date of the tax increment provision shall be calculated on the basis of the sum of the taxable value, as shown by the last equalized assessment roll, of all taxable property located outside the urban renewal area and the original taxable value of all taxable property located within the urban renewal area. The mill rate so determined shall be levied against the sum of the actual taxable value of all taxable property located within as well as outside the urban renewal area. The tax increment, if any, received in each year from the levy of the combined mill rates of all the affected taxing bodies against the incremental taxable value within the urban renewal area shall be paid into a special fund held by the treasurer of the municipality and used as provided in this section. The balance of the taxes collected in each year shall be paid to each of the taxing bodies as otherwise provided by law.

(5) The tax increments may be used by the municipality to pay the following costs of or incurred in connection with an urban renewal project: land acquisition; demolition and removal of structures; relocation of occupants; and the acquisition, construction, and improvement of streets, curbs, gutters, sidewalks, pedestrian malls, alleys, parking lots and off-street parking facilities, sewers, waterlines, waterways, public buildings, and other public improvements authorized by Title 11, chapter 22, and items of personal property to be used in connection with improvements for which the foregoing costs may be incurred; or the tax increment may be pledged to the payment of the principal of premiums, if any, and interest on bonds which the municipality may issue for such purposes pursuant to 11-3910 for the purpose of providing funds to pay such costs. The municipality may also enter into agreements with the other affected taxing bodies to remit to such taxing bodies any portion of the annual tax increment not currently required for the payment of such costs or pledged to the payment of the principal of premiums, if any, and interest on such bonds.

(6) At the time of adoption of a tax increment provision or at any time subsequent thereto, the governing body of the municipality may provide that only a portion of the tax increment from the incremental taxable value shall be segregated as provided in subsections (3) and (4) of this section. The portion so determined shall be reported by the clerk to the officers and taxing bodies to which the increment provision is reported. Thereafter, in determining the mill rates of affected taxing bodies, the taxable values against which the mill rates are levied, and the tax increment to be paid to the municipality, the original taxable value shall be increased and the incremental taxable value shall be decreased.

(7) The tax increment provision shall terminate upon the 10th year following its adoption or upon the payment or provision for payment in full or discharge of all bonds for which the tax increment has been pledged and the interest thereon, whichever last occurs. Any amounts remaining in the special fund or any reserve fund after termination of the tax increment provision shall be distributed among the various taxing bodies in

HeinOnline -- 1977 vol. II 1712 1977

proportion to their property tax revenues from the district. After termination of the tax increment provision, all taxes shall be levied upon the actual taxable value of the taxable property in the urban renewal area, and shall be paid into the funds of the respective taxing bodies. No bonds with tax increment provisions for the repayment thereof may be issued subsequent to 10 years after the effective date of this act."

Section 3. **Effective date and transition.** This act is effective on its passage and approval. Any municipality which adopted a provision for the allocation of taxes under 11-3921 prior to the effective date of this act may implement and carry out such provision under this act.

Section 4. **Repealer.** Sections 11-3922, 11-3923, 11-3924, and 11-3925, R.C.M. 1947, are repealed.

Approved April 29, 1977.

CHAPTER NO. 533

AN ACT TO PROVIDE FOR OR CHANGE FEES FOR APPLICATION, LICENSE, EXAMINATION, RENEWAL, LATE RENEWAL, RECIPROCITY, CERTIFICATION, AND REGISTRATION FOR APPLICANTS, LICENSEES, OR REGISTRANTS OF THE BOARDS OF HORSE RACING, BARBERS, PODIATRY EXAMINERS, COSMETOLOGISTS, MEDICAL EXAMINERS, PHARMACISTS, PUBLIC ACCOUNTANTS, REAL ESTATE AND SANITARIANS OF THE DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING; TO DEFINE RECIPROCITY ELIGIBILITY FOR BOARD OF COSMETOLOGISTS APPLICANTS AND IMPOSE A FEE; TO PROVIDE THAT NO LICENSE FEE OR TAX MAY BE IMPOSED ON REAL ESTATE BROKERS OR SALESMEN BY A MUNICIPALITY OR OTHER SUBDIVISION OF THE STATE; LIMITING TRAVEL AUTHORITY OF THE BOARD OF REAL ESTATE; SPECIFYING THE DIRECTOR'S AUTHORITY OVER CONTRACTS AND EXPENDITURES; PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE; AMENDING SECTIONS 62-505, 66-411, 66-605, 66-815, 66-1042, 66-1506, 66-1508, 66-1826, 66-1934, 66-2909, 66-3608, 69-3416, AND 82A-1604, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 62-505, R.C.M. 1947, is amended to read as follows:

"**62-505. Duties of board, department, and licensees — license fee.** The board shall adopt rules to govern race meets and the parimutuel system. These rules shall include the following: definitions, auditing, and supervision of the parimutuel system, corrupt practices, supervision, duties and responsibilities of the presiding steward, racing secretary and other racing officials, licensing of all personnel who have anything to do with the substantive operation of racing, the establishment of dates for race meets and meetings in the best interest of breeding and racing in this state, and the veterinary practices and standards which must be

observed in connection with race meets. A person who participates in a race meet shall be licensed and charged an annual fee not to exceed *$15*, which shall be paid to the department and used for expenses of the board, subject to section 82A-1603(6). Each person holding a license under this chapter, and every owner, trainer, jockey, and attendant at a race course in this state, shall comply with this chapter and with the rules adopted and orders issued by the board."

Section 2. Section 66-411, R.C.M. 1947, is amended to read as follows:

"66-411. Fees to be paid by apprentices, students, barbers, barbershops and training programs. (1) The fee to be paid by an apprentice for an apprentice examination and an apprentice card is $25. The fee to be paid by an applicant for an examination to determine his fitness to receive a certificate of registration to practice barbering is $20, and for the issuance of the certificate an additional $10.

(2) A person registered as a barber or barber apprentice shall, before July 1 of each year, pay a license fee *set by the board in an amount not to exceed $15 and based on clerical and administrative costs* for the renewal of his certificate of registration. If a barber fails to have the certificate renewed before July 1 of each year the barber shall on renewal of the certificate of registration pay a penalty of $10, in addition to the regular *renewal* fee. If a certificate of registration is not renewed within 1 year after the date of expiration, the barber is not entitled to have the certificate of registration renewed, or a new certificate of registration issued, without first applying for and taking the examination and paying the fees provided for in this section. However, physically handicapped persons, trained for the barber profession by the department of social and rehabilitation services and certified by that department as having successfully completed a *9-month* course in a reputable barber college are not required to pay fees, and are for a period of 1 year immediately following their training exempt from all except the sanitary provisions of this chapter. No other or additional license or fee may be imposed on barbers or barber apprentices by a municipality or other subdivision of this state.

(3) In addition to the fees and charges now provided by law, barbershops heretofore established, and which have been under the inspection of the board shall pay an annual license fee *set by the board in an amount not to exceed $15 and based on clerical and administrative costs.* Barbershops hereafter established shall pay an initial inspection fee of *$25* for the first year or portion thereof, and shall pay an annual license fee *set by the board in an amount not to exceed $15.*

(4) Barbershop, school, or college licenses expire on July 1 of each year, following the issuance of the license, and an owner or manager of a barbershop, school, or college which continues in active operation shall annually, before July 1, renew his barbershop, school, or college license and pay the required fee. A barbershop which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty of $10, and a barber school or college which fails to have the license renewed before July 1 of each year shall, on renewal, pay a penalty of $55.

Any person conducting in this state any advanced barber training pro-

HeinOnline -- 1977 vol. II 1714 1977

gram, clinic, or seminar for barbers as defined in this chapter, shall pay an annual license fee of $50 to the department, or a 10 day license fee of $15, and display the license while operating. Any such advanced barber training program, clinic, or seminar may be inspected by the department at reasonable times during operation."

Section 3. Section 66-605, R.C.M. 1947, is amended to read as follows:

"**66-605. Designation of licensees — renewals — reissuance of license — display of license required — recording necessary.** A license issued under this act shall be designated as a "registered podiatrist's license" and may not contain any abbreviations thereof, nor any other designation or title except that a statement of limitation shall be contained in the license referring to the licensee as a "registered podiatrist—practice limited to the foot," so as not to mislead the public with respect to their right to treat other portions of the body. Licenses shall be recorded by the department the same as other medical licenses. The person receiving the license shall have it recorded in the office of the county clerk in the county in which he resides, and the record shall be endorsed on it. If the person licensed moves to another county to practice, he shall record the license in the same manner in the county into which he moves, and the county clerk is entitled to charge and receive the usual fee for making this record. A renewal license fee *set by the board in an amount not to exceed $25* shall be paid annually on July 1 of each year, and if not paid within 3 months, the license shall be revoked and may be reissued only on original application and payment of a fee of $35. Licenses shall be conspicuously displayed by podiatrists at their offices or other places of practice."

Section 4. Section 66-815, R.C.M. 1947, is amended to read as follows:

"**66-815. Fees.** Fees for licenses and certificates of registration shall be paid to the department not to exceed the following respective amounts prescribed by the board. (1) A student enrolling in a registered cosmetology school shall pay a registration fee of *$7* to the department.

(2) An applicant for examination to practice shall pay at the time of the application a fee of *$40.*

(3) An applicant for examination who is a graduate from a cosmetology school of this state may pay a fee of *$8* for a temporary license to practice as an operator.

(4) An applicant for examination to teach shall pay at the time of the application a fee of *$60.*

(5) A person practicing cosmetology as an operator shall pay a fee of *$12* for the issuance of a license.

(6) An applicant for a manager-operator license shall pay a fee of *$20* for the issuance of a license.

(7) An applicant for an itinerant license as a cosmetologist shall pay a fee of *$100.*

(8) A person, firm, copartnership, or corporation owning, operating, or

HeinOnline -- 1977 vol. II 1715 1977

conducting a cosmetological salon shall pay the sum of *$20* for the issuance of the certificate of registration.

(9) A person teaching or instructing cosmetology shall pay a fee of *$20* for the issuance of a license.

(10) A person, firm, copartnership, or corporation owning, operating, or conducting a school of cosmetology shall pay the sum of *$100* for a certificate of registration.

(11) A person, firm, copartnership, or corporation owning, operating, or conducting an advanced school of cosmetology shall pay the sum of *$100* for a certificate of registration.

(12) A person, firm, copartnership, or corporation owning, operating, or conducting a teacher-training unit in a school of cosmetology shall pay the sum of *$100* for a certificate of registration.

(13) An applicant for reciprocity licensure shall pay a fee of $100.

(14) Duplicate licenses or certificates of registration shall be issued on payment of *$4* and proof of necessity. The license and registration fees shall be paid annually, *unless otherwise provided by board rule,* in advance to the department. No other or additional license or registration fee may be imposed by a municipal corporation or other political subdivision of this state for the practice or teaching of cosmetology."

Section 5. There is a new R.C.M. section numbered 66-808.1 that reads as follows:

66-808.1. Reciprocity. A person who is licensed to practice cosmetology in another state may be eligible for reciprocity licensing in this state if he fulfills the requirements of this chapter and the rules adopted under it, other than those relating to examination. However, he may be licensed without examination only if the state in which he is licensed grants the same privilege to persons licensed in this state who seek licensure as a cosmetologist in that state.

Section 6. Section 66-1042, R.C.M. 1947, is amended to read as follows:

"66-1042. Annual registration fees — limiting authority to impose registration fees. (1) In addition to the license fees required of applicants, a licensed physician actively practicing medicine in this state shall pay each year to the department, an annual registration fee, not to exceed the sum of *$100,* as prescribed by the board. If a person licensed to practice medicine absents himself from the state for a period of 1 or more years, or does not engage in active practice in this state, he may continue his license in good standing by payment *each year* of *a fee prescribed by the board in an amount not to exceed $50,* or at the discretion of the board, he may be reinstated on the payment of a fee *not to exceed $50* for each year of absence or inactive practice.

(2) The annual payments for registration shall be made prior to April 1, and a receipt acknowledging payment of the annual registration fee shall be issued by the department. The department shall mail registration

HeinOnline -- 1977 vol. II 1716 1977

notices, at least 60 days before the registration is due. In case of default in the payment of the annual registration fee by a person licensed to practice medicine who is actively practicing medicine in this state, his underlying certificate to practice medicine may be revoked by the board on 30 days' notice given to the delinquent of the time and place of considering the revocation. A registered or certified letter addressed to the last known address of the person failing to comply with the requirements of annual registration, as the address appears on the records of the department, constitutes sufficient notice of intention to revoke his underlying certificate. No certificate may be revoked for nonpayment if the person authorized to practice medicine, and notified, pays the annual registration fee before or at the time fixed for consideration of revocation together with a delinquency penalty of $10. The department may collect the dues by an action at law.

(3) No registration or license fee may be imposed on a licensee under this act by a municipality or any other subdivision of the state."

Section 7. Section 66-1506, R.C.M. 1947, is amended to read as follows:

"66-1506. Examination of applicants for registration — fees — certificates. (1) The board shall meet at least once a year to transact its business. The department shall give reasonable notice of examinations by mail to known applicants. The department shall record the names of persons examined together with the grounds on which the right of each to examination was claimed and also the names of persons registered by examination or otherwise. The fee for an examination *shall be set by the board at a figure commensurate with costs,* which fee may, in the discretion of the board, be returned to applicants not taking the examination.

(2) On again making payment of the fee an applicant who fails is entitled to take the next succeeding examination free of charge.

(3) The fee for registration by reciprocity is *$200.*

(4) To be entitled to examination as a pharmacist, the applicant shall be a citizen of the United States, of good moral character, and a graduate of the school of pharmacy of the university of Montana or of a college or school of pharmacy recognized and approved by, or a member of, the American association of colleges of pharmacy, but the applicant may not receive a registered pharmacist's license until he has complied with the internship requirements established by the board. During this period, if the applicant has passed the examination, he shall be licensed as an intern only.

(5) The board may, in its discretion, authorize the department to grant registration without examination, to a pharmacist licensed by a board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state, if the requirements for registration in the other state are, in the opinion of the board, equivalent to the requirements of this act. Every person licensed and registered under this act shall receive from the department an appropriate certificate attesting the fact, which shall be conspicuously displayed at all times in his place of business. If the holder is entitled to manage or conduct a pharmacy

HeinOnline -- 1977 vol. II 1717 1977

in this state for himself or another, the fact shall be set forth in the certificate."

Section 8. Section 66-1508, R.C.M. 1947, is amended to read as follows:

"**66-1508. Store license — certified pharmacy license — suspension or revocation.** (1) The department shall on application on forms prescribed by the board and on the payment of an annual fee of *$10*, license stores other than a pharmacy in which are sold ordinary household or medicinal drugs prepared in sealed packages or bottles by a manufacturer, qualified under the laws of the state in which the manufacturer resides. The name and address of the manufacturer shall appear conspicuously on each package sold by the licensee. It is unlawful for a store to sell, deliver, or give away household medicinal drugs, without first having secured a license and thereafter keeping it in force by proper renewal. This subsection does not prevent a vendor from selling a patent or proprietary medicine in the original package when plainly labeled, nor nonmedical articles usually sold by vendors.

(2) The board shall provide for the *original certification* and *annual renewal* by the department of every pharmacy doing business in this state. On presentation of evidence satisfactory to the board and on application on a form prescribed by the board and on the payment of an *original certification* fee of *$100*, the department shall issue a license to a pharmacy as a "CERTIFIED PHARMACY", however, the license may be granted only to pharmacies operated by registered pharmacists or registered interns qualified under this act. *The annual renewal fee for a pharmacy shall be set by the board in an amount not to exceed $50.* Any default in the payment of such renewal fee for a period of 30 days after the date the same is due shall increase the renewal fee to the sum of *$100*. The license must be displayed in a conspicuous place in the pharmacy for which it is issued, and expires on June 30 following the date of issue. It is unlawful for a person to conduct a pharmacy, use the word pharmacy to identify his business, or use the word pharmacy in advertising unless a license has been issued and is in effect.

(3) The board may suspend, revoke, or refuse to renew a store or pharmacy license obtained by false representation or fraud; when the pharmacy for which the license is issued is kept open for the transaction of business without a pharmacist in charge; when the person to whom the license is granted has been convicted of a violation of this act, a felony, or a violation of the Federal Food, Drug and Cosmetic Act of June 25, 1938, (52 Stats. 1040 through 1059) if a natural person, whose pharmacist or intern license has been revoked; or when the store or pharmacy is conducted in violation of this act. Before a license can be revoked the holder is entitled to a hearing by the board."

Section 9. Section 66-1826, R.C.M. 1947, is amended to read as follows:

"**66-1826. Powers of board.** The board shall have power to prescribe, by uniform rule, for the following:

(a) The terms and conditions under which a candidate who passes one

HeinOnline -- 1977 vol. II 1718 1977

or more subjects of examination may be re-examined in only the remaining subjects, with credit for the subjects previously passed;

(b) A reasonable waiting period for a candidate's re-examination in a subject he has failed;

(c) The maximum number of re-examinations for which a candidate may apply;

(d) The fees to be charged each candidate for initial examinations and special examinations *shall be commensurate with costs. With respect to* re-examinations, *a fee commensurate with costs may be charged* for each subject in which the candidate is re-examined."

Section 10. Section 66-2909, R.C.M. 1947, is amended to read as follows:

"**66-2909. Renewal of license.** A license expires on December 31 of each year and shall be renewed then or thereafter, by the department, on payment of a renewal fee of not less than $10 or more than $25, as set by the board.

Any licensee who fails to renew on or before December 31 of each year shall be required to pay, in addition to the renewal fee, a late renewal fee, in an amount not to exceed $10. Failure to so renew within 30 days following December 31 shall be cause for suspension or revocation of the license."

Section 11. Section 66-3608, R.C.M. 1947, is amended to read as follows:

"**66-3608. Fees — earmarked revenue fund — late renewal fee.** (1) The fee for an original electrologist license shall not exceed $50 as set by the board. The renewal shall be automatic, unless revoked or suspended for cause, and the renewal fee shall be set by the board.

(2) The fee for an original electrologist salon license shall be the same as that for cosmetology salons. The renewal fee shall be the same as that for cosmetology salons.

(3) All licenses issued under this act expire on December 31 and shall be renewed annually. *Failure to renew on or before December 31 shall cause a late renewal fee of $10 to be added to the regular renewal fee. The right to renew by payment of the late renewal fee expires after 3 years of nonpayment.*

(4) All fees or moneys collected by the department under this act shall be deposited in the earmarked revenue fund for the use of the board in administration of the act."

Section 12. Section 69-3416, R.C.M. 1947, is amended to read as follows:

"**69-3416. License fees.** (1) An applicant for a license shall pay a fee *set by the board in an amount commensurate with examination and administrative costs.*

(2) A registered sanitarian may renew his license by paying an annual fee set by the board, not to exceed $10.

HeinOnline -- 1977 vol. II 1719 1977

(3) Renewal fees are due July 1 of the renewal year. If the renewal fee is not payed the license expires. Licenses which have lapsed for failure to pay renewal fees may be reissued under rules adopted by the board."

Section 13. Section 66-1934, R.C.M. 1947, is amended to read as follows:

"**66-1934. Fees — when due.** (1) The following fees shall be charged by the department and paid into the earmarked revenue fund for the use of the board, subject to section 82A-1603(6):

(a) For each examination, a fee not to exceed *$25.*

(b) For each original resident broker's license issued, a fee not to exceed fifty dollars ($50).

(c) For each annual renewal of a resident broker's license, a fee not to exceed *$30.*

(d) For each original nonresident broker's license issued, a fee not to exceed fifty dollars ($50).

(e) For each annual renewal of a nonresident broker's license, a fee not to exceed *$30.*

(f) For each original salesman's license issued, a fee not to exceed twenty-five dollars ($25).

(g) For each annual renewal of a salesman's license, a fee not to exceed *$15.*

(h) For each additional office or place of business, an annual fee not to exceed twenty-five dollars ($25).

(i) For each change of place of business or change of employer or contractual associate, a fee not to exceed *$15.*

(j) For each duplicate license, where the original license is lost or destroyed and affidavit is made, a fee not to exceed ten dollars ($10).

(k) For each duplicate pocket card, where the original pocket card is lost or destroyed and affidavit is made, a fee not to exceed ten dollars ($10).

(2) The board shall adopt a schedule of fees within the limits set by this section. However, a fee once set for one of the items for which a fee is charged cannot be increased or decreased until at least one (1) year has passed since the fee for that particular item was last increased or decreased.

(3) Annual fees are due and payable for the ensuing year during the month of December of each year. Failure to remit annual fees before January 1 automatically cancels the license, but otherwise the license remains in effect continuously from the date of issuance, unless suspended or revoked by the board for just cause.

(4) No license fee or tax may be imposed on a real estate broker or salesman by a municipality or any other political subdivision of the state.

HeinOnline -- 1977 vol. II 1720 1977

(5) No member of the board may be reimbursed from the board's earmarked revenue fund for travel outside the state on business of the board."

Section 14. Section 82A-1604, R.C.M. 1947, is amended to read as follows:

"**82A-1604. Director — duties.** In addition to his powers and duties under sections 82A-107 and 82A-108 of this act, the director shall:

(1) Appoint impartial legal counsel to conduct hearings before each board within the department whenever any board holds a hearing. The legal counsel appointed shall see that hearings are conducted in a proper and legal manner.

(2) Whenever the department conducts an investigation of a complaint of illegal or unethical conduct of a member of a particular profession or occupation as prescribed in section 82A-1603(5) of this chapter, and if requested by the appropriate board, appoint an impartial member of that profession or occupation to assist the department in its investigation. The member so appointed may not be a member of the board having jurisdiction over the particular profession or occupation.

(3) Hire all personnel to perform the administrative and clerical functions of the department for the boards. Boards within the department have no authority to hire personnel.

(4) Approve all contracts and expenditures by boards within the department. No board within the department may enter into a contract or expend funds without the approval of the director."

Section 15. **Effective date.** This act is effective on its passage and approval.

Approved April 29, 1977.

CHAPTER NO. 534

AN ACT TO PROVIDE ADDITIONAL REIMBURSEMENT IN CERTAIN CASES FOR PARENTS DRIVING THEIR CHILDREN TO A BUS STOP OR TO SCHOOL; AMENDING SECTION 75-7019, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7019, R.C.M. 1947, is amended to read as follows:

"**75-7019. Schedule of maximum reimbursement for individual transportation including provisions for isolation, room and board, and supervised study programs.** The following rates for individual transportation constitute the maximum reimbursement to districts for individual transportation from state and county sources of transportation revenue under the provisions of sections 75-7022 and 75-7023. These rates also shall constitute the limitation of the budgeted amounts for individual

HeinOnline -- 1977 vol. II 1721 1977

transportation for the ensuing school fiscal year. When the trustees contract with the parent or guardian of any eligible transportee to provide individual transportation for each day of school attendance, they shall reimburse the parent or guardian on the basis of the following schedule:

(1) When a parent or guardian transports an eligible transportee or transportees from the residence of the parent or guardian to a school, or to schools located within three (3) miles of one another, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the school, or the most distant school if more than one, by two (2), subtracting six (6) miles from the product so obtained, and multiplying the difference by twelve cents ($.12) provided that:

(a) if two (2) or more eligible transportees are transported by a parent or guardian to two (2) or more schools located within three (3) miles of one another, and if such schools are operated by different school districts, the total amount of the reimbursement shall be divided equally between the districts.

(b) if two or more eligible transportees are transported by a parent or guardian to two (2) or more schools located more than three (3) miles from one another, the parent or guardian shall be separately reimbursed for transporting the eligible transportee or transportees to each school.

(c) if a parent transports two or more eligible transportees to a school and a bus stop which school and bus stop are located within three (3) miles of one another, the total reimbursement shall be determined under the provisions of this subsection and shall be divided equally between the district operating the school and the district operating the bus.

(d) if a parent transporting two or more eligible transportees to a school or bus stop must, because of varying arrival and departure times, make more than one round-trip journey to the bus stop or school, the total reimbursement allowed by this section shall be limited to one round trip per day for each scheduled arrival or departure time.

(2) When the parent or guardian transports an eligible transportee or transportees from the residence to a bus stop of a bus route approved by the trustees for the transportation of the transportee or transportees, the total reimbursement per day of attendance shall be determined by multiplying the distance in miles between the residence and the bus stop by two (2), subtracting three (3) miles from the product so obtained and multiplying the difference by twelve cents ($.12) provided that:

(a) if the eligible transportees transported attend schools in different districts but ride on one bus, the districts shall divide the total reimbursement equally, and

(b) if the parent or guardian is required to transport the eligible transportees to more than one bus, the parent or guardian shall be separately reimbursed for transportation to each bus.

(3) Where, due to excessive distances, impassable roads or other special circumstances of isolation, the rates prescribed in subsections (1) or (2) would be an inadequate reimbursement for the transportation costs or

HeinOnline -- 1977 vol. II 1722 1977

would result in a physical hardship for the eligible transportee, his parent or guardian may request an increase in the reimbursement rate. Such a request for increased rates due to isolation shall be made by the parent or guardian on the contract for individual transportation for the ensuing school fiscal year by indicating the special facts and circumstances which exist to justify the increase. Before any increase rate due to isolation can be paid to the requesting parent or guardian, such rate must be approved by the county transportation committee and the superintendent of public instruction after the trustees have indicated their approval or disapproval. Regardless of the action of the trustees and when approval is given by the county transportation committee and the superintendent of public instruction, the trustees shall pay such increased rate due to isolation. The increased rate shall be one and one-half (1 ½) times the rate prescribed in subsection (1) above.

(4) When the isolated conditions of the household where an eligible transportee resides require such eligible transportee to live away from the household in order to attend school, he shall be eligible for the room and board reimbursement. Approval to receive the room and board reimbursement shall be obtained in the same manner prescribed in subsection (3) above. The per diem rate for room and board shall be three dollars ($3) for one eligible transportee and one dollar and fifty cents ($1.50) for each additional eligible transportee of the same household.

(5) When the individual transportation provision is to be satisfied by supervised home study or supervised correspondence study, the reimbursement rate shall be the cost of such study; provided that the course of instruction is approved by the trustees and supervised by the district.

(6) The schedules provided in this section shall not be altered by any authority other than the legislature of the state of Montana."

Approved April 29, 1977.

CHAPTER NO. 535

AN ACT AMENDING SECTION 53-118, R.C.M. 1947, TO PROVIDE FOR REGULATION OF MOTOR VEHICLE AND TRAILER DEALERS; DEFINING THE ACQUISITION AND USE OF DEALER LICENSE PLATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-118, R.C.M. 1947, is amended to read as follows:

"**53-118. Application for dealer's license.** *(1)* Every person, firm, corporation, or association who, for commission or profit, engages in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, used motor vehicles, trailers, (except trailers having an unladen weight of less than five hundred (500) pounds), semitrailers or special mobile equipment as defined in section 53-642 and qualifies under subparagraph (f) of this section, shall cause to be filed, by mail or other-

HeinOnline -- 1977 vol. II 1723 1977

wise, in the office of the registrar of motor vehicles, a verified application for licensing as a dealer on a blank to be furnished by the registrar of motor vehicles for that purpose, and containing the information therein required. The application and all of the information therein contained shall be verified by the Montana highway patrol. Each application must be accompanied by the license fee hereinafter named. Dealer's license must be renewed and paid for annually, and an application for relicensing must be filed not later than January first of each year. To qualify for licensing and the issuance and use of "D," "UD," "DTR," or "MCD" plates, as hereinafter provided, the applicant must furnish the following information and qualify under the following provisions:

(a) To qualify as a new motor vehicle dealer and for the use of "D" plates, the applicant must:

(i) state the name under which the business is to be conducted and the location of the premises (street address, city, county, and state) where records are kept, sales are made, and stock of motor vehicles is displayed;

(ii) state the name and address of all owners or persons having an interest in the business, provided that in the case of a corporation, the names and addresses of the president and secretary thereof are sufficient;

(iii) state the name and make of all motor vehicles handled and the name and address of the manufacturer, importer, or distributor with whom the applicant has a written new motor vehicle franchise or sales agreement;

(iv) execute a certificate to the effect that the applicant has a permanent building for the display and sale of new motor vehicles at the location of the premises where sales are conducted;

(v) execute a certificate to the effect that the applicant has a bona fide service department for the repair, service, and maintenance of motor vehicles; and

(vi) execute a certificate to the effect that the applicant is a bona fide dealer in new motor vehicles and that he is recognized by a manufacturer, importer, or distributor as a dealer in new motor vehicles.

(b) To qualify as a used motor vehicle dealer and for the use of "UD" plates, or as a trailer, semitrailer, or special mobile equipment dealer and for the use of "DTR" plates, or as a motorcycle dealer and for the use of "MCD" plates, the applicant must, in addition to the matters set forth in subsections (i) and (ii) of subsection (1)(a) above, provide:

(i) a statement that the applicant has a building or lot and a sign readable at a minimum distance of 150 feet and indicating the firm name and headquarters as the principal place of business; and

(ii) a certificate to the effect that the applicant is a bona fide dealer in used motor vehicles, trailers, semitrailers, special mobile equipment, or motorcycles.

(c) To qualify for a used motor vehicle dealer license a person must submit an annual application for that license and comply with the provi-

HeinOnline -- 1977 vol. II 1724 1977

sions of this subsection in addition to fulfilling the requirements of subsection (1)(b) above. A new applicant for a used motor vehicle dealer license shall pay $300 to the registrar of motor uehicles in addition to any other sums required by this section or other provisions of the law. An applicant for a renewal of a used motor vehicle dealer license shall certify under oath that he has sold more than five used motor vehicles during the preceding calendar year or pay an additional $300 before he may be licensed.

(d) The provisions of subsection (1)(c) above, do not apply to an applicant who is licensed as a motor vehicle wrecking facility under the provisions of Title 69, chapter 68, R.C.M. 1947.

(2) The applicant for a dealer's license shall also file with his application a good and sufficient bond in the sum of five thousand dollars ($5,000), and the bond shall be conditioned that the applicant shall conduct his business in accordance with the requirements of the law. All bonds shall run to the state of Montana and shall be approved by the registrar of motor vehicles and filed in his office and shall be renewed annually.

(3) Upon making such application, the applicant shall pay to the registrar of motor vehicles, in addition to the fees required of dealers under the provisions of section 53-122, a fee of five dollars ($5). Upon receipt of the application, fee and bond, as provided above, the registrar of motor vehicles shall examine the application, and may, prior to issuing a license, make individual investigation of the truth of the statements contained in the application. If the registrar of motor vehicles is satisfied that the applicant qualifies for the issuance of a dealer's license under the provisions of this act, he may thereupon issue the same.

(4) Every dealer licensed under this section shall keep a book or record of the purchase, sale or exchange or receipt for the purpose of sale, of any used vehicle, a description of such vehicles, together with the name and address of the seller, of the purchaser, and of the alleged owner or other person from whom such vehicle was purchased or received, or to whom it was sold or delivered, as the case may be. Such description in the case of motor vehicles shall also include the engine number, if any, the maker's number, if any, chassis number, if any, and such other numbers or identification marks as may be thereon, and shall include a statement that a number has been obliterated, defaced or changed, if such is the fact. In the case of a trailer, semitrailer or special mobile equipment, the record shall include the manufacturer's number and such other numbers or identification marks as may be thereon. He shall also have in his possession a duly assigned certificate of title from the owner of said motor vehicle in accordance with the provisions of another section of this act, from the time when the motor vehicle is delivered to him until it has been disposed of by him.

(5) Upon the licensing of a dealer as a new motor vehicle dealer, used motor vehicle dealer, or trailer, semitrailer, or special mobile equipment dealer, or a dealer of the motorcycle-type vehicle, the registrar of motor vehicles shall assign to such dealer a distinctive serial license number as a dealer and *after payment of fees* furnish every qualified dealer in motor vehicles with not less than two (2) sets of number plates, and as

HeinOnline -- 1977 vol. II 1725 1977

many more as *required according to need, which need shall be justified by the dealer with the initial application for license and each renewal. Assigned* number plates shall be similar to number plates furnished to owners of motor vehicles but shall bear thereon, in addition to the serial number assigned such dealer, the letter "D" if the dealer *is authorized to sell* new motor vehicles (including trucks and *truck-trailers*); the letters "UD" if the dealer *is authorized to sell* used motor vehicles (including *used* trucks and *used truck-trailers*); the letters "DTR" if the dealer *is authorized to sell* trailers, semitrailers, or special mobile equipment (new or used); and the letters "MCD" if the dealer *is authorized to sell* vehicles of the motorcycle type *(new or used). With the exception of a dealer authorized to sell* new motor vehicles (including trucks and *truck-trailers*) *and to use the "D" plate, no dealer authorized to transact business under the provisions of this section may offer for sale or trade any vehicle described in this section except such vehicles as are authorized by the plates assigned to him. If an applicant wishes to sell more than one type of vehicle, he shall make application for each separate authorization. No dealer plate assigned to a dealer may be used on any vehicle other than the type described in this section. A dealer authorized to sell new motor vehicles and assigned a "D" plate is authorized to sell both new and used motor vehicles (including trucks and truck-trailers), and "D" plates may be displayed on either new or used motor vehicles by a licensed dealer in new vehicles.* The registrar of motor vehicles shall cause to be placed on each set of license plates issued to a dealer, a serial number assigned to each dealer and the actual number of license plates issued to each dealer. The number of the dealer shall follow the prefix of the county, and the number of plates issued the dealer shall follow the prefix of the county and the number of the dealer, the dealer's number to be separated from the county prefix by a dash, and the number of plates issued to a dealer to be separated from the dealer's number by a dash, as follows: Dealer number 4 in Lewis and Clark County would be numbered 5-4, and if the dealer were issued three sets of plates, they would be numbered consecutively as follows, 5-4-1, 5-4-2 and 5-4-3. Dealers properly licensed under this section are authorized to use and display, dealer's license plates on any motor vehicle held for *bona fide* sale or used in the conduct of the dealer's business in selling or demonstrating motor vehicles. No dealer's license plate shall be used or displayed on vehicles normally used for hire, lease or rental or for purposes not incident to the business of a motor vehicle dealer. *Each dealer is accountable for each plate issued and shall certify quarterly to the registrar of motor vehicles the disposition of each dealer plate assigned to the dealer, including the name, address, and occupation of the person primarily using each plate.* If it shall appear to the satisfaction of the registrar of motor vehicles, from information furnished to him by the sheriff or any other law enforcement officer, that any such dealer has been improperly licensed, has used the dealer's license in a manner other than the one *herein authorized* or is not qualified as a dealer under the requirements of this section, the registrar of motor vehicles may revoke such dealer's license. No person, firm, corporation or association shall, for commission or profit, engage in the business of buying, selling, exchanging or acting as a broker of new motor vehicles, trailers or semitrailers unless duly licensed in compliance with this section (except trailers having an unladen weight of less than five hundred (500) pounds).

HeinOnline -- 1977 vol. II 1726 1977

Any person violating the provisions of this section shall be guilty of a misdemeanor and subject to a fine of not less than two hundred fifty dollars ($250) and not more than five hundred dollars ($500). For the purposes hereof, every sale of a motor vehicle in violation of the provisions of this section shall be deemed a separate offense."

Approved April 29, 1977.

CHAPTER NO. 536

AN ACT TO AMEND SECTION 94-5-610, R.C.M. 1947, TO PROVIDE THAT UNLAWFUL POSSESSION OF AN INTOXICATING SUBSTANCE BY A CHILD BE TREATED AS PROVIDED IN THE YOUTH COURT ACT WHEN PROCEEDINGS ARE HELD IN THE YOUTH COURT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 94-5-610, R.C.M. 1947, is amended to read as follows:

"**94-5-610. Unlawful possession of intoxicating substance by children.** (1) A person who has not reached the age of majority commits the offense of possession of intoxicating substance if he knowingly has in his possession an intoxicating substance, except a person who has not reached the age of majority does not commit the offense of possession of an intoxicating substance when in the course of his employment, he bags, carries or transports beer for customers at a grocery store.

(2) A person convicted of the offense of possessing an intoxicating substance shall be fined not to exceed $50 or be imprisoned in the county jail for any term not to exceed 10 days, or both. *If proceedings are held in the youth court, the preceding penalty does not apply and the offender shall be treated as an alleged youth in need of supervision as defined in 10-1203(13). In such case, the youth court may enter its judgment under 10-1222.*"

Approved April 29, 1977.

CHAPTER NO. 537

AN ACT TO AVOID JURISDICTIONAL CONFLICT BETWEEN STATES IN CHILD CUSTODY PROCEEDINGS; PROVIDING INTERSTATE JUDICIAL ASSISTANCE IN CUSTODY CASES TO DISCOURAGE ILLEGAL SCHEMES TO GAIN POSSESSION OF A CHILD IN CONTESTED CUSTODY PROCEEDINGS; AMENDING SECTIONS 48-315 AND 48-331, R.C.M. 1947.

HeinOnline -- 1977 vol. II 1727 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 61-401 that reads as follows:

61-401. Short title. This act may be cited as the "Uniform Child Custody Jurisdiction Act".

Section 2. There is a new R.C.M. section numbered 61-402 that reads as follows:

61-402. Purposes of act — construction of provisions. (1) The general purposes of this act are to:

(a) avoid jurisdictional competition and conflict with courts of other states in matters of child custody which have in the past resulted in the shifting of children from state to state with harmful effects on their well-being;

(b) promote cooperation with the courts of other states to the end that a custody decree is rendered in that state which can best decide the case in the interest of the child;

(c) assure that litigation concerning the custody of a child takes place ordinarily in the state with which the child and his family have the closest connection and where significant evidence concerning his care, protection, training, and personal relationships is most readily available and that courts of this state decline the exercise of jurisdiction when the child and his family have a closer connection with another state;

(d) discourage continuing controversies over child custody in the interest of greater stability of home environment and of secure family relationships for the child;

(e) deter abductions and other unilateral removals of children undertaken to obtain custody awards;

(f) avoid relitigation of custody decisions of other states in this state insofar as feasible;

(g) facilitate the enforcement of custody decrees of other states;

(h) promote and expand the exchange of information and other forms of mutual assistance between the courts of this state and those of other states concerned with the same child; and

(i) make uniform the law of those states which enact it.

(2) This act shall be construed to promote the general purposes stated in this section.

Section 3. There is a new R.C.M. section numbered 61-403 that reads as follows:

61-403. Definitions. As used in this act, the following definitions apply:

(1) "Contestant" means a person, including a parent, who claims a right to custody or visitation rights with respect to a child.

HeinOnline -- 1977 vol. II 1728 1977

(2) "Custody determination" means a court decision and court orders and instructions providing for the custody of a child, including visitation rights. It does not include a decision relating to child support or any other monetary obligation of any person.

(3) "Custody proceeding" includes proceedings in which a custody determination is one of several issues, such as an action for divorce or separation, and includes issues of custody in adoption proceedings. A "custody proceeding" is not a proceeding pursuant to Title 10, chapter 12, or Title 10, chapter 13.

(4) "Decree" or "custody decree" means a custody determination contained in a judicial decree or order made in a custody proceeding and includes an initial decree and a modification decree.

(5) "Home state" means the state in which the child, immediately preceding the time involved, lived with his parents, a parent, or a person acting as parent, for at least 6 consecutive months and in the case of a child less than 6 months old the state in which the child lived from birth with any of the persons mentioned. Periods of temporary absence of any of the named persons are counted as part of the 6-month or other period.

(6) "Initial decree" means the first custody decree concerning a particular child.

(7) "Modification decree" means a custody decree which modifies or replaces a prior decree, whether made by the court which rendered the prior decree or by another court.

(8) "Physical custody" means actual possession and control of a child.

(9) "Person acting as parent" means a person, other than a parent, who has physical custody of a child and who has either been awarded custody by a court or claims a right to custody.

(10) "State" means any state, territory, or possession of the United States, the Commonwealth of Puerto Rico, and the District of Columbia.

Section 4. There is a new R.C.M. section numbered 61-404 that reads as follows:

61-404. Jurisdiction. The jurisdictional provisions of 48-331 apply to this act.

Section 5. There is a new R.C.M. section numbered 61-405 that reads as follows:

61-405. Notice and opportunity to be heard. Before making a decree under this act, reasonable notice and opportunity to be heard shall be given to the contestants, any parent whose parental rights have not been previously terminated, and any person who has physical custody of the child. If any of these persons are outside this state, notice and opportunity to be heard shall be given pursuant to 61-406.

Section 6. There is a new R.C.M. section numbered 61-406 that reads as follows:

HeinOnline -- 1977 vol. II 1729 1977

61-406. Notice to persons outside this state — submission to jurisdiction. (1) Notice required for the exercise of jurisdiction over a person outside this state shall be given in a manner reasonably calculated to give actual notice and may be:

(a) by personal delivery outside this state in the manner prescribed for service of process within this state;

(b) in the manner prescribed by the law of the place in which the service is made for service of process in that place in an action in any of its courts of general jurisdiction;

(c) by any form of mail addressed to the person to be served and requesting a receipt; or

(d) as directed by the court including publication, if other means of notification are ineffective.

(2) Notice under this section shall be served, mailed, or delivered or last published at least 10 days before any hearing in this state.

(3) Proof of service outside this state may be made by affidavit of the individual who made the service or in the manner prescribed by the law of this state, the order pursuant to which the service is made, or the law of the place in which the service is made. If service is made by mail, proof may be a receipt signed by the addressee or other evidence of delivery to the addressee.

(4) Notice is not required if a person submits to the jurisdiction of the court.

Section 7. There is a new R.C.M. seciton numbered 61-407 that reads as follows:

61-407. Simultaneous proceedings in other states. (1) A court of this state may not exercise its jurisdiction under this act if at the time of filing the petition a proceeding concerning the custody of the child was pending in a court of another state exercising jurisdiction substantially in conformity with this act unless the proceeding is stayed by the court of the other state because this state is a more appropriate forum or for other reasons.

(2) Before hearing the petition in a custody proceeding, the court shall examine the pleadings and other information supplied by the parties under 61-410 and shall consult the child custody registry established under 61-417 concerning the pendency of proceedings with respect to the child in other states. If the court has reason to believe that proceedings may be pending in another state, it shall direct an inquiry to the state court administrator or other appropriate official of the other state.

(3) If the court is informed during the course of the proceeding that a proceeding concerning the custody of the child was pending in another state before the court assumed jurisdiction, it shall stay the proceeding and communicate with the court in which the other proceeding is pending to the end that the issue may be litigated in the more appropriate forum and that information be exchanged in accordance with 61-420 through

HeinOnline -- 1977 vol. II 1730 1977

61-423. If a court of this state has made a custody decree before being informed of a pending proceeding in a court of another state, it shall immediately inform that court of the fact. If the court is informed that a proceeding was commenced in another state after it assumed jurisdiction, it shall likewise inform the other court to the end that the issues may be litigated in the more appropriate forum.

Section 8. There is a new R.C.M. section numbered 61-408 that reads as follows:

61-408. Inconvenient forum. (1) A court which has jurisdiction under this act to make an initial or modification decree may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that a court of another state is a more appropriate forum.

(2) A finding of inconvenient forum may be made upon the court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.

(3) In determining if it is an inconvenient forum, the court shall consider if it is in the interest of the child that another state assume jurisdiction. For this purpose it may take into account the following factors, among others:

(a) if another state is or recently was the child's home state;

(b) if another state has a closer connection with the child and his family or with the child and one or more of the contestants;

(c) if substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another state;

(d) if the parties have agreed on another forum which is no less appropriate; and

(e) if the exercise of jurisdiction by a court of this state would contravene any of the purposes stated in 61-402.

(4) Before determining whether to decline or retain jurisdiction, the court may communicate with a court of another state and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to the parties.

(5) If the court finds that it is an inconvenient forum and that a court of another state is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named state or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

(6) The court may decline to exercise its jurisdiction under this act if a custody determination is incidental to an action for divorce or another

HeinOnline -- 1977 vol. II 1731 1977

proceeding while retaining jurisdiction over the divorce or other proceeding.

(7) If it appears to the court that it is clearly an inappropriate forum, it may require the party who commenced the proceedings to pay, in addition to the costs of the proceedings in this state, necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses. Payment is to be made to the clerk of the court for remittance to the proper party.

(8) Upon dismissal or stay of proceedings under this section the court shall inform the court found to be the more appropriate forum of this fact or, if the court which would have jurisdiction in the other state is not certainly known, transmit the information to the court administrator or other appropriate official for forwarding to the appropriate court.

(9) Any communication received from another state informing this state of a finding of inconvenient forum because a court of this state is the more appropriate forum shall be filed in the custody registry of the appropriate court. Upon assuming jurisdiction, the court of this state shall inform the original court of this fact.

Section 9. There is a new R.C.M. section numbered 61-409 that reads as follows:

61-409. Jurisdiction declined by reason of conduct. (1) If the petitioner for an initial decree has wrongfully taken the child from another state or has engaged in similar reprehensible conduct, the court may decline to exercise jurisdiction if this is just and proper under the circumstances.

(2) Unless required in the interest of the child, the court may not exercise its jurisdiction to modify a custody decree of another state if the petitioner, without consent of the person entitled to custody, has improperly removed the child from the physical custody of the person entitled to custody or has improperly retained the child after a visit or other temporary relinquishment of physical custody. If the petitioner has violated any other provision of a custody decree of another state, the court may decline to exercise its jurisdiction if this is just and proper under the circumstances.

(3) In appropriate cases a court dismissing a petition under this section may charge the petitioner with necessary travel and other expenses, including attorneys' fees, incurred by other parties or their witnesses.

Section 10. There is a new R.C.M. section numbered 61-410 that reads as follows:

61-410. Information under oath to be submitted to the court. (1) Each party in a custody proceeding in his first pleading or in an affidavit attached to that pleading shall give information under oath as to the child's present address, the places where the child has lived within the last 5 years, and the names and present addresses of the persons with whom the child has lived during that period. In this pleading or affidavit each party shall further declare under oath whether:

HeinOnline -- 1977 vol. II 1732 1977

(a) he has participated (as a party, witness, or in any other capacity) in any other litigation concerning the custody of the same child in this or any other state;

(b) he has information of any custody proceeding concerning the child pending in a court of this or any other state; and

(c) he knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.

(2) If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the court. The court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the court's jurisdiction and the disposition of the case.

(3) Each party has a continuing duty to inform the court of any custody proceeding concerning the child in this or any other state of which he obtained information during this proceeding.

Section 11. There is a new R.C.M. section numbered 61-411 that reads as follows:

61-411. Additional parties. If the court learns from information furnished by the parties pursuant to 61-410 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child, it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside this state, he shall be served with process or otherwise notified in accordance with 61-406.

Section 12. There is a new R.C.M. section numbered 61-412 that reads as follows:

61-412. Appearance of parties and the child. (1) The court may order any party to the proceeding who is in this state to appear personally before the court. If that party has physical custody of the child, the court may order that he appear personally with the child.

(2) If a party to the proceeding whose presence is desired by the court is outside this state with or without the child, the court may order that the notice given under 61-406 include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.

(3) If a party to the proceeding who is outside this state is directed to appear under subsection (2) or desires to appear personally before the court with or without the child, the court may require another party to pay to the clerk of the court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

Section 13. There is a new R.C.M. section numbered 61-413 that reads as follows:

HeinOnline -- 1977 vol. II 1733 1977

61-413. Binding force and res judicata effect of custody decree. A custody decree rendered by a court of this state which had jurisdiction under 61-404 binds all parties who have been served in this state or notified in accordance with 61-406 or who have submitted to the jurisdiction of the court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this act.

Section 14. There is a new R.C.M. section numbered 61-414 that reads as follows:

61-414. Recognition of out-of-state custody decrees. The courts of this state shall recognize and enforce an initial or modification decree of a court of another state which had assumed jurisdiction under statutory provisions substantially in accordance with this act or which was made under factual circumstances meeting the jurisdictional standards of the act, so long as this decree has not been modified in accordance with jurisdictional standards substantially similar to those of this act.

Section 15. There is a new R.C.M. section numbered 61-415 that reads as follows:

61-415. Modification of custody decree of another state. (1) If a court of another state has made a custody decree, a court of this state may not modify that decree unless it appears to the court of this state that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this act or has declined to assume jurisdiction to modify the decree and the court of this state has jurisdiction.

(2) If a court of this state is authorized under subsection (1) and 61-409 to modify a custody decree of another state, it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it in accordance with 61-423.

Section 16. There is a new R.C.M. section numbered 61-416 that reads as follows:

61-416. Filing and enforcement of custody decree of another state. (1) A certified copy of a custody decree of another state may be filed in the office of the clerk of any district court of this state. The clerk shall treat the decree in the same manner as a custody decree of the district court of this state. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by a court of this state.

(2) A person violating a custody decree of another state which makes it necessary to enforce the decree in this state may be required to pay necessary travel and other expenses, including attorneys' fees, incurred by the party entitled to the custody or his witnesses.

Section 17. There is a new R.C.M. section numbered 61-417 that reads as follows:

HeinOnline -- 1977 vol. II 1734 1977

61-417. Registry of out-of-state custody decrees and proceedings. The clerk of each district court shall maintain a registry in which he shall enter the following:

(1) certified copies of custody decrees of other states received for filing;

(2) communications as to the pendency of custody proceedings in other states;

(3) communications concerning a finding of inconvenient forum by a court of another state; and

(4) other communications or documents concerning custody proceedings in another state which may affect the jurisdiction of a court of this state or the disposition to be made by it in a custody proceeding.

Section 18. There is a new R.C.M. section numbered 61-418 that reads as follows:

61-418. Certified copies of custody decree. The clerk of the district court of this state, at the request of the court of another state or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

Section 19. There is a new R.C.M. section numbered 61-419 that reads as follows:

61-419. Taking testimony in another state. In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in another state. The court on its own motion may direct that the testimony of a person be taken in another state and may prescribe the manner in which and the terms upon which the testimony shall be taken.

Section 20. There is a new R.C.M. section numbered 61-420 that reads as follows:

61-420. Hearings and studies in another state — orders to appear. (1) A court of this state may request the appropriate court of another state to hold a hearing to adduce evidence, to order a party to produce or give evidence under other procedures of that state, or to have social studies made with respect to the custody of a child involved in proceedings pending in the court of this state; and to forward to the court of this state certified copies of the transcript of the record of the hearing, the evidence otherwise adduced, or any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or, if necessary, ordered paid by the state.

(2) A court of this state may request the appropriate court of another state to order a party to custody proceedings pending in the court of this state to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

HeinOnline -- 1977 vol. II 1735 1977

Section 21. There is a new R.C.M. section numbered 61-421 that reads as follows:

61-421. Assistance to courts of other states. (1) Upon request of the court of another state the courts of this state which are competent to hear custody matters may order a person in this state to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available in this state or may order social studies to be made for use in a custody proceeding in another state. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the clerk of the court to the requesting court.

(2) A person within this state may voluntarily give his testimony or statement in this state for use in a custody proceeding outside this state.

(3) Upon request of the court of another state a competent court of this state may order a person in this state to appear alone or with the child in a custody proceeding in another state. The court may condition compliance with the request upon assurance by the other state that state travel and other necessary expenses will be advanced or reimbursed.

Section 22. There is a new R.C.M. section numbered 61-422 that reads as follows:

61-422. Preservation of documents for use in other states. In any custody proceeding in this state the court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents until the child reaches 18 years of age. Upon appropriate request of the court of another state, the court shall forward to the other court certified copies of any or all of such documents.

Section 23. There is a new R.C.M. section numbered 61-423 that reads as follows:

61-423. Request for court records of another state. If a custody decree has been rendered in another state concerning a child involved in a custody proceeding pending in a court of this state, the court of this state upon taking jurisdiction of the case shall request of the court of the other state a certified copy of the transcript of any court record and other documents mentioned in 61-422.

Section 24. There is a new R.C.M. section numbered 61-424 that reads as follows:

61-424. International application. The general policies of this act extend to the international area. The provisions of this act relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard have been given to all affected persons.

Section 25. There is a new R.C.M. section numbered 61-425 that reads as follows:

HeinOnline -- 1977 vol. II 1736 1977

61-425. Priority. A custody proceeding which raises a question of existence or exercise of jurisdiction under this act shall be given calendar priority and handled expeditiously.

Section 26. Section 48-315, R.C.M. 1947, is amended to read as follows:

"**48-315. Application of the Montana rules of civil procedure to proceedings under this act.** (1) *Except for proceedings coming under the uniform child custody jurisdiction act, the* Montana rules of civil procedure apply to all proceedings under this act, except as otherwise provided in this act.

(2) A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In re the Marriage of _____ and _____". A custody or support proceeding shall be entitled "In re the (Custody) (Support) of _____".

(3) The initial pleading in all proceedings under this act shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this act, shall be denominated as provided in the Montana rules of civil procedure.

(4) In this act, "decree" includes "judgment".

(5) A decree of dissolution or of legal separation, if made, shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed."

Section 27. Section 48-331, R.C.M. 1947, is amended to read as follows:

"**48-331. Jurisdiction — commencement of proceedings.** (1) A court of this state competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if:

(a) this state

(i) is the home state of the child at the time of commencement of the proceedings, or

(ii) had been the child's home state within six (6) months before commencement of the proceeding and the child is absent from this state because of his removal or retention by a person claiming his custody or for other reason, and a parent or person acting as parent continues to live in this state; or

(b) it is in the best interest of the child that a court of this state assume jurisdiction because

(i) the child and his parents, or the child and at least one contestant, have a significant connection with this state, and

(ii) there is available in this state substantial evidence concerning the

HeinOnline -- 1977 vol. II 1737 1977

child's present or future care, protection, training, and personal relationships; or

(c) the child is physically present in this state and

(i) has been abandoned or

(ii) it is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or

(d) (i) no other state has jurisdiction under prerequisites substantially in accordance with paragraphs (a), (b), or (c), or another state has declined to exercise jurisdiction on the ground that this state is the more appropriate forum to determine custody of the child, and

(ii) it is in his best interest that the court assume jurisdiction.

(2) Except under paragraphs (c) and (d) of subsection (1), physical presence in this state of the child, or of the child and one of the contestants, is not alone sufficient to confer jurisdiction on a court of this state to make a child custody determination.

(3) Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody.

(4) A child custody proceeding is commenced in the district court:

(a) by a parent, by filing a petition

(i) for dissolution or legal separation; or

(ii) for custody of the child in the county in which he is permanently resident or found; or

(b) by a person other than a parent, by filing a petition for custody of the child in the county in which he is permanently resident or found, but only if he is not in the physical custody of one of his parents.

(5) Notice of a child custody proceeding shall be given to the child's parent, guardian, custodian, *those persons having physical custody of the child, and all other contestants,* who may appear, be heard, and file a responsive pleading. The court, upon a showing of good cause, may permit intervention of other interested parties."

Section 28. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved April 29, 1977.

CHAPTER NO. 538

AN ACT MAKING THE ELECTION CAMPAIGN FUND PERMANENT AND PROVIDING A SHORT TITLE FOR CHAPTER 49 OF TITLE 23,

HeinOnline -- 1977 vol. II 1738 1977

R.C.M. 1947; AMENDING SECTIONS 23-4901, 23-4902, 23-4904, AND 23-4906, R.C.M. 1947; AND REPEALING SECTION 7, CHAPTER 263, LAWS OF 1974.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 23-4901, R.C.M. 1947, is amended to read as follows:

"23-4901. Short title. *This chapter may be cited as "The Public Campaign Fund Act".*

Section 2. Section 23-4902, R.C.M. 1947, is amended to read as follows:

"23-4902. Definitions. As used in this act, unless the context requires otherwise:

(1) "Fund" means the election campaign fund established in section 4 [23-4904] of this act.

(2) "Political party" is a party whose candidate for governor in the last general election received five percent (5%) or more of the total votes cast for that office as verified by the secretary of state.

(3) "Department" means the department of revenue provided for in Title 82A, chapter 18.

(4) "Candidate" means an individual who has been nominated by a political party for election to *public* office *in* this state.

(5) "Individual" means a natural person."

Section 3. Section 23-4904, R.C.M. 1947, is amended to read as follows:

"23-4904. Public campaign fund. (1) There is *a public* campaign fund within the earmarked revenue fund provided for in section 79-410.

(2) All monies designated under section 2 [23-4902] of this act shall be deposited in the fund.

(3) Five (5) months before the general election in a gubernatorial election year all monies in the fund shall be paid over in equal amounts to the treasurer of each political party, to be spent only for the legitimate campaign expenses of *candidates for public offices which offices have been designated by the legislature.*"

Section 4. Section 23-4906, R.C.M. 1947, is amended to read as follows:

"23-4906. Penalties for violation. The use of moneys from the fund by anyone for any purpose other than the legitimate campaign expenses of a candidate for *a designated public office* is an offense and is punishable by imprisonment for not more than one (1) year, or by a fine of not more than five thousand dollars ($5,000), or by both."

Section 5. **Repealer.** Section 7, Chapter 263, Laws of 1974, is repealed.

Approved April 29, 1977.

HeinOnline -- 1977 vol. II 1739 1977

CHAPTER NO. 539

AN ACT FOR THE GENERAL REVISION OF LAWS RELATING TO SPECIAL EDUCATION; AMENDING SECTIONS 75-7801, 75-7802, 75-7803, 75-7804, 75-7805, 75-7806, 75-7807, 75-7808, 75-7809, 75-7811, 75-7813.1, 75-7814, AND 75-7816, R.C.M. 1947; REPEALING SECTION 75-7812, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 75-7801, R.C.M. 1947, is amended to read as follows:

"**75-7801. Definitions.** *In* this Title, unless the context clearly indicates otherwise, *the following definitions apply*:

(1) "Special education" means *specially designed* instruction, *given at no cost to the parents or guardians, to meet the unique needs of a handicapped child, including but not limited to classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions. The term includes but is not limited to speech pathology, audiology, occupational therapy, and physical therapy.*

(2) "Handicapped child" means a child evaluated as being mentally retarded, hard-of-hearing, deaf, speech-impaired, visually handicapped, emotionally disturbed, orthopedically impaired, other health-impaired, or as having specific learning disabilities, who because of those impairments needs special education and related services.

(3) "Deaf" means a hearing impairment which is so severe that the child's hearing is nonfunctional for the purpose of educational performance.

(4) "Hard-of-hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included within the definition of "deaf".

(5) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes but is not limited to impairment caused by congenital anomaly (e.g., clubfoot or absence of some member), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis), and impairments from other causes (e.g., fractures or burns which cause contractures, amputation, cerebral palsy).

(7) "Other health-impaired" means limited strength, vitality, or alert-

HeinOnline -- 1977 vol. II 1740 1977

ness due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle-cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes.

(8) "Emotionally disturbed" means a condition exhibiting one or more of the following characteristics to a marked degree and over a long period of time: an inability to learn which cannot be explained by intellectual, sensory, or health factors; an inability to build or maintain satisfactory interpersonal relationships with peers and teachers; inappropriate types of behavior or feelings under normal circumstances; a general pervasive mood of unhappiness or depression; or a tendency to develop physical symptoms, pains, or fears associated with personal or school problems. The term does not include children who are socially maladjusted. The emotionally distrubed category may include students who also may have been diagnosed by appropriate specialists as autistic, psychotic, sociopathic, or schizophrenic. An emotionally disturbed child's disorders are not primarily the result of problems with visual acuity, hearing impairment, physical handicaps, cultural or instructional factors, or mental retardation. "Emotionally disturbed" refers to a person who has been identified, based on a comprehensive evaluation, as having observable behavioral patterns which seriously inhibit the academic and social or emotional growth of the individual or the educational rights of others to the point that supportive services are required. These behavioral patterns may include:

(a) excessive physical or verbal aggression toward oneself or others and a lack of response to regular educational intervention;

(b) high frequency of persistent inattention to academic or social tasks associated with regular classroom performance; and

(c) persistent withdrawal from peer or adult interactions associated with the expected social development in a regular educational environment.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. The term includes but is not limited to such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, mental retardation, or environmental, cultural, or economic disadvantages.

(10) "Speech/language impaired" means a communication disorder such as stuttering, impaired articulation, or a language or voice impairment which adversely affects a child's interpersonal relationships or educational performance.

(11) "Visually handicapped" means a visual impairment which, after correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children."

Section 2. Section 75-7802, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1741 1977

"75-7802. **Conduct of special education to comply with board of public education policies.** *(1)* The conduct of special education programs shall comply with the policies recommended by the superintendent of public instruction and adopted by the board of *public* education. These policies *shall assure and* include but are not limited to*:*

(a) placement of handicapped children in the least restrictive alternative setting;

(b) due process for all handicapped children;

(c) use of child study teams to identify handicapped children and use of instructional teams to plan individual education programs;

(d) comprehensive evaluation for each handicapped child; and

(e) other policies needed to assure a free and appropriate public education.

(2) The superintendent of public instruction shall promulgate rules to administer the policies of the board of public education."

Section 3. Section 75-7803, R.C.M. 1947, is amended to read as follows:

"75-7803. **Duties of superintendent of public instruction.** The superintendent of public instruction shall supervise and co-ordinate the conduct of special education in the state by:

(1) recommending to the board of public education for adoption of those policies necessary to establish a planned and co-ordinated program of special education in the state;

(2) administering the policies adopted by the board of public education;

(3) certifying special education teachers on the basis of the special qualifications for such teachers as prescribed by the board of public education;

(4) *establishing procedures to be used by school district personnel in identifying handicapped children*;

(5) *recommending to districts* the type of *special education class or program needed to serve the handicapped* children *of the districts* and preparing appropriate guides for *developing individual education programs*;

(6) seeking *for local districts* appropriate *interdisciplinary* assistance from public *and private* agencies in diagnosing the special education needs of children, in planning programs, and in admitting and discharging children from such programs;

(7) *assisting local school districts, institutions, and other agencies in developing full-service programs for all handicapped children*;

(8) approving, as they are proposed and annually thereafter, those special education classes or programs which comply with the laws of the state of Montana, policies of the board of public education, and the regulations of the superintendent of public instruction;

HeinOnline -- 1977 vol. II 1742 1977

(9) providing *technical assistance to* district superintendents, principals, teachers and trustees;

(10) conducting conferences, offering advice and otherwise co-operating with parents and other interested persons;

(11) acting as the co-ordinating agency with federal agencies, other state agencies, political subdivisions of the state, and private bodies on matters concerning special education, reserving to the other agencies and political subdivisions their full responsibilities for other aspects of the care of children needing special education; and

(12) *administering* regional special education services for children in need of special education in accordance with policies of the board of public education."

Section 4. There is a new R.C.M. section numbered 75-7817 that reads as follows:

75-7817. Regional special education services. (1) There is established a regional special education services program to provide special education services to handicapped children who cannot efficiently be served by a program operated by an individual school district or by several cooperating school districts. Regional special education services shall be limited to:

(a) providing direct services to handicapped children who are not adequately served by a district program;

(b) initiating special services for handicapped children as a service model which may then be continued as an individual district or cooperative district program;

(c) coordinating and conducting in-service training for special education and local district personnel in the region; and

(d) assisting local districts in the region in the development and expansion of individual district or cooperative district programs.

(2) Funds for such services shall be appropriated to the superintendent of public instruction from state equalization funds and shall be available to support regional special education programs and services. Such funds may be supplemented by appropriate federal funds. The authorization for regional special education services for children expires on June 30, 1980.

Section 5. Section 75-7804, R.C.M. 1947, is amended to read as follows:

"**75-7804. Co-operation of state agencies.** The state department of health, the department of institutions, *the department of social and rehabilitation services,* and the state school for the deaf and blind shall *cooperate with* the superintendent of public instruction *in assisting school districts* in discovering children in need of special education. Nothing herein shall be construed to interfere with the purpose and function of these state agencies."

Section 6. Section 75-7805, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1743 1977

"**75-7805. Establishment of special education program.** (1) *All handicapped children in Montana are entitled to a free appropriate public education provided in the least restrictive alternative setting. To the maximum extent appropriate, handicapped children, including children in public or private institutions or other care facilities, shall be educated with children who are not handicapped. Separate schooling or other removal of handicapped children from the regular educational environment may occur only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.* After *September 1, 1977,* the board of trustees of every school district must provide or establish and maintain a special education program for every handicapped person as herein defined between the ages of 6 and *18, inclusive. After September 1, 1980, such services shall be provided for all handicapped children between the ages of 3 and 21, inclusive.*

(2) The board of trustees of any school district may meet its obligation to serve handicapped persons by establishing its own special education program, by establishing a cooperative special education program, or by participating in a regional services program."

Section 7. Section 75-7806, R.C.M. 1947, is amended to read as follows:

"**75-7806. Establishment of individual district special education program.** *(1)* The trustees of any district, *upon obtaining the approval of the superintendent of public instruction, shall* establish and maintain a special education program *whenever, in the judgment of the trustees and the superintendent of public instruction:*

(a) there are sufficient numbers of handicapped children in the district to justify the establishment of a program; or

(b) an individual *child requires* special education *services* such as home or hospital tutoring, school-to-home telephone communication, or other individual programs.

(2) Prior to September 1, 1980, programs may be established for handicapped children *ages 3 through 5 and after September 1, 1980, children ages 0 through 2 may be provided service* when the superintendent of public instruction *and the trustees have* determined that such programs will:

(a) assist a child to achieve levels of competence that will enable him to participate in the regular instruction of the district when he could not participate without special education;

(b) permit the conservation or early acquisition of skills which will provide the child with an equal opportunity to participate in the regular instruction of the district; or

(c) provide other demonstrated educational advantages which will materially benefit the child.

(3) Prior to September 1, 1980, programs may be established for handi-

HeinOnline -- 1977 vol. II 1744 1977

capped persons between the ages of 18 and 21 inclusive when the superintendent of public instruction and the trustees have determined that such programs will contribute to the educational development of those persons.

(4) When an agency which has responsibility for a handicapped person over 21 but not more than 25, inclusive, cannot provide appropriate services to that person, the agency may contract with the local school district to provide such services."

Section 8. Section 75-7807, R.C.M. 1947, is amended to read as follows:

"75-7807. Petition of parents for establishment of special education program. The parents of persons requiring special education may petition the board of trustees to establish *an individual district* special education program. Parents residing in several districts may petition the board of trustees of each district to co-operatively establish a special education program. The interlocal co-operative agreement authorized in chapter 49 of Title 16, R.C.M. 1947, may be used to establish a multi-district special education program."

Section 9. Section 75-7808, R.C.M. 1947, is amended to read as follows:

"75-7808. Arranging attendance in another district in lieu of a special education program. *With the approval of the superintendent of public instruction,* the trustees may arrange for the attendance of a child in need of special education in a special education program in another district within the state of Montana. Arrangements for the attendance of a child in need of special education are not subject to the laws governing the attendance of pupils in schools outside the district and no tuition shall be charged the district of residence. *However, tuition as required under 75-6320 may be charged for children who are not considered full-time special education pupils as defined in 75-6902."*

Section 10. Section 75-7809, R.C.M. 1947, is amended to read as follows:

"75-7809. Out-of-state tuition for special education children. *If the* trustees of any district *recommend to the superintendent of public instruction* the attendance of a child in need of special education in a special education program offered outside of the state of Montana, *such* arrangements shall not be subject to the out-of-state attendance provisions of the laws governing the attendance of pupils in schools outside the state of Montana.

Whenever the attendance of a child at an out-of-state special education program is *approved by the superintendent of public instruction, it shall be the responsibility of the superintendent of public instruction, in cooperation with the department of social and rehabilitation services and the department of institutions, to* negotiate the *program for the child and the* amount and manner of payment of tuition. The amount of tuition shall be included as a contracted service in section 75-7813.1(b)(iv)(A) in the maximum-budget-without-a-vote for special education."

Section 11. There is a new R.C.M. section numbered 75-7809.1 that reads as follows:

HeinOnline -- 1977 vol. II 1745 1977

75-7809.1. Arranging attendance in a private institution. Whenever the trustees determine that a handicapped child is in need of services that can only be provided by a private institution and the superintendent of public instruction so approves, the board of trustees may negotiate the amount and manner of payment of tuition and it shall be included as a contracted service as allowed in 75-7813.1(1)(b)(iv)(A).

Section 12. Section 75-7811, R.C.M. 1947, is amended to read as follows:

"**75-7811. Determination of need for special education by trustees and approval of classes and programs by superintendent of public instruction.** The determination of the children requiring special education and the type of special education needed by these children shall be the responsibility of the trustees, *and such determination shall be made in compliance with the procedures established in the rules* of the superintendent of public instruction. Whenever the trustees of any district intend to establish a special education class or program, they shall apply for approval *and funding* of the class or program by the superintendent of public instruction. The superintendent of public instruction shall approve or disapprove the application for the special education class or program on the basis of its compliance with the laws of the state of Montana, the special education policies adopted by the board of *public* education, and the *rules* of the superintendent of public instruction. No special education class *may* be operated by the trustees without the approval of the superintendent of public instruction. Each special education class or program must be approved annually *to be funded as part of the maximum-budget-without-a-vote for special education.*"

Section 13. Section 75-7813.1, R.C.M. 1947, is amended to read as follows:

"**75-7813.1. Allowable cost schedule for special programs — the superintendent of public instruction to make rules — annual accounting.** (1) For the purpose of determining the maximum-budget-without-a-vote for special education as defined in sections 75-6905(20) and 75-6905(21), the following schedule of allowable costs shall be followed by the school district in preparation of its special education budget for state aid request purposes and by the superintendent of public instruction in his review and approval of the budget for the purposes of determining the amount of the maximum-budget-without-a-vote for special education for the district, and as used in this schedule, "full-time special pupil" and "regular ANB" are to be determined in accordance with sections 75-6902 and 75-6903.

(a) Administration; salaries, benefits, supplies and other expenses of the superintendent's office, the office of the board of trustees, and the business office including:

(i) salaries of professional administrative personnel—a portion of the entire cost corresponding to the portion of entire working time which each such person devotes to the special program;

(ii) salaries of clerical personnel for administrative staff—the amount

HeinOnline -- 1977 vol. II 1746 1977

allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(iii) supplies and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(b) Instruction; salaries, benefits, supplies, textbooks and other expenses including:

(i) salaries of principals and clerical personnel—a portion of the entire cost corresponding to the portion of the entire working time which each such person devotes to the special program but not to exceed one and seventy-five hundredths (1.75) times the amount budgeted per regular ANB for the current year;

(ii) salaries and benefits of special program teachers, regular program teachers, teacher aides, special education supervisors, audiologists, and speech and hearing clinicians—the entire cost if employed full-time in the special program. If such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(iii) teaching supplies and textbooks—if used exclusively for special programs the actual total cost. If shared with regular programs—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year;

(iv) other expenses—with the exception of the following items, the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year:

(A) Contracted services, including fees paid for professional advice and consultation regarding special students or the special program, and the delivery of special education services by *public or private* agencies—the actual total cost.

(B) Transportation costs for special education personnel who must travel on an itinerant basis from school to school or district to district—the actual cost to the district calculated on the same mileage rate used by the district for other travel reimbursement purposes.

(c) Library services; salaries, books and periodicals and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(d) Supportive services; salaries, benefits and other expenses:

(i) salaries and benefits of professional supportive personnel—the entire cost if employed full-time in the special program. If such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program.

Professional supportive personnel may include counselors, social workers, psychologists, psychometrists, physicians, nurses, and physical and occupational therapists.

HeinOnline -- 1977 vol. II 1747 1977

(ii) salaries and benefits of clerical personnel for professional personnel in supportive services—the entire cost if employed full-time in the special program. If such personnel are shared between special and regular programs—a portion of the entire cost corresponding to the entire working time which each such person devotes to the special program;

(iii) other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(e) Operation of plant; salaries, benefits, heat for buildings, utilities except heating, and other supplies and expenses—the superintendent of public instruction shall make regulations fixing a ratio for operation spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(f) Maintenance of plant; salaries, benefits, replacements and parts, contracted services—the superintendent of public instruction shall make regulations fixing a ratio for maintenance spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors.

(g) School food services—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(h) Student body and auxiliary services; salaries and other expenses—the amount allowed for budget purposes per full-time special pupil may not exceed the amount budgeted per regular ANB for the current year.

(i) Other current charges; insurance, rental of land and buildings, and other expenses:

(i) rental of land and buildings, when such premises meet all requirements of the board of public education and the department of health and environmental sciences—no such costs may be charged to the special program without specific authorization from the superintendent of public instruction unless the land and buildings are shared between the special and regular pupils, and the amount of the total cost that may be charged to the special program may not exceed whatever proportion the number of special full-time pupils are to the total enrollment of the school district of the previous year. Provided, however, that any school district renting land and buildings for special education purposes prior to the 1974-75 school year is not subject to this requirement, and will charge a portion of the total cost when shared with regular programs, to be prorated based on the amount of building space used by each type of program;

(ii) insurance—the superintendent of public instruction shall make regulations fixing a ratio for insurance spending per full-time special pupil to such spending per current year's regular ANB. The proration shall be based on the ratio between the number of special pupils per class and the number of regular pupils per class and any other relevant factors;

HeinOnline -- 1977 vol. II 1748 1977

(iii) all other expenses—the amount allowed for budget purposes per full-time special pupil for a school year may not exceed the amount budgeted per regular ANB for the current school year.

(j) Capital outlay; remodeling and improvements, equipment and other:

(i) classroom remodeling and improvements for a program for handicapped students *who need special facilities*—the actual total cost; all other remodeling and improvements—the amount allowed for budget purposes per full-time special pupil for a school year may not exceed the amount budgeted per regular ANB for the current school year;

(ii) equipment—the actual total cost;

(iii) special equipment for district-owned school buses necessary to accommodate special students—the actual total cost.

(iv) special equipment for school buses contracted to transport special students—that portion of the contract price attributable to the cost of special equipment or personnel required to accommodate special students—the actual special cost.

(v) other—the amount allowed for budget purposes may not exceed the amount budgeted per regular ANB for the current year.

(k) Room and board costs when the special pupil has to attend a program at such a distance from his home that commuting is undesirable as determined by the superintendent of public instruction.

(2) The superintendent of public instruction shall, prior to *September 1, 1977, revise the* rules and regulations, in accordance with the policies of the board of public education, for:

(a) keeping necessary records for supportive and administrative personnel and any personnel shared between special and regular programs;

(b) defining the total special program caseload that shall be assigned to specific support persons and the kinds of professional specialties to be considered relevant to the program before the district may count an allowable cost under subsection (1)(d) of this section;

(c) defining the kinds or types of equipment whose costs may be counted under subsection (1)(j)(ii) of this section; and

(d) prescribing formulas for calculating the portion of operation and maintenance costs, insurance, building and rental costs properly allocable to the special programs, as prescribed by subsections (1)(e), (1)(f), (1)(i)(i), and (1)(i)(ii) of this section.

(3) An annual accounting of all expenditures of school district general fund monies for special education shall be made by the district trustees on forms furnished by the superintendent of public instruction. The superintendent of public instruction shall make rules for such accounting.

(4) If a board of trustees chooses to exceed the budget approved by the superintendent of public instruction, costs in excess of the approved budget

may not be reimbursed under the maximum-budget-without-a-vote for special education."

Section 14. Section 75-7814, R.C.M. 1947, is amended to read as follows:

"**75-7814. Special education child eligibility for transportation.** With the approval of the superintendent of public instruction, any special education child shall be eligible for transportation *which shall be provided by the resident district* when:

(1) he is enrolled in a special education class or program operated by the district of such child's residence;

(2) he is enrolled in a special education class or program operated by a Montana district other than the child's resident district;

(3) he is enrolled under an approved tuition agreement in a special education class or program operated outside of the state of Montana; *or*

(4) he is enrolled under an approved tuition agreement in a private institution."

Section 15. Section 75-7816, R.C.M. 1947, is amended to read as follows:

"**75-7816. Financial assistance for under-six year-old special education class or program.** Any district operating an approved special education class or program for children under the age of 6 years shall be eligible for financial assistance in accordance with *75-7813.1* and for transportation reimbursement under 75-7815."

Section 16. **Repealer.** Section 75-7812, R.C.M. 1947, is repealed.

Approved April 29, 1977.

CHAPTER NO. 540

AN ACT TO BRING THE COAL TAX DISTRIBUTION FORMULA INTO COMPLIANCE WITH THE MONTANA CONSTITUTION AS AMENDED IN 1976 BY CREATING A TRUST FUND; REVISING THE PERCENTAGES DISTRIBUTED TO LOCAL GOVERNMENTS AND STATE PROGRAMS AND THE PROGRAMS FUNDED THEREUNDER; AMENDING SECTIONS 50-1803, 50-1804, 50-1806, 79-309, 82-3710, 84-1319, AND 89-3607, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-1319, R.C.M. 1947, is amended to read as follows:

"**84-1319. Disposal of severance taxes.** *Severance* taxes collected under the provisions of this chapter are allocated as follows:

(1) To the *trust fund created by Article IX, section 5, of the Montana*

constitution, 25% of total collections a year. After December 31, 1979, 50% of coal severance tax collections are allocated to this trust fund. The trust fund moneys shall be deposited in the fund established under 79-309(5) and invested by the board of investments as provided by law.

(2) Coal severance tax collections remaining after allocation to the trust fund under subsection (1) are allocated in the following percentages of the remaining balance:

(a) To the county in which coal is mined, 2% of the severance tax paid on the coal mined in that county until January 1, 1980, for such purposes as the governing body of the county may determine.

(b) 2 ½% until December 31, 1979, and thereafter *5%* to the earmarked revenue fund to the credit of the alternative energy research development and demonstration account;

(c) 26 ½% until July 1, 1979, and thereafter *37 ½%* to the earmarked revenue fund to the credit of the local impact and education trust fund account;

(d) for each of the *2* fiscal years following *June 30, 1977, 13%* to the earmarked revenue fund to the credit of the coal area highway improvement account;

(e) 10% to the earmarked revenue fund for state equalization aid to public schools of the state;

(f) 1% to the earmarked revenue fund to the credit of the county land planning account;

(g) 2 ½% to the sinking fund to the credit of the renewable resource development bond account;

(h) 2 ½% through June 30, 1979, of which portion one-half shall be allocated to the earmarked revenue fund for the purpose of acquisition, *operation, or maintenance* of sites and areas described in 62-304, subject to legislative appropriations, and one-half shall be allocated to the *earmarked revenue fund, to be invested in a trust* fund for the purpose of parks acquisition *or management.* After June 30, 1979, 5% shall be allocated to the trust fund for the purpose of parks acquisition *or management.* Income from the fund established in this subsection *(h)* may be appropriated for the acquisition of sites and areas described in 62-304, *and the operation and maintenance of sites so acquired;*

(i) all other revenues from severance taxes collected under the provisions of this chapter shall be deposited to the credit of the general fund of the state."

Section 2. Section 50-1803, R.C.M. 1947, is amended to read as follows:

"**50-1803. Coal area highway reconstruction program.** (1) There is appropriated to the department of highways for each of the 4 fiscal years following *July 1, 1975,* all the funds in the coal area highway improvement account for carrying out the programs authorized by this section. *Any funds thus appropriated and not expended before June 30,*

1979, may, notwithstanding the provisions of 79-1015.3, be expended or encumbered to carry out this section until June 30, 1981.

(2) The department of highways, within the area designated as the eastern Montana coal field economic growth center as certified to the secretary of transportation by the governor under section 143, Title 23, United States Code, shall prepare a special construction program for the reconstruction of deficient sections of these highways.

(3) The department of highways shall expedite the planning and reconstruction program for projects on the designated portions within this area by using funds allocated under this subsection and any federal funds that may be made available to match such funds; until federal funds are made available to match the funds allocated under this subsection the department of highways may, upon approval of the Montana state highway commission, expend such funds for planning and reconstruction projects *with or without assurance from the federal government that unmatched state expenditures will be retroactively recognized for matching purposes.*

(4) Funds allocated under this subsection shall not be used to match apportionments made for primary and secondary highways under the *Federal-Aid* Highway Acts; however, nothing in this subsection should be construed to prohibit the implementation of projects otherwise funded by apportionments made under the *Federal-Aid* Highway Acts; furthermore, planning and reconstruction projects may be financed in whole or in part by public and private funds provided such projects conform to the applicable standards, regulations, and procedures of the department of highways and the federal highway administration."

Section 3. Section 50-1806, R.C.M. 1947, is amended to read as follows:

"**50-1806. Coal board — general powers.** The board may:

(1) retain professional consultants and advisors;

(2) adopt rules governing its proceedings;

(3) consider applications for grants from the local impact and education trust fund account; and

(4) award grants, subject to 50-1807, not to exceed in any one year seven-elevenths, and after June 30, 1979, *seven-fifteenths* of the revenue paid into the local impact and education trust fund account, to local governmental units and state agencies to assist local governmental units in meeting the local impact of coal development by enabling them to adequately provide governmental services and facilities which are needed as a direct consequence of coal development. As used in the preceding sentence, "revenue paid" does not include interest income from the account reinvested in the account in trust for the public schools and the university system. Such grants shall be awarded on the basis of (a) need, (b) degree of severity of impact from the coal development, (c) availability of funds, and (d) degree of local effort in meeting these needs. The board shall formulate guidelines to evaluate degree of local effort, considering bond issues and millage levels. To the extent funds are needed to evaluate

HeinOnline -- 1977 vol. II 1752 1977

and plan for the impact needs caused by coal development, consideration of bond issues and millage levies may be waived."

Section 4. Section 82-3710, R.C.M. 1947, is amended to read as follows:

"**82-3710. County land planning assistance.** (1) The department of community affairs shall annually distribute the funds *appropriated from* the county land planning account *as follows:*

Each county shall be allotted $3,000. After this disbursement has been made, 40% of the balance in the account shall be apportioned to the counties according to the ratio of each county's land area to the total land area of the state, and 60% of the balance shall be apportioned to the counties according to each county's portion of the total population of the state. If a multijurisdictional planning board has been established in the county it may receive and expend part or all of the funds allocated to that county.

(2) Counties, *cities, or joint planning boards* receiving funds under this section shall use such funds for *land planning* purposes.

(3) At the end of each fiscal year *every local* governing body *and planning agency receiving funds under this section* shall provide an accounting of how the moneys were spent in a form acceptable to the department of community affairs. Any surplus of funds shall revert to the education trust fund account."

Section 5. There is a new section that reads as follows:

Coal tax oversight committee continued. The select committee established by section 15, Chapter 502, Laws of 1975, is continued for the biennium ending June 30, 1979, and is directed to report its recommendation to the 46th legislature.

Section 6. Section 50-1804, R.C.M. 1947, is amended to read as follows:

"**50-1804. Coal board established — composition.** (1) There is a coal board composed of seven members.

(2) The coal board is allocated to the department of community affairs for administrative purposes only as prescribed in section 82A-108.

(3) The members of the coal board are selected as follows: The governor shall appoint a seven-member coal board, *as provided under 82A-112,* two from the impact areas and two with expertise in education. The governor shall further, in making these appointments, consider people from these fields: business, engineering, public administration and planning. No more than four members may be residents of the same congressional district."

Section 7. Section 79-309, R.C.M. 1947, is amended to read as follows:

"**79-309. Investment funds.** For each treasury fund account into which state funds are segregated by the department of administration pursuant to section 79-413, individual transactions and totals of all investments shall be separately recorded to the extent directed by the

HeinOnline -- 1977 vol. II 1753 1977

department. However, the securities purchased and cash on hand for all treasury fund accounts not otherwise specifically designated by law or by the provisions of a gift, donation, grant, legacy, bequest or devise from which the fund account originates to be invested shall be pooled in an account to be designated "Treasury Cash Account" and placed in one of the investment funds designated below. The share of the income for this account shall be credited to the general fund. If within the list hereinafter of separate investment funds, more than one investment fund is included which may be held jointly with others under the same separate listing, all investments purchased for that separate investment fund shall be held jointly for all the accounts participating therein, which shall share all capital gains and losses and income pro rata. Separate investment funds shall be maintained as follows:

(1) the trust and legacy fund, including all public school funds and funds of the Montana university system and other state institutions of learning referred to in sections 2 and 10, article X, of the 1972 Montana constitution, and all money referred to in section 79-410(8);

(2) a separate investment fund, which may not be held jointly with other funds, for money pertaining to each retirement or insurance system now or hereafter maintained by the state, including those now maintained under the following statutes:

(a) the highway patrolmen's retirement system described in title 31, chapter 2;

(b) the public employees' retirement system described in title 68;

(c) the game wardens' retirement system described in title 68, chapter 14;

(d) the teachers' retirement system described in title 75, chapter 62; and

(e) the industrial accident insurance program described in title 92, chapter 11;

(3) a pooled investment fund, including all other accounts within the treasury fund structure established by section 79-410;

(4) a fund consisting of gifts, donations, grants, legacies, bequests, devises and other contributions made or given for a specific purpose or under conditions expressed in the gift, donation, grant, legacy, bequest, devise or contribution on the part of the state of Montana to be observed. If such gift, donation, grant, legacy, bequest, devise, or contribution permits investment, and is not otherwise restricted by its terms, it may be treated jointly with other such gifts, donations, grants, legacies, bequests, devises, or contributions;

(5) a fund consisting of coal severance taxes allocated thereto under section 5, Article IX, of the Montana constitution. The principal of this trust fund shall be permanent and invested in the permissible investments enumerated in 79-310. In the event the legislature appropriates any part of the principal of this fund by vote of three-fourths of the members of each house, such liquidation may create a gain or loss in the principal; and

HeinOnline -- 1977 vol. II 1754 1977

(6) such additional investment funds as may be expressly required by law, or may be determined by the board of investments to be necessary to fulfill fiduciary responsibilities of the state with respect to funds from a particular source."

Section 8. Section 89-3607, R.C.M. 1947, is amended to read as follows:

"**89-3607. Sinking fund account.** (1) The state may by enactment of the legislature or the people levy, impose, assess, and pledge and appropriate to the sinking fund account any tax, charge, fee, rental or other income from any designated source. The state reserves the right to modify from time to time the nature and amount of special taxes and other revenues pledged and appropriated to the sinking fund account, provided that the aggregate resources so pledged and appropriated are determined by the legislature to be sufficient for the prompt and full payment of the principal of and interest and redemption premiums when due on all bonds payable from that account, and provided that the pledge of the full faith and credit and taxing powers of the state for the security of all such bonds shall be and remain irrevocable until they are fully paid.

(2) Money in the sinking fund account shall be used first to pay interest, principal and redemption premiums when due and payable with respect to renewable resource development bonds; second to accumulate a reserve for the further security of such payments, to the amount required each month to meet those payments due within 12 months thereafter; and third to restore the reserve to this amount after each payment.

(3) After the reserve provided for in subsection (2) above is in the sinking fund, money at any time received in the sinking fund in excess of that amount shall be transferred by the treasurer to the clearance fund account. If the balance at any time on hand in the sinking fund is not sufficient for compliance with subsection (2), and is not restored to the required amount within 3 months thereafter, from funds specifically pledged and appropriated to the sinking fund account, the treasurer shall transfer thereto from the general fund an amount sufficient to restore the required balance.

(4) The state pledges and appropriates and directs to be credited to the sinking fund account as received 2 ½% of all money from time to time received from the collection of the severance tax, *and remaining after allocation of such tax to the trust fund established under section 5, Article IX, of the Montana constitution* and such additional amount thereof, if any, as may be required from time to time to provide sufficient funds for the purposes stated in subsection (2) above; provided that no more than 2 ½% of such tax collections shall be deemed to be pledged for the purpose of section 89-3606, subsection (3)."

Approved May 10, 1977.

CHAPTER NO. 541

AN ACT TO ELIMINATE BOND REQUIREMENTS FOR CERTAIN

PROFESSIONS AND OCCUPATIONS; AMENDING SECTIONS 66-1940, 66-2115, AND 66-2405, R.C.M. 1947; AND REPEALING SECTIONS 66-2113, 66-3322, 66-3323, 66-3324, 66-3325, 66-3326, AND 66-3510, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-1940, R.C.M. 1947, is amended to read as follows:

"**66-1940. Penalties — legal actions.** *(1)* Any individual acting as a broker or salesman without a license or while his license is suspended or revoked, or any person who violates any provision of this act, shall be guilty of a misdemeanor and upon conviction thereof by a district court of this state shall be punishable by a fine of not less than $100 or more than $500 or by imprisonment for a term not to exceed 90 days, or both. Upon conviction of a second or subsequent violation, the person shall be punishable by a fine of not less than $500 or more than $2,000 or by imprisonment for a term not to exceed 6 months, or both.

(2) In case any person in a civil action is found guilty of having received any money, or the equivalent thereof, as a fee, commission, compensation, or profit by or in consequence of a violation of any provision of this act, he shall in addition be liable to a penalty of not less than the amount of the sum of money so received and not more than three times the sum so received, as may be determined by the court, which penalty may be recovered in any court of competent jurisdiction by any person aggrieved."

Section 2. Section 66-2115, R.C.M. 1947, is amended to read as follows:

"**66-2115. Regulation of abstracters — violations.** (1) The board may cancel and revoke a certificate of registration issued to a person under this act for a violation of this act or on a conviction of the holder of the certificate of a crime involving moral turpitude or if the board finds the holder to be guilty of habitual carelessness or inattention to business or of fraudulent practices. The board may also cancel and revoke a certificate of authority issued to a person, firm, or corporation under this act for failure to maintain indices and abstract records or for failure to have in charge of the business a registered abstracter or for violation of this act.

(2) On a verified complaint being filed with the department charging the holder of a certificate of registration with a violation of any of the provisions of subsection (1) of this section the board shall require the holder of the certificate to appear before it on a day fixed by the board to show cause why the certificate should not be canceled."

Section 3. Section 66-2405, R.C.M. 1947, is amended to read as follows:

"**66-2405. Examination fee — expiration of license — annual renewal — fees.** No applicant for a master plumber's license may submit to the examinations prescribed by the board until he has deposited with

HeinOnline -- 1977 vol. II 1756 1977

the department $100 as an examination fee, and no applicant for a journeyman plumber's license may submit to the examination prescribed by the board until he has deposited with the department $50 as an examination fee. A license when issued expires 1 year from the date of issuance. A license issued to a master plumber or a journeyman plumber may be renewed annually without examination, at any time prior to its expiration, by a written request for its renewal directed to the department and the payment of not to exceed $100 as set by the board for a renewal of a master plumber's license and not to exceed $25 as set by the board for a journeyman plumber's license, and renewal is also for the period of 1 year."

Section 4. **Repealer.** Sections 66-2113, 66-3322, 66-3323, 66-3324, 66-3325, 66-3326, and 66-3510, R.C.M. 1947, are repealed.

Approved May 10, 1977.

CHAPTER NO. 542

AN ACT REVISING TITLE 69, CHAPTER 40; PROVIDING A SHORT TITLE FOR PURPOSES OF CITING THE CHAPTER; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO LICENSE SOLID WASTE MANAGEMENT SYSTEMS; AUTHORIZING THE DEPARTMENT TO INITIATE AND MAINTAIN ACTIONS TO COLLECT CIVIL PENALTIES; PROVIDING CONTROL OVER THE STORAGE, TREATMENT, AND DISPOSAL OF HAZARDOUS WASTES; AND AMENDING SECTIONS 69-4001, 69-4002, 69-4003, 69-4004, 69-4005, 69-4006, 69-4007, AND 69-4008, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4001, R.C.M. 1947, is amended to read as follows:

"**69-4001. Legislative findings and policy.** It is hereby found and declared that the health and welfare of Montana citizens are being endangered by improperly operated *solid waste management systems and by the improper and unregulated disposal of hazardous wastes.* It is declared the public policy of this state to control *solid waste management systems* to protect the public health and safety *and to conserve natural resources whenever possible.*"

Section 2. There is a new R.C.M. section numbered 69-4001.1 that reads as follows:

69-4001.1. Short title. This chapter may be cited as "The Montana Solid Waste Management Act".

Section 3. Section 69-4002, R.C.M. 1947, is amended to read as follows:

"**69-4002. Definitions.** Unless the context requires otherwise, in this chapter *the following definitions apply*:

HeinOnline -- 1977 vol. II 1757 1977

(1) *"Solid waste" means all putrescible and nonputrescible wastes including but not limited to garbage; rubbish; refuse; hazardous wastes; ashes; sludge from sewage treatment plants, water supply treatment plants, or air pollution control facilities; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; and wood products or wood by-products and inert materials. "Solid waste" does not mean municipal sewage, industrial wastewater effluents, mining wastes regulated under the mining and reclamation laws administered by the department of state lands, slash and forest debris regulated under laws administered by the department of natural resources and conservation, or marketable wood by-products.*

(2) *"Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6.*

(3) *"Board" means the board of health and environmental sciences, provided for in 82A-605.*

(4) *"Person" means an individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other governmental or private entity whether organized for profit or not.*

(5) *"Dispose" or "disposal" means the discharge, injection, deposit, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or onto the land so that the solid waste or hazardous waste or any constituent of it may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.*

(6) "Hazardous waste" means any waste or combination of wastes of a solid, liquid, contained gaseous, or semi-solid form which may cause or contribute to an increase in mortality or an increase in serious illness, taking into account the toxicity of the waste, its persistence and degradability in nature, its potential for assimilation or concentration in tissue, and other factors that may otherwise cause or contribute to adverse acute or chronic effects on the health of persons or other living organisms. Hazardous wastes include but are not limited to those which are toxic, radioactive, corrosive, flammable, irritants, strong sensitizers, or which generate pressure through decomposition, heat, or other means, excluding wood chips and wood used for manufacturing or fuel purposes.

(7) "Storage" means the actual or intended containment of wastes, either on a temporary basis or for a period of years.

(8) "Transport" means the movement of wastes from the point of generation to any intermediate points and finally to the point of ultimate storage or disposal.

(9) "Treatment" means a method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any solid waste so as to neutralize the waste or so as to render it nonhazardous, safer for transport, amenable for recovery, amenable for storage, or reduced in volume.

(10) "Hazardous waste management" means the management of the storage, transport, treatment, recycling, recovery, or disposal of hazardous wastes.

HeinOnline -- 1977 vol. II 1758 1977

(11) "Resource recovery" means the recovery of material or energy from solid waste.

(12) "Resource recovery system" means a solid waste management system which provides for the collection, separation, recycling, or recovery of solid wastes, including disposal of nonrecoverable waste residues.

(13) "Resource recovery facility" means a facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(14) "Solid waste management system" means a system which controls the storage, treatment, recycling, recovery, or disposal of solid waste."

Section 4. Section 69-4003, R.C.M. 1947, is amended to read as follows:

"69-4003. Unapproved disposal prohibited. No person *may* dispose of *solid waste or transport hazardous waste* except as permitted under this *chapter."*

Section 5. Section 69-4004, R.C.M. 1947, is amended to read as follows:

"69-4004. License required. *(1) Except as provided in 69-4008, no person may dispose of solid waste or hazardous waste, operate a solid waste management system, or transport hazardous waste without a license from the department. The department shall provide application forms for a license as provided in this chapter. The application shall contain the name and business address of the applicant, the location of the proposed solid waste management system, a plan of operation and maintenance, and such other information as the department may by rule require.*

(2) When the department receives an application for a license pursuant to the provisions of this chapter, the local health officer in the county where the solid waste management system will be located shall be notified in writing of the application within 15 days after the department has received the application. If the department decides to issue a license pursuant to the provisions of this chapter, the department shall notify the local health officer in writing. A license issued by the department under this section shall not be valid until signed by the local health officer having jurisdiction in the county in which the solid waste management system will be operated. The local health officer shall, within 15 days after the department has notified the local health officer of its decision to issue a license under this chapter, make a final decision on whether the license will be validated. The local health officer may only refuse to validate a license issued under this chapter upon a finding that the requirements of this chapter and the rules implementing this chapter cannot be satisfied. If the local health officer refuses to validate the license, he shall notify the applicant, the department and any other interested person in writing. The applicant or any person aggrieved by the decision of the local health officer not to validate a license may appeal the decision to the board of health and environmental sciences within 30 days after receiving written notice of the local health officer's decision. The hearing before the board of health and environmental sciences shall be held pursuant to the contested case provisions of the Montana Administrative Procedure Act."

HeinOnline -- 1977 vol. II 1759 1977

Section 6. Section 69-4005, R.C.M. 1947, is amended to read as follows:

"**69-4005. State hazardous waste disposal facility.** *The department may establish, maintain, and operate state hazardous waste management facilities to provide for the treatment, storage, or disposal of hazardous wastes accepted by the department as a result of spills, embargoes, citizen assistance requests, and other similar occurrences. A state facility shall meet all the requirements for a hazardous waste disposal site required by this chapter.*"

Section 7. Section 69-4006, R.C.M. 1947, is amended to read as follows:

"**69-4006. Revocation or denial of license.** The *department* may *deny or* revoke *a* license *to operate a solid waste management system* after *giving the applicant and the local health officer written notice and an opportunity for a hearing before the board. The decision to deny or revoke a license may be made only after a finding that a solid waste management system cannot be operated or is not being operated in compliance with this chapter or a rule or order issued pursuant to this chapter. The hearing held before the board on a denial or revocation shall be held pursuant to the provisions of the Montana Administrative Procedure Act.*"

Section 8. Section 69-4007, R.C.M. 1947, is amended to read as follows:

"**69-4007. Powers and duties of department.** *(1) The department shall adopt rules governing solid waste management systems which shall include but not be limited to:*

(a) requirements for the plan of operation and maintenance that must be submitted with an application under this chapter;

(b) the classification of disposal sites according to the physical capabilities of the site to contain the type of solid waste to be disposed of;

(c) the procedures to be followed in the disposal, treatment, or transport of solid wastes;

(d) the suitability of the site from a public health standpoint when hydrology, geology, and climatology are considered;

(e) procedures and requirements for the submission of reports on the operation and maintenance of a hazardous waste disposal site, the transport of hazardous waste, and the generation of hazardous wastes; and

(f) any other factors relating to the sanitary disposal or management of solid wastes.

(2) The department has continuing authority and responsibility to inspect a solid waste management system under the provisions of this chapter. Inspections may be conducted only during reasonable hours and only after presentation of appropriate credentials identifying the inspector as a duly authorized employee of the department.

(3) The department may, through the attorney general or appropriate

HeinOnline -- 1977 vol. II 1760 1977

county attorney, initiate and maintain in district court enforcement actions, as provided in this chapter, including actions to collect a criminal penalty or to enjoin the operation of a solid waste management system that is in violation of this chapter or a rule adopted by the department or order issued as provided in this chapter."

Section 9. Section 69-4008, R.C.M. 1947, is amended to read as follows:

"69-4008. Exclusion from chapter. *(1)* This *chapter may* not be construed to prohibit *a* person from disposing of his own *solid waste, except hazardous waste,* upon land *owned, leased, or covered by easement or permit* as long as *it* does not create a nuisance *or public health hazard.*

(2) A person may dispose of his own hazardous wastes upon land owned, leased, covered by easement or permit, after complying with the licensing requirements of this chapter and the rules that shall be adopted to regulate the disposal or transport of hazardous wastes.

(3) The licensing requirements of this chapter do not apply to the transportation of marketable hazardous wastes to a manufacturing or processing center.

(4) If it is determined that an application for a certificate under the major facility siting act, Title 70, chapter 8, R.C.M. 1947, will result in the generation, transport, storage, or disposal of hazardous wastes as defined in this chapter, the department shall conduct its review under the provisions of this chapter concurrently with the studies of air and water quality conducted under the provisions of the major facility siting act. A decision to grant or deny a license for the transport, storage or disposal of hazardous wastes under the provisions of this chapter shall be appealable concurrently with and subject to the same procedures established for the appeal of the department's air and water quality certification decision under the major facility siting act. If the initial license has been granted as specified in this subsection, all renewals or modifications of a license, or enforcement actions concerning alleged violations of the license and the provisions of this chapter shall be conducted pursuant to the procedures and enforcement provisions established in this chapter.

(5) The exclusion contained in subsection (1) of this section does not apply to a division of land of 5 acres or less made after July 1, 1977 which falls within the definition of subdivision in Title 69, chapter 50, or the Montana Subdivision and Platting Act in Title 11, chapter 38."

Section 10. Section 69-4009, R.C.M. 1947, is amended to read as follows:

"69-4009. Penalty for violations. *(1)* Any person violating this act or regulations prescribed by the department under this act, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $50, nor more than $500. Each day upon which a violation of this act occurs shall be considered a separate offense.

(2) A person who stores, treats, transports, or disposes of a hazardous waste in violation of this chapter, a rule adopted as authorized by this chapter, or an order issued as provided in this chapter is subject to a civil

HeinOnline -- 1977 vol. II 1761 1977

penalty of not more than $25,000. Each day upon which a violation occurs is a separate violation."

Approved May 10, 1977.

CHAPTER NO. 543

AN ACT TO FURTHER SUSPEND ACTION ON SOLUTION EXTRACTION OF URANIUM FROM IN PLACE DEPOSITS UNTIL APRIL 1, 1978, UNLESS THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES ADOPTS RULES REGULATING THIS PROCESS BEFORE THAT DATE; AMENDING SECTION 50-1704, R.C.M. 1947; AND REPEALING SECTION 50-1703, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 50-1704, R.C.M. 1947, is amended to read as follows:

"**50-1704. Suspension of action.** No person may initiate construction of or in any way undertake an operation for the purpose of solution extraction of uranium *from in place deposits until April 1, 1978, unless the board of health and environmental sciences adopts rules regulating the solution extraction of uranium from in place deposits prior to that date. In the event such rules are adopted, no person may initiate construction of, or in any way undertake an operation for the purpose of solution extraction of uranium from in place deposits until the rules take effect."*

Section 2. **Repealer.** Section 50-1703, R.C.M. 1947, is repealed.

Approved May 10, 1977.

CHAPTER NO. 544

AN ACT TO DESCRIBE THE PURPOSE OF ARCHITECTURE LICENSING LAWS, DEFINE PUBLIC BUILDING, PROVIDE FOR INJUNCTION OF VIOLATIONS OF SUCH LAWS, REVISE THE EXEMPTION PROVISIONS, PROHIBIT OTHER STATE AGENCIES OR POLITICAL SUBDIVISIONS FROM CHARGING ARCHITECT LICENSE FEES, MAKE CLEAR THAT ANY PERSON RENDERING PROFESSIONAL SERVICES ON A PUBLIC BUILDING MUST BE LICENSED TO PRACTICE ARCHITECTURE, AND REVISE THE REQUIREMENT FOR ERRORS AND OMISSIONS INSURANCE; AMENDING SECTIONS 66-103, 66-106, 66-107, 66-110, 66-113, AND 66-114, R.C.M. 1947; AND REPEALING SECTION 66-115, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 66-101.1 that reads as follows:

HeinOnline -- 1977 vol. II 1762 1977

66-101.1. Purpose. It is hereby declared, as a matter of legislative policy in the state of Montana, that the practice of architecture is a privilege granted by legislative authority and is not a natural right of individuals and that it is necessary, as a matter of such policy and in the interests of the health, safety, and welfare of the people of Montana, to provide laws covering the granting of that privilege and its subsequent use, control, and regulation for the purpose of protecting the public from the unprofessional, improper, unauthorized, and unqualified practice of architecture.

Section 2. Section 66-103, R.C.M. 1947, is amended to read as follows:

"66-103. Definitions — examinations for certificates to practice — granting of certificates — registration without examination under certain circumstances. (1) Except as provided in this act, no person may practice architecture in this state or use the title "architect" or "registered architect," or any words, letters, figures, or other device indicating or intending to imply that he is an architect, without having qualified under this act.

(2) Unless the context requires otherwise, in this act:

(a) "Practice of architecture" means rendering or offering to render services by consultations, preliminary studies, drawings, specifications, or other service in connection with the design of a building or addition or alteration thereto, whether one or all of these services are performed either in person or as the directing head of an organization.

(b) "Architect" means an individual technically and legally qualified to practice architecture and who is authorized under this act to practice architecture.

(c) "Building" means a structure intended primarily for human occupancy or use.

(d) "Public building" means any building which the state or any political subdivision thereof maintains for the use of the public.

(e) "Board" means the board of architects, provided for in section 82A-1602.3.

(f) "Department" means the department of professional and occupational licensing, provided for in Title 82A, chapter 16.

(3) A person wishing to practice architecture in this state shall apply to the department for a certificate to do so. A person applying shall have successfully completed the requirement of prerequisites in education, practical experience and a written examination as prescribed by the board in conformance with the standard national council of architectural registration boards examination and grading procedure. After examination the department shall, if the candidate has been found qualified, grant a certificate to the candidate to practice architecture in this state, which may only be granted on the consent of not less than two (2) members of the board, and attested by the secretary, and have the seal of the board attached. However, an architect holding a valid and current license to

HeinOnline -- 1977 vol. II 1763 1977

practice in another state, territory or country will be granted a certificate to practice in Montana following presentation of a certificate issued by *the* national council of architectural registration boards and approved by the board. But no arrangement may be made under this section which may lower the standard of practice of architecture in this state. The board may, if considered necessary, require an examination of applicants for a license from other states, after careful consideration of the credentials from those states. The board shall by rule establish methods and procedures for investigation of applicants for a license by reciprocity."

Section 3. Section 66-106, R.C.M. 1947, is amended to read as follows:

"**66-106. Penalty for illegal practice or misuse of title.** *(1)* Any person who shall use the title "architect" or "registered architect" or any other words, letters, figures, or other device indicating or intending to imply that the person using the same is an architect, or who shall engage in the practice of architecture within the meaning of this act, or shall accept compensation for rendering architectural service, without first having complied with the provisions of this act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than two hundred dollars ($200.00) nor more than five hundred dollars ($500.00), or by imprisonment in the county jail for not less than thirty (30) days nor more than six (6) months, or by both such fine and imprisonment. Any person convicted a second time for any violation of this act shall be punished by both such fine and imprisonment. The district court shall have jurisdiction of all prosecutions brought hereunder.

(2) Whenever the board of architects has reasonable cause to believe that a person is violating any provision of this act or rule of the board, it may, in addition to the remedies provided in subsection (1) and without prejudice thereto, bring an action in the district court for the county in which the violation is occurring to enjoin such person from continuing to engage in such violation or from doing any act in furtherance thereof."

Section 4. Section 66-107, R.C.M. 1947, is amended to read as follows:

"**66-107. Registration limited to individuals — employees of architects entitled to practice under supervision — exceptions — exemptions.** (a) No firm, company, partnership, association, corporation or other similar organization shall be registered as an architect. Only individuals shall be registered as architects but a number of architects constituting a firm may use the collective title "architects" or "registered architects."

(b) Nothing contained in this act shall prevent draftsmen, students, clerks of work, superintendents, and other employees of those lawfully practicing as architects under the provisions of this act from acting under the instruction, control, or supervision of their employers, or to prevent the employment of superintendents of the construction, enlargement, or structural alteration of buildings or any appurtenance thereto. Nor shall anything contained in this act be construed to apply to alterations to any building which do not involve changes affecting the structural safety thereof or the public health; nor to prevent the preparation of details and shop drawings by persons, other than architects, for use in connection with

HeinOnline -- 1977 vol. II 1764 1977

the execution of their work; nor to prevent the preparation of drawings or details for fixtures, cabinet work, furniture, or other interior appliances or equipment, or for any work necessary to provide for their installation unless the same involves public health or safety. None of the acts enumerated in this paragraph shall be interpreted or construed as the practice of architecture.

(c) Nothing in this act shall be construed to affect or prevent the following, provided that no words, letters, figures, or other device shall be used in such manner as to tend to convey the impression that the person rendering such service is an architect duly registered under this act:

1. Consultants, officers, and employees of the United States while engaged solely in the practice of architecture for said government.

2. Professional engineers from performing architectural services which are purely incidental to their engineering practice.

3. Any person from planning, designing, altering, repairing, supervising, *or engaging in* residential *construction consisting of less than eight living units regardless of size or cost* or farm buildings *which are not intended for use or used as a public building.*

4. The planning, *design,* alteration, *construction,* repair, or supervision *of construction* of a building by its owner *if the building is not intended for use or used as a public building.*"

Section 5. Section 66-110, R.C.M. 1947, is amended to read as follows:

"**66-110. Annual fee of licensed architects.** *(1)* A licensed architect in this state who desires to continue the practice of his profession shall annually, during the time he continues in this practice, pay to the department, during the month of July, a fee of $20.

(2) The board of architects is vested with exclusive jurisdiction to issue licenses for the privilege of practicing architecture. No other state agency or political subdivision of the state, including counties and municipalities, may levy any fee or tax for such privilege."

Section 6. Section 66-113, R.C.M. 1947, is amended to read as follows:

"**66-113. Architects on public buildings must hold certificate from board.** A contract for the employment of or the rendering of professional services by *any person* relating to the planning or construction of public buildings or other public works or improvements may not be entered into by this state or its agencies, or a county, city, or school district in this state unless the *person* is the holder in good standing of a certificate granted by the board entitling him to practice architecture in this state."

Section 7. Section 66-114, R.C.M. 1947, is amended to read as follows:

"**66-114. Plans for public buildings to have seal and signature of architect — insurance coverage.** All architectural plans and specifications for public buildings of the state of Montana, or any agency thereof, or of any county, city, or school district of the state, shall bear the seal and signature of the architect responsible therefor.

HeinOnline -- 1977 vol. II 1765 1977

Each contract for architectural services for public buildings of the state of Montana, any agency thereof, any county, city, school district, or other subdivision of the state shall require errors and omissions insurance furnished by the architect. The amount and duration of the coverage shall be determined on each contract for service by an authorized agent of the contracting authority and the cost included in the contract."

Section 8. **Repealer.** Section 66-115, R.C.M. 1947, is repealed.

Approved May 10, 1977.

CHAPTER NO. 545

AN ACT TO PROHIBIT ANY AGENCY OF STATE GOVERNMENT FROM INTERFERING, RESTRAINING, COERCING, OR RETALIATING AGAINST A STATE EMPLOYEE WHO EXERCISES THE RIGHT OF APPEAL UNDER THE CLASSIFICATION AND WAGE ACT; AMENDING SECTION 82A-1014, R.C.M. 1947; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82A-1014, R.C.M. 1947, is amended to read as follows:

"**82A-1014. Board of personnel appeals created.** (1) There is created a board of personnel appeals.

(2) The board is allocated to the department of labor and industry for administrative purposes only as prescribed in section 82A-108.

(3) The board consists of five members appointed by the governor. Two members shall represent management, two members shall represent employees or employee organizations of the state, and one member shall represent a neutral position.

(4) (a) *An* employee or his representative affected by the operation of Title 59, chapter 9, is entitled to file a complaint with the board and to be heard, under the provisions of a grievance procedure to be prescribed by the board.

(b) Direct or indirect interference, restraint, coercion, or retaliation by an employee's supervisor or the agency for which the employee works *or by any other agency of state government* against an employee because the employee has filed or attempted to file a complaint with the board shall also be basis for a complaint and shall entitle the employee to file a complaint with the board and to be heard, under the provisions of the grievance procedure prescribed by the board.

(c) If upon the preponderance of the evidence taken at the hearing the board is of the opinion that the employee is aggrieved, it may issue an order to the *appropriate agency or agencies of state government* requiring such action as will resolve the employee's grievance. In any hearing the

HeinOnline -- 1977 vol. II 1766 1977

board is not bound by statutory or common law rules of evidence. *An action attempting to revise the class specifications of or series of class specifications involving an employee exercising a right conferred by this section in a way which would adversely affect the employee prior to final resolution or entry of a final order with respect thereto is presumed to be an interference, restraint, coercion, or retaliation prohibited by this section unless such review was commenced or scheduled prior to filing of the appeal and was not prompted by the grievance appealed from. The presumption is rebuttable.*

(d) The board or the employee may petition for the enforcement of the board's order and for appropriate temporary relief, and shall file in the district court the record of the proceedings. Upon the filing of the petition, the district court shall have jurisdiction of the proceeding. Thereafter, the district court shall set the matter for hearing. After the hearing, the district court shall issue its order granting such temporary or permanent relief as it considers just and proper. No objection that has not been raised before the board shall be considered by the court unless the failure or neglect to raise the objection is excused because of extraordinary circumstances. The findings of the board with respect to questions of fact, if supported by substantial evidence on the record considered as a whole, shall be conclusive.

(5) The board is designated a quasi-judicial board for purposes of section 82A-112."

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved May 10, 1977.

CHAPTER NO. 546

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE COMMITMENT OF MENTALLY ILL PERSONS AND TO AMEND SECTIONS 38-1232, 38-1301 THROUGH 38-1310, 38-1313, 38-1322, 38-1324, 38-1325, 38-1328, 38-1330, AND 38-1331, R.C.M. 1947; REPEALING SECTION 80-1908, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 38-1301, R.C.M. 1947, is amended to read as follows:

"**38-1301. Purpose of chapter.** The purpose of this *chapter* is:

(1) to secure for each person who may be seriously mentally ill or suffering from a mental disorder such care and treatment as will be suited to the needs of the person, and to insure that such care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) *to accomplish this goal whenever possible in a community-based setting;*

HeinOnline -- 1977 vol. II 1767 1977

(3) to accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so mentally ill as to require institutionalized care; and

(4) to assure that due process of law is accorded any person coming under the provisions of this chapter."

Section 2. Section 38-1302, R.C.M. 1947, is amended to read as follows:

"38-1302. Definitions. As used in this *chapter, the following definitions apply*:

(1) "Board" means the mental disabilities board of visitors created by this *chapter.*

(2) "Court" means *any* district court of the state of Montana.

(3) "Department" means the department of institutions.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital *which is equipped and staffed to provide treatment for persons with mental disorders* or, a community mental health center, or any mental health clinic or treatment center approved by the department. No correctional institution or facility, or jail, is a mental health facility within the meaning of this *chapter.*

(7) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means *a person committed by the court for treatment for any period of time.*

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman or other peace officer.

(10) "Professional person" means:

(a) a medical doctor, or

(b) a person trained in the field of mental health and certified by the department of institutions in accordance with standards of professional licensing boards, federal regulations, and the joint commission on accreditation of hospitals.

(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(12) "Respondent" means a person alleged in a petition filed pursuant to this *chapter* to be seriously mentally ill.

HeinOnline -- 1977 vol. II 1768 1977

(13) "Responsible person" means any person willing and able to assume responsibility for a seriously mentally ill person or person alleged to be seriously mentally ill, including next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a responsible person set out in this *chapter.* Only one person *may* at any one time be the responsible person within the meaning of this *chapter.* In appointing a responsible person, the court shall consider the preference of the respondent. The court may, at any time for good cause shown, change its designation of the responsible person.

(14) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others, or the imminent threat thereof, or which has deprived the person afflicted of the ability to protect his life or health. No person may be involuntarily committed to a mental health facility *or* detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes *him* to be seriously mentally ill within the meaning of this *chapter.*"

Section 3. Section 38-1303, R.C.M. 1947, is amended to read as follows:

"**38-1303. Voluntary admission — cost of admission.** (1) Nothing in this *chapter may* be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional person. An application for admission to a mental health facility shall be in writing on a form prescribed by the facility and approved by the department. It *is* not valid unless it is approved by a professional person and a copy is given to the person voluntarily admitting himself. The form shall contain a statement of the rights of the person voluntarily applying for admission, as set out in this *chapter,* including the right to release.

(2) Any applicant who wishes to voluntarily apply for admission to the Montana state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder and that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment.

(3) An application for voluntary admission shall give the facility the right to detain the applicant for no more than 5 days, *excluding weekends and holidays,* past his written request for release.

(4) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced shall be borne by the county of the patient's residence at the time of admission.

(5) The costs of transportation to a mental health facility under this section shall be provided by the welfare department of the county of the patient's residence. *However, if protective proceedings under Title 91A, chapter 5, have been or are initiated with respect to the person, the welfare department may seek reimbursement. If no one else is available to transport him, the sheriff shall transport the person.*

HeinOnline -- 1977 vol. II 1769 1977

(6) Any person voluntarily entering or remaining in any mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility.

(7) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by a facility or a person licensed to practice medicine or psychology in this state.

(8) *Except as provided by this subsection, voluntary admission* of a minor to a mental health facility for an in-patient course of treatment shall be for *the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of his request as provided in 38-1303(3). The minor himself may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor patient and his counsel, voluntary admission terminates at the expiration of 1 year.* Counsel shall be appointed for the minor.

(9) If, in any voluntary *admission* for any period of time to a mental health facility, a minor fails to join in the consent of his parents or guardian to the voluntary *admission*, then the *admission* shall be treated as an involuntary commitment. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary *admission* of a minor to a mental health facility. The notice shall be explained to the minor by the professional person approving the application."

Section 4. Section 38-1304, R.C.M. 1947, is amended to read as follows:

"**38-1304. Rights and waiver of rights.** (1) Whenever a person is involuntarily detained, or is examined pursuant to 38-1305, the person shall be informed of his constitutional rights and his rights under this *chapter*. A person may waive his rights, *or his rights may be waived by his counsel and responsible person acting together if a record is made of the reasons for the waiver.* The right to counsel may not be waived. The right to treatment provided for in this *chapter* may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by his attorney and the responsible person with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect his mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects on his mental condition.

(3) *(a)* In the case of a minor, *provided that a record is made of the reasons for* the waiver, *his* rights *may be waived by the mutual consent of his counsel and parents or guardian or guardian ad litem if there are no parents or guardian.*

HeinOnline -- 1977 vol. II 1770 1977

(b) If there is an apparent conflict of interest between a minor and his parents or guardian, the court *shall* appoint a guardian ad litem for *him.*

(4) In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state or by this *chapter*, any person who is involuntarily detained or against whom a petition is filed pursuant to this *chapter* has the following rights:

(a) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;

(b) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;

(c) the right in any hearing to cross-examine witnesses;

(d) the right to be represented by counsel;

(e) the right to remain silent;

(f) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(g) the right to view and copy all petitions on file with the court concerning him;

(h) the right to be examined by a professional person of his choice when such professional person is reasonably available;

(i) the right to be dressed in his own clothes at any hearing held pursuant to this *chapter; and*

(j) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this *chapter.*

(5) A person detained pursuant to this chapter shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public. Whenever possible, a person detained pursuant to this chapter shall be detained in a mental health facility and in the county of residence. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person. A person may be detained in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the person detained and the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility. A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain."

Section 5. Section 38-1305, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1771 1977

"**38-1305. Petition alleging person as seriously mentally ill — contents and procedure.** (1) *The* county attorney, upon the *written* request of any person, may file a petition with the court alleging that there is a person within the county who is seriously mentally ill and requesting that *the person be committed to a mental health facility for a period of no more than 3 months.*

(2) The petition shall contain:

(a) the name and address of the person requesting the petition and his interest in the case;

(b) the name of the respondent, and, if known, the address, age, sex, marital status, and occupation of the respondent;

(c) the purported facts supporting the allegation of mental illness;

(d) the name and address of every person known or believed to be legally responsible for the care, support, and maintenance of the person for whom evaluation is sought;

(e) the name and address of the person's next of kin, to the extent known to the county attorney and the person requesting the petition;

(f) the name and address of any person whom the county attorney believes might be willing and able to be appointed as responsible person;

(g) the name, address, and telephone number of the attorney, if any, who has most recently represented the person for whom evaluation is sought. If there is no attorney, there shall be a statement as to whether, to the best knowledge of the person requesting the petition, the person for whom evaluation is sought is indigent and therefore unable to afford the services of an attorney; and

(h) a statement of the rights of the respondent which shall be in conspicuous print and identified by a suitable heading.

(3) *(a) The petition shall be filed with the clerk of court who shall immediately notify the judge.*

(b) If a judge is available, he shall consider the petition and if he finds no probable cause it shall be dismissed. If the judge finds probable cause, counsel shall be immediately appointed for the respondent and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be advised of his constitutional rights, his rights under this chapter, and the substantive effect of the petition. The respondent may, at this appearance, object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a responsible person and set a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent shall be taken into consideration in the appointment of the responsible person and in the confirmation of the appointment of the attorney.

(c) If a judge is not available in the county, the clerk shall notify a

HeinOnline -- 1977 vol. II 1772 1977

resident judge by telephone and read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge finds probable cause, he shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this chapter, and the contents of the clerk's order as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a responsible person, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present.

(4) *Following the initial hearing, whether before a judge or justice of the peace, the respondent shall be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of his findings in person or by phone and shall make a written report of his examination to the court, with copies to the respondent's attorney and the county attorney. The following action shall be taken based on the professional person's findings:*

(a) If he recommends dismissal, he shall additionally notify counsel and the respondent shall be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If he finds that commitment proceedings should continue, the hearing shall be held as scheduled. The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation; such reasons shall be set forth in the order along with the amount of additional time needed.

(5) *The court may not order detention of respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel shall be orally notified immediately. Counsel for the respondent may then request a detention hearing, which shall be held forthwith. In the event of detention, the respondent shall be detained in the least restrictive setting necessary to assure his presence and assure his safety and the safety of others as provided in 38-1304(5). He shall have the right to be examined additionally by a professional person of his choice. Unless objection is made by counsel for the respondent, he shall continue to be evaluated and treated by the professional person pending the hearing.*

(6) *Notice of the petition shall be hand delivered to the respondent and to his counsel on or before the initial appearance of the respondent before the judge or justice of the peace. Notice of the petition and the order setting*

HeinOnline -- 1977 vol. II 1773 1977

the date and time of the hearing and the names of the respondent's counsel, professional person, and responsible person shall be hand delivered or mailed to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible responsible person other than the one named as the responsible person. The notice may provide, other than as to the respondent and his counsel, that no further notice will be given unless written request is filed with the clerk of court. At any time prior to the date set for hearing, the respondent, through his counsel, may request a jury trial, whereupon the time set for hearing shall be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters. If there is not a jury in attendance, a jury shall be selected in the manner provided in 93-1512 and a date set for trial by jury not later than 7 days, exclusive of Saturdays, Sundays, and holidays.

(7) *The respondent shall be present unless his presence has been waived as provided in 38-1304(2), and he shall be represented by counsel at all stages of the trial. The trial shall be limited to the determination of whether or not the respondent is seriously mentally ill within the meaning set forth in this chapter. The standard of proof in any hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters, except that mental disorders shall be evidenced to a reasonable medical certainty; imminent threat of self-inflicted injury or injury to others shall be evidenced by overt acts, sufficiently recent in time as to be material and relevant as to the respondent's present condition. The professional person appointed by the court shall be present for the trial and subject to cross-examination. The trial shall be governed by the Montana rules of civil procedure except that, if tried by a jury, at least two-thirds of the jurors must concur on a finding that the patient is seriously mentally ill. The court may order the trial closed to the public for the protection of the respondent. If, upon trial, it is determined that the patient is not seriously mentally ill within the meaning of this chapter, he shall be discharged and the petition dismissed.*

(8) *The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue."*

Section 6. Section 38-1306, R.C.M. 1947, is amended to read as follows:

"**38-1306. Posttrial disposition — petition for extension.** *(1) (a)* If it is determined that the *respondent* is seriously mentally ill within the meaning of this *chapter* the court shall *hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:*

(i) commit the *respondent* to a facility for a period of not more than 3 months;

HeinOnline -- 1977 vol. II 1774 1977

(ii) order the *respondent* to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection *may* affect the *respondent's* custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the *respondent* and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the *respondent* are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

(2) At any time within the *3-month* period the patient may be discharged on the written order of the professional person in charge of *him.* In the event the patient is not discharged within the *3-month* period and if the term is not extended as provided herein, *he* shall be discharged by the facility at the end of 3 months without further order of the court. Notice of *the* discharge *shall* be filed with the court *and the county attorney at least* 5 days *prior to* the discharge.

(3) Not less than 2 calendar weeks prior to the end of the *3-month* period of detention, the professional person in charge of the patient *at the place of detention* may petition the court for extension of the detention period. The petition shall be accompanied by a written report and evaluation of the patient's mental and physical condition. The report shall describe any tests and evaluation devices which have been employed in evaluating the patient, the course of treatment which has been undertaken for the patient, and the future course of treatment anticipated by the professional person. Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, his next of kin, if reasonably available, the responsible person appointed by the court, and to the patient's counsel. If any person so notified requests a hearing prior to the termination of the previous detention authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people including the professional person in charge of the patient. *If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.* Procedure on the petition for extension, *when a hearing has been requested,* shall be the same in all respects as the procedure on the petition for the original *3-month* commitment except the patient *is* not entitled to trial by jury. The hearing shall be held in the district court having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court. If upon the hearing the court finds the patient not seriously mentally ill within the meaning of this *chapter, he* shall be discharged and the petition dismissed. If the court finds that the patient continues to suffer from serious mental illness, the court shall order commitment, custody in relatives, outpatient

HeinOnline -- 1977 vol. II 1775 1977

therapy, or other order as set forth in subsection *(1)* of this section except that no order *may* affect his custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall not order continuation of an alternative which does not include a comprehensive, individualized plan of treatment for the patient. *A* court order for the continuation of an alternative shall include a specific finding that a comprehensive, individualized plan of treatment exists.

(4) Further extensions may be obtained under the same procedure described in subsection *(3)* of this section except that the patient's custody *may* not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection *(3)* of this section, including a statement of the findings required by subsection *(3)*.

(5) At any time during the patient's commitment the court may on its own initiative or upon application of the professional person in charge of the patient, the patient, his next of kin, his attorney, or the responsible person appointed by the court, order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient therapy or other appropriate placement or treatment."

Section 7. Section 38-1307, R.C.M. 1947, is amended to read as follows:

"**38-1307. Emergency situation — petition — detention.** (1) When an emergency situation exists, a peace officer may take any person who appears to be seriously mentally ill and, as a result of serious mental illness, to be a danger to others or to himself into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained appears to be seriously mentally ill and that an emergency situation exists, then the person may be detained *and treated* until the next regular business day. At that time, the professional person shall release the detained person *or file his findings with the county attorney who, if he determines probable cause to exist, shall file the petition provided for in 38-1305 in the county of the respondent's residence.* In either case, the professional person shall file a report with the court explaining his actions.

(3) The county attorney of any county may make arrangements with any federal, state, regional, or private mental facility or with a mental health facility in any county for the detention of persons held pursuant to this section."

Section 8. Section 38-1308, R.C.M. 1947, is amended to read as follows:

"**38-1308. Outpatient care — conditional release.** (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of

HeinOnline -- 1977 vol. II 1776 1977

commitment, then outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, *may* not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when *the* modification is in the best interest of the patient. *This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care provided the transfer is in the best interest of the patient and the outpatient facility so designated agrees in writing to assume responsibility. Notice of an intended transfer shall be given to the professional person in charge of the mental health facility that provided the involuntary treatment.*

(3) If the mental health facility designated to provide outpatient care determines that a conditionally released person is failing to adhere to the terms and conditions of his release, and because of that failure has become a substantial danger to himself or other persons, then, upon notification by the mental health facility designated to provide outpatient care, or on his own motion, the professional person in charge of the patient's case may order that the conditionally released person be apprehended and returned to the facility from which he was conditionally released. The professional person in charge of the patient's case may modify or rescind *the* order at any time. The professional person shall mail or deliver notice to the person detained, his attorney, if any, his guardian or conservator, if any, his next of kin, if known, and the responsible person appointed by the court. *The sheriff of the county where the mental health facility is located and from which the patient is being transferred has the duty of transporting a patient under the provisions of this section.*

(4) The proceedings set forth in subsection (3) of this section may be initiated by the professional person in charge of the patient's case on the same basis set forth therein without the professional person requiring or ordering the apprehension and detention of the conditionally released person.

(5) Notice in writing to the court which committed the patient for treatment and the county attorney who initiated the action shall be provided by the professional person in charge of him at least 5 days prior to his release from commitment or outpatient care."

Section 9. Section 38-1309, R.C.M. 1947, is amended to read as follows:

"38-1309. Right to counsel and appeal — examination of respondent — records. (1) The person alleged to be seriously mentally ill *has* the right to be present at any hearing or trial. If he has no attorney, the judge shall appoint *one* to represent him at either the hearing or the trial, or both, *who shall be compensated from the public funds of the county where the respondent resides.* The county of residence shall also pay all precommitment expenses including transportation to a mental

health facility incurred in connection with the detention, examination, and precommitment custody of the respondent. *The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this chapter does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.*

(2) *The respondent or the responsible person appointed by the court may secure an attorney of his own choice and at his own expense to represent the respondent.* The respondent, his attorney, or the responsible person appointed by the court may secure a professional person of his own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of his examination.

(3) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons and if the respondent joins in the request for *the* examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the requested examination who will be compensated from the public funds of the county where the respondent resides.

(4) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised of his right to appeal *the* order by the court at the conclusion of any hearing *the* result of which such an order may be entered.

(5) Records and papers in proceedings under this *chapter* shall be maintained separately by the clerks of the several courts. *Five days prior to the release of a respondent or patient,* the facility shall notify the clerk of the court and the clerk shall immediately seal the record in the case and omit the name of the respondent or patient from the index or indices of cases in *the* court unless the court orders the record opened for good cause shown."

Section 10. Section 38-1310, R.C.M. 1947, is amended to read as follows:

"**38-1310. Transfer or commitment to facility — procedure.** No person who is in the custody of the department of institutions for any purpose other than treatment of severe mental illness *may* be transferred or committed to a mental health facility *for more than 10 days* unless *the* transfer or commitment is effected according to the procedures set out in this *chapter. However, proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is, in the county of the institution from which the person was transferred to the mental health facility, or in the county of the person's residence. Notice of a transfer shall be given immediately to any assigned counsel at the mental health facility and to the parents of minors, guardians, responsible persons, or conservators, as the case may be.*"

Section 11. Section 38-1313, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1778 1977

"**38-1313. Civil and legal rights of person committed.** (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment *does* not forfeit any legal right or suffer any legal disability by reason of the provisions of this act except insofar as it may be necessary to detain the person for treatment, evaluation, or care.

(2) Whenever *a* person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section *terminates* upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) *A* person who has been committed to a mental health facility pursuant to this *chapter is* automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection *does* not affect, however, *a* guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. *A* person who leaves a mental health facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) *A* person committed to a mental health facility prior to *July 1, 1975, enjoys* all the rights and privileges of a person committed after *that* date.

(5) No person who has received evaluation or treatment under any *of the* provisions of this *chapter may* be discriminated against because of *that* status. For purposes of this section, "discrimination" means giving any unfavorable weight to the fact of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet standards applicable to all persons. The fact that a person has received evaluation and treatment, whether voluntarily or involuntarily, at *a* mental health facility *may* not be admitted into evidence in *a* subsequent proceeding for involuntary commitment or for the appointment of a guardian or conservator *unless it is necessary to a determination of the present condition of the respondent or the prognosis for treatment in the present case and the judge determines that the need for the evidence outweighs the prejudicial effect of its admission.*"

Section 12. Section 38-1322, R.C.M. 1947, is amended to read as follows:

"**38-1322. Treatment procedures — restrictions.** Patients have a right not to be subjected to treatment procedures such as lobotomy, adversive reinforcement conditioning, or other unusual or hazardous

HeinOnline -- 1977 vol. II 1779 1977

treatment procedures without their express and informed consent after consultation with counsel, the legal guardian, if any, the responsible person appointed by the court, and any other interested party of the patient's choice. At least one of those consulted must consent to the treatment *along with the patient's counsel.* If there is no responsible person or if the responsible person appointed by the court is no longer available, then a responsible person who is in no way connected with the facility or with the department of institutions shall be appointed before any such treatment procedure can be employed. The facility shall send notice of intent to employ extraordinary treatment procedures to the patient, his next of kin, if known, the legal guardian, if any, the attorney who most recently represented him, and the responsible person appointed by the court at least 10 days prior to the commencement of *the* extraordinary treatment program."

Section 13. Section 38-1324, R.C.M. 1947, is amended to read as follows:

"**38-1324. Treatment plan for patient established.** (1) Each patient admitted as an inpatient to a mental health facility shall have a comprehensive physical and mental examination and review of behavioral status within 48 hours after admission to the mental health facility.

(2) Each patient shall have an individualized treatment plan. This plan shall be developed by appropriate professional persons including a psychiatrist and *shall be* implemented no later than *10* days after the patient's admission. Each individualized treatment plan shall contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of commitment;

(c) a description of intermediate and long-range treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these intermediate and long-range goals;

(e) a specification of staff responsibility and a description of proposed staff involvement with the patient in order to attain these treatment goals;

(f) criteria for release to less restrictive treatment conditions, and criteria for discharge; *and*

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

(3) As part of his treatment plan, each patient shall have an individualized after care plan. This plan shall be developed by a professional persón as soon as practicable after the patient's admission to the facility.

(4) In the interests of continuity of care, whenever possible one professional person (who need not have been involved with the development of

HeinOnline -- 1977 vol. II 1780 1977

the treatment plan) shall be responsible for supervising the implementation of the treatment plan, integrating the various aspects of the treatment program, and recording the patient's progress. This professional person shall also be responsible for ensuring that the patient is released, where appropriate, into a less restrictive form of treatment.

(5) The treatment plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. Moreover, at least every 90 days, each patient shall receive a mental examination from and his treatment plan shall be reviewed by a professional person other than the professional person responsible for supervising the implementation of the plan."

Section 14. Section 38-1325, R.C.M. 1947, is amended to read as follows:

"**38-1325. Examination following commitment.** No later than *30* days after a patient is committed to a mental health facility, the professional person in charge of the facility or his appointed, professionally qualified agent shall *reexamine* the committed patient and shall determine whether *he* continues to require commitment to the facility and whether a treatment plan complying with this *chapter* has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, he must be released immediately unless he agrees to continue with treatment on a voluntary basis. *If for sound professional reasons a treatment plan has not been implemented, this fact shall be reported immediately to the professional person in charge of the facility, the director of the department of institutions, the mental disabilities board of visitors, and the patient's counsel.*"

Section 15. Section 38-1328, R.C.M. 1947, is amended to read as follows:

"**38-1328. Records to be maintained.** Complete patient records shall be kept by the mental health facility and shall be available to any person authorized in writing by the patient and the board. *The records shall also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient.* These records shall include:

(1) identification data, including the patient's legal status;

(2) a patient history, including, but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior hospitalization;

(3) the chief complaints of the patient and the chief complaints of others regarding the patient;

(4) an evaluation which notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive *rather than* interpretative fashion;

HeinOnline -- 1977 vol. II 1781 1977

(5) a summary of each physical examination which describes the results of the examination;

(6) a copy of the individual treatment plan and any modifications thereto;

(7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan which analyzes the successes and failures of the treatment program and directs whatever modifications are necessary;

(8) a copy of the individualized after care plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status, which includes the signed orders of the prescribing physician. The staff person administering the medication shall indicate by signature that orders have been carried out.

(10) a detailed summary of each significant contact by a professional person with the patient;

(11) a detailed summary on at least a weekly basis by a professional person involved in the patient's treatment of the patient's progress along the treatment plan;

(12) a weekly summary of the extent and nature of the patient's work activities and the effect of such activity upon the patient's progress along the treatment plan;

(13) a signed order by a professional person for any restrictions on visitations and communications;

(14) a signed order by a professional person for any physical restraints and isolation;

(15) a detailed summary of any extraordinary incident in the facility involving the patient to be entered by a staff member noting that he has personal knowledge of the incident or specifying his other source of information and initialed within 24 hours by a professional person; *and*

(16) a summary by the professional person in charge of the facility or his appointed agent of his findings after the *30-day* review provided for in 38-1325."

Section 16. Section 38-1330, R.C.M. 1947, is amended to read as follows:

"**38-1330. Mental disabilities board of visitors — creation and responsibilities.** (1) The governor shall appoint a mental disabilities board of visitors. The board shall consist of five persons *representing but not limited to consumers, doctors of medicine, and the behavioral sciences,* at least three of whom *may* not be professional persons and at least one of whom shall be a representative of an organization concerned with the care and welfare of the mentally ill. No one may be a member of the board who is *a full-time* agent or employee of the department of institutions or *a* mental health facility affected by this *chapter, except this*

HeinOnline -- 1977 vol. II 1782 1977

prohibition does not affect any employee of a state college or university. If a board of similar title and structure is created in any act concerning the treatment of the mentally retarded or developmentally disabled, then *only* one board shall be created to perform the functions *of* both and the board so created shall include at least one representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled.

(2) The mental disabilities board of visitors shall be an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this *chapter.*

(3) The board shall review all plans for experimental research involving persons admitted to *a* mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. No experimental research project involving persons admitted to *a* mental health facility affected by this *chapter may* be commenced unless it is approved by the mental disabilities board of visitors.

(4) The board shall, at least annually, inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this *chapter.* The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(5) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this *chapter.* The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist any patient at a mental health facility in resolving any grievance he may have concerning his commitment or his course of treatment in the facility.

(7) The board shall employ and be responsible for full-time legal counsel at the Warm Springs state hospital, whose responsibility shall be to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine his files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(8) If the board believes that any facility is failing to comply with the provisions of this *chapter* in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to *the professional person in charge of the facility and the director of the department of institutions and, if appropriate after waiting a reasonable time for a response*

HeinOnline -- 1977 vol. II 1783 1977

from such professional person, the board may notify the next of kin or guardian of any patient involved, the responsible person appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(9) The mental disabilities board of visitors shall report annually to the governor and shall report to each session of the legislature concerning the status of the mental health facilities and treatment programs which it has inspected.

(10) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in this *chapter.*"

Section 17. Section 38-1331, R.C.M. 1947, is amended to read as follows:

"**38-1331. Statement of rights to be furnished and posted.** Each patient shall promptly upon *his* admission receive, *in language he understands, a* written *statement of all of his rights under this chapter, including the right to treatment, the right to the development of a treatment plan, and the right to and the availability of legal counsel, and the rules for patient labor.* In addition a copy of *the foregoing statement* shall be posted in each ward."

Section 18. Section 38-1232, R.C.M. 1947, is amended to read as follows:

"**38-1232. Mental disabilities board of visitors — duties.** (1) The governor shall appoint a mental disabilities board of visitors. The board shall consist of five persons *representing but not limited to consumers, doctors of medicine, and the behaviorial sciences,* at least three of whom *may* not be professional persons and at least one of whom shall be a representative of an organization concerned with the care and welfare of the developmentally disabled. No one may be a member of the board who is *a full-time* agent or employee of *any* department *or agency of the state* or residential facility affected by this act, *except this prohibition does not affect any employee of a state college or university.* If a board of similar title and structure is created in any act concerning the treatment of the mentally ill, then *only* one board shall be created to perform the functions *of* both and the board so created shall include at least one representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled.

(2) The mental disabilities board of visitors shall be an independent board of inquiry and review to assure that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this act.

The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to any residential facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental

HeinOnline -- 1977 vol. II 1784 1977

deficiency and with the principles for research involving human subjects required by the United States department of health, education and welfare. No experimental research project involving persons admitted to any residential facility affected by this act *may* be commenced unless it is approved by the mental disabilities board of visitors. The board shall investigate all cases of alleged mistreatment of a resident.

(3) The board shall, at least annually, inspect every residential facility which is providing a course of residential habilitation and treatment to any person pursuant to this act. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the institution.

(4) The board shall inspect the file of each person admitted to a residential facility pursuant to this act to insure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation or other extraordinary measures.

(5) The board may assist any patient at a residential facility in resolving any grievance he may have concerning his admission or his course of treatment and habilitation in the facility.

(6) If the board believes that any facility is failing to comply with the provisions of this act in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to *the professional person in charge of the facility and the director of the department of institutions. If appropriate after waiting a reasonable time for a response from such professional person, the board may notify* the parents or guardian of any patient involved, the next of kin, if known, the responsible person appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(7) The mental disabilities board of visitors shall report annually to the governor and shall report to each session of the legislature concerning the status of the residential facilities and habilitation programs which it has inspected.

(8) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in this act."

Section 19. **Repealer.** Section 80-1908, R.C.M. 1947, is repealed.

Approved May 10, 1977.

CHAPTER NO. 547

AN ACT TO REQUIRE STATE DEPARTMENTS, INSTITUTIONS AND AGENCIES TO PROCURE PRODUCTS AND SERVICES FROM SHELTERED WORKSHOPS AND WORK ACTIVITY CENTERS.

HeinOnline -- 1977 vol. II 1785 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82-1941 that reads as follows:

82-1941. Definitions. As used in 82-1941 through 82-1943, the following definitions apply:

(1) "Certified sheltered workshop" or "work activity center" means a nonprofit corporation incorporated under the laws of the state for the purpose of providing vocational services to disabled vocationally handicapped individuals, in whole or in part, which:

(a) holds a current certificate issued by the United States department of labor for either one or all of the following:

(i) evaluation or training;

(ii) a regular work program; or

(iii) work activity center;

(b) complies with other applicable occupational, health, and safety standards of local, state, and federal governments governing the operation of such facility not otherwise included in 82-1941 through 82-1943;

(c) in the manufacture of products and in the provision of service, whether or not the product or service is procured under this act, employs and trains vocationally handicapped individuals for not less than 75% of the man-hours of direct labor required for the manufacture of products or the provision of service; and

(d) is hereinafter referred to as a "facility".

(2) "Department" means the department of administration.

(3) "Vocationally handicapped" means an individual under a physical, mental, or emotional disability which constitutes a substantial handicap to employment and prevents the individual under the disability from engaging in normal competitive employment.

Section 2. There is a new R.C.M. section numbered 82-1942 that reads as follows:

82-1942. Duties and powers. (1) The department shall establish and publish a listing of the products and services purchased by the state. From this list, facilities may select products or services to be produced or provided by one or more facilities. A product or service shall be removed from the list approved for facilities whenever the department ascertains that the product or service exceeds 20% of the gross sales of any business in Montana producing that product or providing that service.

(2) The department may contract with a nonprofit organization to:

(a) certify facilities;

(b) provide technical assistance to facilities on matters of product or service capabilities;

(c) facilitate distribution of orders among facilities and to insure equal opportunity in obtaining orders.

HeinOnline -- 1977 vol. II 1786 1977

(3) The department shall determine the fair market price to be charged for products and services on the procurement list which is competitive with readily available alternative sources. In determining and revising the prices of products and services, the department must give consideration to reasonable costs of labor, materials, and overhead and a percentage of gross sales to fund the activities of the nonprofit organization specified in (2)(a), (2)(b), and (2)(c) above.

(4) The department shall adopt, revise, and amend rules to implement 82-1941 through 82-1943 in accordance with the procedures of the Montana Administrative Procedure Act.

Section 3. There is a new R.C.M. section numbered 82-1943 that reads as follows:

82-1943. Procurement requirements. State departments, institutions and agencies shall, after promulgation of the product and service list, procure listed products and services from a facility. The provisions of Title 82, chapter 19, relating to competitive bidding do not apply to purchases made in accordance with 82-1941 through 82-1943.

Approved May 10, 1977.

CHAPTER NO. 548

AN ACT TO REVISE THE FEES OF THE CLERK OF THE DISTRICT COURT; AMENDING SECTIONS 25-232 AND 93-1116, R.C.M. 1947; REPEALING SECTION 25-233, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 25-232, R.C.M. 1947, is amended to read as follows:

"**25-232. Fees of clerk of district court.** *(1) The clerk shall collect the following fees:*

(a) at the commencement of each action or proceeding, from the plaintiff *or petitioner, $20;* and for filing a complaint in intervention, from the intervenor, *$20*;

(b) from each defendant *or respondent*, on his appearance, *$10;*

(c) on the entry of judgment, *from the prevailing party, $10;*

(d) for preparing copies of papers *on file* in his office, *25 cents per page;*

(e) for each certificate *or oath and jurat,* with seal, *50* cents*;*

For oath and jurat, with seal, fifty cents ($.50).

For administering oath, twenty-five cents ($.25).

For taking depositions, per folio, twenty cents ($.20).

(f) for filing and docketing *a* transcript of judgment *or abstract of judgment* from all other courts, *$5;*

(g) for issuing *an* execution or order of sale on *a* foreclosure of *a lien, $2;*

(h) for transmission of records or files or transfer of *a case* to *another court, $5;*

(i) for filing and entering papers *received by* transfer from other courts, *$10;*

(j) for issuing a marriage license, *$15;*

(k) on the filing of an application for informal, formal, or supervised probate or for the appointment of a personal representative or the filing of a petition for the appointment of a guardian or conservator, from the applicant or petitioner, $35, which includes the fee for filing a will for probate.

(2) Forty percent of all fees collected by the clerk of the district court shall be deposited in and credited to the general fund of the county. The remaining portion of the fees shall be remitted to the state to be deposited as provided in 93-1116."

Section 2. Section 7, Chapter 63, Laws of 1977, is amended to read as follows:

"Section 7. Section 93-1116, R.C.M. 1947, is amended to read as follows:

93-1116. Contributions by the state. The state of Montana shall contribute monthly to the fund a sum equal to 6% of the salary of each member. In addition, the clerk of each district court shall transmit *60%* of the fees collected under 25-232 to the *state, which shall first deposit in the fund an amount equal to 20% of the salaries paid to district judges and supreme court justices who are covered by the judges' retirement system and then deposit the balance in the state general fund.* The clerk of the supreme court shall pay one-fourth of the fees collected under 82-503 to the public employees' retirement division of the department of administration to be credited to the fund. The full amount of the fund as created and accumulated is hereby set aside to be used exclusively for the purpose of paying the retirement benefits and expenses provided for herein."

Section 3. **Repealer.** Section 25-233, R.C.M. 1947, is repealed.

Approved May 10, 1977.

CHAPTER NO. 549

AN ACT APPROPRIATING $50,000 TO THE DEPARTMENT OF ADMINISTRATION FOR THE PROTECTION OF WORKS OF ART IN THE STATE CAPITOL; AMENDING SECTION 84-1319, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated, from the earmarked

HeinOnline -- 1977 vol. II 1788 1977

revenue fund account established under 84-1319 for the acquisition of sites and areas described in 62-304, for the biennium ending June 30, 1979, the sum of $50,000 to the department of administration for the purpose of developing and implementing a program for the preservation and protection of the paintings, murals, and other works of art in the state capitol.

Section 2. Section 84-1319, R.C.M. 1947, is amended to read as follows:

"**84-1319. Disposal of license or severance taxes.** License or severance taxes collected under the provisions of this chapter or such sections as may enact a severance tax on coal in 1975 are allocated as follows:

(1) To the county for such purposes as the governing body of that county may determine from which coal was mined for each calendar year prior to January 1, 1980, three cents (3¢) per ton or four percent (4%) of the severance tax paid on the coal mined in that county, whichever is higher, and for each calendar year following December 31, 1979, three cents (3¢) per ton or three and one-half percent (3 ½%) of the severance tax paid on the coal mined in that county, whichever is higher.

(2) Twenty-seven and one-half percent (27.5%) of total collections per year, until July 1, 1979, and thereafter thirty-five percent (35%), to the earmarked revenue fund to the credit of the local impact and education trust fund account.

(3) For each of the four (4) fiscal years following the effective date of this act ten percent (10%) of total collections per year to the earmarked revenue fund to the credit of the coal area highway improvement account.

(4) Ten percent (10%) of total collections per year, to the earmarked revenue fund, for state equalization aid to public schools of the state.

(5) For the period ending December 31, 1979, one percent (1%) of total collections per year to the earmarked revenue fund, to the credit of the county land planning account.

(6) Two and one-half percent (2 ½%) of total collections per year until December 31, 1979 and thereafter four percent (4%) of total collections per year to the earmarked revenue fund, to the credit of the alternative energy research development and demonstration account.

(7) Two and one-half percent (2 ½%) of total collections per year, to the sinking fund, to the credit of the renewable resource development bond account.

(8) Two and one-half percent (2 ½%) of total collections per year through June 30, 1979, of which portion one-half (½) shall be allocated to the earmarked revenue fund, for the purpose of acquisition of sites and areas described in section 62-304, *and protection of works of art in the state capitol, and other cultural and aesthetic projects,* subject to legislative appropriations, and one-half (½) shall be allocated to the trust and legacy fund, for the purpose of parks acquisition. After June 30, 1979, five percent (5%) of total collections per year shall be allocated to the trust and legacy fund, for the purpose of parks acquisition. Income from the

HeinOnline -- 1977 vol. II 1789 1977

fund established in this subsection may be appropriated for the acquisition of sites and areas described in section 62-304 *and protection of works of art in the state capitol and other cultural and aesthetic projects.*

(9) To the earmarked revenue fund, such portions of the severance tax as may be authorized by laws enacted in 1975.

(10) All other revenues from license or severance taxes collected under the provisions of this chapter shall be deposited to the credit of the general fund of the state."

Approved May 10, 1977.

CHAPTER NO. 550

AN ACT AMENDING SECTIONS 92-202.1, 92-204.1, 92-435, AND 92-614, R.C.M. 1947; CREATING AN UNINSURED EMPLOYERS' FUND TO GRANT TO ALL EMPLOYEES IN THIS STATE WORKERS' COMPENSATION BENEFITS EVEN IF THEIR EMPLOYERS ARE NOT PROPERLY INSURED; PROVIDING FOR FUNDING OF THE FUND; DEFINING INSURER; AND REPEALING SECTIONS 92-201, 92-203, 92-205, 92-207.1, 92-209, 92-210, 92-211, AND 92-1102, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 92-202.1, R.C.M. 1947, is amended to read as follows:

"92-202.1. Employments covered and employments exempted from coverage. *(1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 92-410.1 and to all employees as defined in 92-411. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.*

(2) Unless the employer elects coverage for these employments under the act and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

(a) Household *and domestic* employment.

(b) Casual employment *as defined in 92-436.*

(c) Employment of members of an employer's family dwelling in *the employer's* household.

(d) Employment of sole proprietors or working members of a partnership.

(e) Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States.

HeinOnline -- 1977 vol. II 1790 1977

(f) Any person performing services in return for aid or sustenance only."

Section 2. Section 92-204.1, R.C.M. 1947, is amended to read as follows:

"**92-204.1. Election of employer and employee to come under act — action against third party causing injury.** *For all employments covered* under *the Workers' Compensation Act or for which an election has been made for coverage under the act,* the provisions of *the* act *are* exclusive. *Except as provided in 92-212, 92-213, and 92-214 for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death or personal injury to any employees covered by the Workers' Compensation Act. The Workers' Compensation Act binds* the employee himself, and in case of death *binds* his personal representative, and all persons having any right or claim to compensation for his injury or death, as well as the employer, and the servants and employees of such employer, and those conducting his business during liquidation, bankruptcy or insolvency. The right to compensation and medical benefits as provided by this act *is* not affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer, or the servants or employees of the employer. Whenever such event *occurs* to an employee while performing the duties of his employment and such event *is* caused by the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, *the* employee, or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this act, have a right to prosecute any cause of action he may have for damages against such persons or corporations. *However, if an* employee *receives* an injury while performing the duties of his employment and *the* injury or injuries, so received by *the* employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then *the* employee, or in case of his death, his heirs or personal representatives, shall, in addition to the right to receive compensation under the *Workers'* Compensation Act, have a right to prosecute any cause of action he may have for damages against *the* servants or employees of his employer, causing *the* injury."

Section 3. There is a new R.C.M. section numbered 92-204.2 that reads as follows:

92-204.2. Subrogation. (1) If an action is prosecuted as provided for in 92-204.1 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2) (a) If the injured employee intends to institute the third party action, he shall give the insurer reasonable notice of his intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorneys' fees.

HeinOnline -- 1977 vol. II 1791 1977

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the division shall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed to the workers' compensation judge.

Section 4. There is a new R.C.M. section numbered 92-212 that reads as follows:

92-212. Uninsured employers fund. (1) There is created an uninsured employers fund. The purpose of the fund is to pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3. For the purposes of this section, the words "uninsured employer" mean an employer who has not properly complied with the provisions of 92-202.1. The division shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) The fund shall be funded in the following manner:

(a) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $500, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the

HeinOnline -- 1977 vol. II 1792 1977

employer was uninsured. An assessment prior to July 1, 1977, may not be made.

(b) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer.

(c) In no event may an uninsured employer's combined liability under subsections (2)(a) and (2)(b) of this section exceed $30,000.

(d) The division may, at the beginning of each fiscal year, determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 92-709.1(13)(a) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

(3) If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (2)(a) and (2)(b) above, the sums may be collected by the division through suit. The division may settle through compromise with an uninsured employer the amount due the fund under this section.

(4) Proper surpluses and reserves shall be kept for the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund.

(5) All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

(6) When the division discovers an uninsured employer it shall order him to cease operations until he has elected to be bound by a compensation plan. An employer who does not comply with the division's order to cease operations is guilty of a misdemeanor.

Section 5. There is a new R.C.M. section numbered 92-213 that reads as follows:

92-213. Election of uninsured employee to take under the fund or bring action against employer — limitation on benefit entitlement under the fund. (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 92-212(1), or an employee's beneficiaries in injuries resulting in death, may elect to either receive benefits from the uninsured employers fund or pursue a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action. If an injured employee or the employee's beneficiaries elect to bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(a) employee was negligent unless such negligence was willful;

(b) injury was caused by the negligence of a fellow employee; or

HeinOnline -- 1977 vol. II 1793 1977

(c) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

(2) Notwithstanding the provisions of 92-212 and 92-614, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund shall be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future.

Section 6. There is a new R.C.M. section numbered 92-214 that reads as follows:

92-214. Effective date of uninsured employers' fund. Except as provided in this section, 92-212 is effective on July 1, 1977. Payouts for benefits may not be made from the uninsured employers' fund until the fund attains a level of $150,000 or January 1, 1979, whichever occurs first. However, until payouts for benefits from the uninsured employers' fund begin, an uninsured employer, as defined in 92-212(1), is subject to suit by an employee who suffers an injury arising out of and in the course of employment. In any such action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense that the:

(1) employee was negligent unless such negligence was willful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonable safe tools or appliances.

Section 7. Section 92-435, R.C.M. 1947, is amended to read as follows:

"92-435. Insurer defined. "Insurer" means *an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in 92-212.*"

Section 8. Section 92-614, R.C.M. 1947, is amended to read as follows:

"92-614. Who liable for injuries under the act and in what amounts — extraterritorial application and reciprocity. (1) Every *insurer is* liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee *of an employer it insures* who *receives* an injury arising out of and in the course of his employment or, in the case of his death from such injury, to his beneficiaries, if any.

(2) If a worker employed in this state who is subject to the provisions

HeinOnline -- 1977 vol. II 1794 1977

of this act temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this act shall apply to such worker as though he were injured within this state.

(3) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this act shall not apply to them:

(a) if the employer and employee are bound by the provisions of the Workers' Compensation Law or similar law of such other state which applies to them while they are in the state of Montana, and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(4) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the Workers' Compensation Law of the certifying state.

(5) The division may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this act to carry out the extraterritorial application of the workers' compensation laws of the agreeing states."

Section 9. **Repealer.** Sections 92-201, 92-203, 92-205, 92-207.1, 92-209, 92-210, 92-211, and 92-1102, R.C.M. 1947, are repealed.

Approved May 11, 1977.

CHAPTER NO. 551

AN ACT REQUIRING LOCAL GOVERNING BODIES TO ADOPT NOISE, HEIGHT, AND LAND USE REGULATIONS FOR AIRPORT INFLUENCE AREAS AND TO IDENTIFY AIRPORT INFLUENCE AREAS AND ESTABLISH CRITERIA FOR THE REGULATION OF NOISE, HEIGHT, AND LAND USE WITHIN THESE AREAS.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 1-724 that reads as follows:

1-724. Legislative finding. It is hereby found that tall trees and structures and certain types of development located in the vicinity of airports endanger the lives and property of users of the airport and of occupants of land in its vicinity. It is also found that the location of tall trees and structures and certain types of development near airports reduce the

HeinOnline -- 1977 vol. II 1795 1977

area available for landing, taking off, and maneuvering aircraft, and increase the likelihood of legal action against a local government for noise nuisance, thus destroying the utility of the airports and the public investment in them. It is therefore the purpose of this act to promote the public health, safety, and general welfare by the development of compatible noise, height, and land use regulations.

Section 2. There is a new R.C.M. section numbered 1-725 that reads as follows:

1-725. Definitions. (1) The definitions in 1-102 apply to this act.

(2) In this act the following definitions also apply:

(a) "Airport influence area" means all land in the proximity of an airport, the use of which may be affected by the airport's existence.

(b) "Airport" means, for the purpose of this act, only those airports included on the National Airport System Plan.

(c) "Local government" means any county or incorporated city or town having an airport influence area partially or entirely within its jurisdictional limits.

Section 3. There is a new R.C.M. section numbered 1-726 that reads as follows:

1-726. Designation of airport influence areas. (1) A local government with an airport shall designate an airport influence area around the airport within 3 years from the effective date of this act. The designation shall be based on federal aviation administration rules and guidelines. However, no airport influence area may extend more than 10,000 feet out from the thresholds of the primary instrument approach runway or exceed 1 mile in width on each side of the primary instrument approach runway and its extended centerline. A public hearing shall be held by the local government following the procedure prescribed in 1-730.

(2) A map of the designation shall be filed with the county clerk and recorder of the affected counties and the city clerk of the affected cities and towns.

Section 4. There is a new R.C.M. section numbered 1-727 that reads as follows:

1-727. Temporary effect of designation. Upon the designation of an airport influence area, the use of land within the airport influence area shall be restricted as to height consistent with part 77, federal aeronautics regulations, until rules are adopted pursuant to this act. This restriction does not affect nonconforming uses and areas already zoned on July 1, 1977, and may not be imposed for a period of more than 1 year. After the designation of an airport influence area, no person may recover from a local government damages caused by noise and vibrations from normal and anticipated normal airport operations.

Section 5. There is a new R.C.M. section numbered 1-728 that reads as follows:

HeinOnline -- 1977 vol. II 1796 1977

1-728. Development of criteria by a local government. (1) The local government shall devise criteria and guidelines for regulation of the airport influence area.

(2) The criteria and guidelines for noise regulations shall be designed to promote the public health, safety, and general welfare and the criteria and guidelines for height and land use regulations shall be designed solely to promote the public safety. The criteria and guidelines shall, at the minimum, give reasonable consideration to, among other things:

(a) the safety of airport users and persons and property in the vicinity of the airport;

(b) the character of the flying operations conducted or expected to be conducted at the airport;

(c) the magnitude and duration of noise produced by aircraft and the number of aircraft flybys;

(d) the nature of the terrain;

(e) the future development of the airport;

(f) the views and mandates of the federal agency charged with the fostering of civil aeronautics as to the aerial surfaces necessary for safe flying operations.

Section 6. There is a new R.C.M. section numbered 1-729 that reads as follows:

1-729. Adoption of rules. Within 1 year of the designation of an airport influence area, each local government affected shall adopt and provide for the administration of rules restricting the height to which structures may be erected and trees allowed to grow within the airport influence area.

Section 7. There is a new R.C.M. section numbered 1-730 that reads as follows:

1-730. Public hearing on rules. Before a local government adopts or amends rules governing the airport influence area, it must hold a public hearing thereon. Unless otherwise specifically provided, when notice of a hearing or other official act is required by this title, the following shall apply:

(1) The notice shall be published two times with at least 7 days separating each publication. The first publication shall be no more than 21 days prior to the action and the last no less than 3 days prior to the action.

(2) The published notice shall contain:

(a) the date, time, and place at which the hearing or other action will occur;

(b) a brief statement of the action to be taken.

Section 8. There is a new R.C.M. section numbered 1-731 that reads as follows:

HeinOnline -- 1977 vol. II 1797 1977

1-731. State lands. When an airport influence area lies partially or entirely on state-owned lands, the department of state lands shall administer the affected lands in conformance with the criteria and guidelines prescribed by the local governing body.

Section 9. There is a new R.C.M. section numbered 1-732 that reads as follows:

1-732. Amendment of criteria — redesignation of influence areas. (1) When circumstance so requires, the local government may amend the criteria and guidelines.

(2) The local government may redefine the boundaries of the influence area of an airport whenever an amendment to the criteria and guidelines so requires or whenever the airport site boundaries are altered.

Section 10. There is a new R.C.M. section numbered 1-733 that reads as follows:

1-733. Variance. (1) Any person desiring to erect or increase the height of a structure, permit the growth of a tree, or use his property in violation of the rules adopted pursuant to this act may apply to board of airport hazard adjustment for a variance from the rules.

(2) A variance shall be granted where a literal application or enforcement of the rules would result in substantial practical difficulty or unnecessary hardship and where the variance would not be contrary to the public interest.

(3) A variance shall be granted for a nonconforming use where there is no immediate hazard to safe flying operations or persons and property in the vicinity of the airport and where the noise or vibrations from normal and anticipated normal operations of the airport would not be likely to cause structural damage.

(4) Within an airport influence area a person who obtains a variance for building a structure which is a nonconforming use under rules adopted pursuant to this act or a person who takes or buys property subject to such a variance is on notice that the airport existed before the variance was granted and that normal and anticipated normal operations of the airport will result in noise and vibrations being projected over the property. Furthermore, a person using a structure built under a variance may not collect damages from a local government for interference with the enjoyment of that structure caused by noise and vibrations from normal and anticipated normal airport operations.

Section 11. There is a new R.C.M. section numbered 1-734 that reads as follows:

1-734. Permit system. (1) The rules adopted pursuant to this act shall provide for a permit system for erecting new structures, changing uses of land or structures, and substantially altering, repairing, or replacing existing structures within the airport influence area.

(2) No material change may be made in the use of land and no structure or tree may be erected, altered, planted, or otherwise established in an airport influence area unless a permit for the use has been granted.

HeinOnline -- 1977 vol. II 1798 1977

(3) No permit may be granted which would allow the establishment of an airport hazard or that would allow a nonconforming use, structure, or tree to become a greater hazard to air navigation than it was on the effective date of the designation of the airport influence area or any subsequent revisions to it or than it was prior to the application for a permit.

Section 12. There is a new R.C.M. section numbered 1-735 that reads as follows:

1-735. Conditions on permit or variance. Any permit or variance granted pursuant to this act may require the owner of the structure or tree in question to permit the local government, at its expense, to install, operate, and maintain the lights and markers necessary to warn pilots of the presence of an airport hazard.

Section 13. There is a new R.C.M. section numbered 1-736 that reads as follows:

1-736. Board of adjustment. (1) All rules adopted pursuant to this act shall provide for a board of airport hazard adjustment consisting of five members to be appointed for terms and in the manner provided in 11-2707.

(2) All of the provisions of 11-2707 relating to appeals and judicial review are applicable to grievances relating to rules, variances, or permits.

(3) Where a local government has appointed a board of adjustment under the provisions of 11-2707 or 16-4706, the local government may designate the members of that board as the board of airport hazard adjustment required by this act in which case the terms of such members for purposes of this act are concurrent with their terms as members of the board of adjustment.

Section 14. There is a new R.C.M. section numbered 1-737 that reads as follows:

1-737. Rules relative to zoning ordinances. (1) If a local government has adopted a zoning ordinance, any rules adopted under this act may be made a part of the zoning ordinance and may be administered and enforced in connection with it. However, the zoning ordinance may not limit the effectiveness or scope of the rules adopted pursuant to this act.

(2) Where a conflict exists between the rules adopted pursuant to this act and any zoning ordinances or resolutions applicable to the same area, the more stringent limitation or requirement shall prevail.

Section 15. There is a new R.C.M. section numbered 1-738 that reads as follows:

1-738. Rules to be reasonable — prior nonconforming uses. All rules adopted under this act shall be reasonable and may not require the removal or alteration of any structure or tree lawfully in existence when the rules become effective. Such uses are to be treated as prior nonconforming uses, which may continue but rules may prohibit their expan-

HeinOnline -- 1977 vol. II 1799 1977

sion or their reconstruction or replacement following destruction or substantial damage. Rules may further require that trees in place at the time the rules take effect be maintained by the local government, at its expense, at heights attained at that time. Land in existing residential subdivisions or platted for residential subdivision at the time rules are adopted may continue to be used for residential purposes.

Section 16. There is a new R.C.M. section numbered 1-739 that reads as follows:

1-739. Penalty — court action. (1) Any person who violates any provision of this act or any rules adopted pursuant to it is guilty of a misdemeanor and punishable by a fine not to exceed $500, imprisonment in a county jail for a period not to exceed 6 months, or both. Each day a violation continues to exist constitutes a separate offense.

(2) A local governing body may institute in any court of competent jurisdiction an action to prevent, restrain, correct, or abate any violation of this act or the rules adopted under it.

Section 17. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 11, 1977.

CHAPTER NO. 552

AN ACT TO AMEND SECTIONS 11-3860 AND 11-3862, R.C.M. 1947, TO ALLOW A SIMPLIFIED PROCEDURE FOR SUBDIVISIONS WITHIN MASTER PLAN AREAS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-3860, R.C.M. 1947, is amended to read as follows:

"**11-3860. Statement of purpose.** It is the purpose of this act to promote the public health, safety, and general welfare by regulating the subdivision of land; to prevent overcrowding of land; to lessen congestion in the streets and highways; to provide for adequate light, air, water supply, sewage disposal, parks and recreation areas, ingress and egress, and other public requirements; to require development in harmony with the natural environment; to require that *whenever necessary, the appropriate* approval of *subdivisions* be contingent upon a written finding of public interest by the governing body; and to require uniform monumentation of land subdivisions and transferring interests in real property by reference to plat or certificate of survey."

Section 2. Section 11-3862, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1800 1977

"11-3862. **Surveys required — exceptions — standards for monumentation.** (1) All divisions of land for sale other than a subdivision after the effective date of this act into parcels which cannot be described as 1/32 or larger aliquot parts of a United States government section or a United States government lot must be surveyed by or under the supervision of a registered land surveyor.

(2) Every subdivision of land after June 30, 1973, shall be surveyed and platted in conformance with this act by or under the supervision of a registered land surveyor. Subdivision plats shall be prepared and filed in accordance with this act and regulations adopted pursuant thereto. All division of sections into aliquot parts and retracement of lines must conform to United States bureau of land management instructions, and all public land survey corners shall be filed in accordance with Corner Recordation Act of Montana (sections 67-2001 through 67-2019). Engineering plans, specifications, and reports required in connection with public improvements and other elements of the subdivision required by the governing body shall be prepared and filed by a registered engineer or a registered land surveyor as their respective licensing laws allow in accordance with this act and regulations adopted pursuant thereto.

(3) The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this act unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat.

(4) Instruments of transfer of land which is acquired for state highways may refer by parcel and project number to state highway plans which have been recorded in compliance with section 32-2413, and are exempted from the surveying and platting requirements of this act; provided, however, that if such parcels are not shown on highway plans of record, instruments of transfer of such parcels shall be accompanied by and refer to appropriate certificates of survey and plats when presented for recording.

(5) The provisions of this act shall not apply to the division of state-owned land unless the division creates a second or subsequent parcel from a single tract for sale, rent or lease for residential purposes after July 1, 1974.

(6) Unless the method of disposition is adopted for the purpose of evading this act, the following divisions of land are not subdivisions under this act but are subject to the surveying requirements of this section for divisions of land not amounting to subdivisions.

Within a platted subdivision filed with the county clerk and recorder any division of lots which results in an increase in the number of lots, or which redesigns or rearranges six or more lots, must be reviewed and approved by the governing body and an amended plat must be filed with the county clerk and recorder. For five or fewer lots within a platted subdivision, relocation of common boundaries and the aggregation of lots are exempted from review as subdivisions. Exempted from local review outside of platted subdivisions are:

HeinOnline -- 1977 vol. II 1801 1977

(a) Divisions made for the purpose of relocating common boundary lines between adjoining properties.

(b) Divisions made for the purpose of a gift or sale to any member of the landowner's immediate family.

(c) Divisions made by sale or agreement to buy and sell where the parties to the transaction enter a covenant running with the land and revocable only by mutual consent of the governing body and the property owner that the divided land will be used exclusively for agricultural purposes. Any change in use of the land for anything other than agricultural purposes subjects the division to the provisions of this chapter.

(d) A single division of a parcel when the transaction is an occasional sale.

(7) Subdivisions created by rent or lease are exempt from the surveying and filing requirements of this act but must be submitted for review and approved by the governing body before portions thereof may be rented or leased.

(8) Subdivisions totally within a master planning area adopted pursuant to 11-3801 through 11-3856 wherein zoning regulations pursuant to 11-2701 through 11-2709 or 16-4701 and a long-range development program of public works' projects pursuant to 11-3831 have been adopted are deemed to be in the public interest and exempt from the requirement of an environmental assessment.

(9) Unless the method of disposition is adopted for the purpose of evading this act, the requirements of this act shall not apply to any division of land:

(a) which is created by order of any court of record in this state or by operation of law, or which, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain (sections 93-9901 through 93-9926);

(b) which is created *to provide security for construction mortgages, liens,* or trust *indentures*;

(c) which creates an interest in oil, gas, minerals, or water which is now or hereafter severed from the surface ownership of real property;

(d) which creates cemetery lots;

(e) which is created by the reservation of a life estate;

(f) which is created by lease or rental for farming and agricultural purposes.

(10) The sale, rent, lease, or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land, as that term is defined in this act, and is not subject to the requirements of this act.

(11) The department of community affairs shall, in conformance with

HeinOnline -- 1977 vol. II 1802 1977

the Montana Administrative Procedure Act (sections 82-4201 through 82-4225), prescribe uniform standards for monumentation and for the form, accuracy, and descriptive content of records of survey.

(12) It shall be the responsibility of the governing body to require the replacement of all monuments removed in the course of construction."

Approved May 11, 1977.

CHAPTER NO. 553

AN ACT AMENDING SECTIONS 11-3867 AND 11-3876, R.C.M. 1947, TO ALLOW CONTRACTS FOR SALE BEFORE A FINAL SUBDIVISION PLAT IS FILED OF RECORD.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-3867, R.C.M. 1947, is amended to read as follows:

"11-3867. Filing of subdivision plat with county recorder — review of final subdivision plats and certificates of survey by examining land surveyor. (1) The governing body may require that final subdivision plats and certificates of survey be reviewed for errors and omissions in calculation or drafting by an examining land surveyor before recording with the county clerk and recorder. When the survey data shown on the plat or certificate of survey meet the conditions set forth by or pursuant to this act, the examining land surveyor shall so certify in a printed or stamped certificate on the plat or certificate of survey; such certificate shall be signed by him.

No land surveyor shall act as an examining land surveyor in regard to a plat or certificate of survey in which he has a financial or personal interest.

(2) The governing body shall examine every final subdivision plat and shall approve it when, and only when, it conforms to the conditions of approval set forth on the preliminary plat and to the terms of this act and regulations adopted pursuant thereto. The clerk and recorder of the county shall refuse to accept any plat for record that fails to have such approval in proper form.

(3) *Except as provided in subsection (4), every* final subdivision plat must be filed for record with the county clerk and recorder before title to the subdivided land can be sold or transferred in any manner. If illegal transfers of any manner are made, the county attorney shall commence action to enjoin further sales *or* transfers, and compel compliance with all provisions of this act. The cost of such action shall be imposed against the person transferring the property.

(4) After the preliminary plat of a subdivision has been approved or conditionally approved the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(a) that under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the state of Montana.

(b) that under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder.

(c) that the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments he has made under the contract, and

(d) that the contracts contain the following language conspicuously set out therein: "The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner.""

Section 2. Section 11-3876, R.C.M. 1947, is amended to read as follows:

"11-3876. Violation — misdemeanor. Any person who violates any provision of this act or any local regulations adopted pursuant thereto shall be guilty of a misdemeanor and punishable by a fine of not less than one hundred dollars ($100) or more than five hundred dollars ($500) or by imprisonment in a county jail for not more than three (3) months, or by both fine and imprisonment. Each sale, lease or transfer of each separate parcel of land in violation of any provision of this act or any local regulation adopted pursuant thereto shall be deemed a separate and distinct offense."

Approved May 11, 1977.

CHAPTER NO. 554

AN ACT TO AMEND SECTION 69-5003, R.C.M. 1947, TO SHORTEN THE TIME PERIOD FOR PROCESSING PETITIONS FOR REMOVAL OF SANITARY RESTRICTIONS AND TO EXEMPT SUBDIVISIONS WITHIN MASTER PLANNING AREAS WHICH WILL BE PROVIDED WITH MUNICIPAL FACILITIES FOR THE SUPPLY OF WATER OR DISPOSAL OF SEWAGE FOR THE SUBDIVISION.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-5003, R.C.M. 1947, is amended to read as follows:

"69-5003. Approval of plans for facilities in subdivisions. (1) *Out-*

side master planning areas adopted pursuant to 11-3801 through 11-3856, a person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, *erect any facility for the supply of water or disposal of sewage or solid waste,* erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent building in a subdivision until the department has indicated that the subdivision is subject to no sanitary restriction.

(2) Within master planning areas adopted pursuant to 11-3801 through 11-3856, a subdivision is not subject to sanitary restrictions when the local governing body certifies that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision as provided in subsection (5) of this section. In this case, department approval is not necessary.

(3) To the extent that municipal facilities for the supply of water or disposal of sewage or solid waste are not to be provided for a subdivision as certified to by the governing body, the person wishing to subdivide must obtain department approval as provided in subsection (6)(a).

(4) Until the local governing body has certified that a subdivision is to be provided with municipal facilities for a supply of water and disposal of sewage and solid waste or that the department has indicated that the subdivision is subject to no restrictions, a person may not file a subdivision plat with a county clerk and recorder, make disposition of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision which requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision.

(5) When a subdivision is reviewed under the master plan provisions of 69-5003, the local governing body shall, within 20 days after receiving an application under the subdivision and platting act distribute the lot fees as determined by subsection (11) and shall, send notice of certification to the department that a subdivision has been submitted for approval and that municipal facilities for the supply of water and disposal of sewage and solid waste will be provided for the subdivision. The notice of certification shall include the following:

(i) the name and address of the applicant;

(ii) a copy of the preliminary plat or a final plat where a preliminary plat is not necessary;

(iii) the number of proposed parcels in the subdivision;

(iv) a copy of any applicable zoning ordinances in effect;

(v) how construction of the sewage disposal and water supply systems or extensions will be financed;

(vi) a copy of the master plan, if one has not yet been submitted to the department;

(vii) the relative location of the subdivision to the city or town; and

HeinOnline -- 1977 vol. II 1805 1977

(viii) certification that adequate municipal facilities for the supply of water and disposal of sewage and solid waste are available or will be provided within 1 year after the notice of certification is issued.

(6) The exclusions provided for in this section shall not relieve any person of the duty to comply with the requirements of the public water supply act, Title 69, chapter 49.

(7) A county clerk and recorder may not accept a subdivision plat for filing until *one of the following conditions has been met:*

(a) *The* person wishing to file the plat has obtained approval of the local health officer having jurisdiction and has filed the approval with the department; and the department has indicated by stamp or certificate, that it has approved the plat and plans and specifications and that the subdivision is subject to no sanitary restriction *whenever department approval is necessary; or*

(b) Whenever department approval is not necessary, the person wishing to file the plat has obtained a certificate from the governing body that the subdivision is inside a master planning area and will be provided with municipal facilities for the supply of water and disposal of sewage and solid waste.

(8) When a subdivision as defined in this chapter is excluded from the provisions of Title 11, chapter 38, section 11-3862, R.C.M. 1947, except section 11-3862(8), R.C.M. 1947, and the subdivision is otherwise subject to the provisions of this chapter, plans and specifications of the *subdivision as defined in this chapter* shall be submitted to the department and the department shall indicate by certificate that it has approved the plans and specifications and that the subdivision is not subject to a sanitary restriction. The plan review by the department shall be as follows:

(a) *At any time after the developer has submitted an application under the subdivision and platting act, the* developer shall present to the department a preliminary plan of the proposed development, whatever information the developer feels necessary for its subsequent review, *and information required by the department.*

(b) The department must give final action of the proposed plan within 60 days, unless an environmental impact statement is required, at which time this deadline may be increased to 120 days.

(8) A person may not construct or use any facilities which deviate from the plans and specifications filed with the department until the department has approved the deviation.

(9) A subdivision excluded from the provisions of Title 11, chapter 38, shall be submitted for review by the department according to the provisions of this chapter, except that the following divisions are not subject to review by the department:

(a) the exclusions cited in 11-3862(8) and 11-3862(9);

(b) divisions made for the purpose of acquiring additional land to become part of an approved parcel, provided that no dwelling or structure

HeinOnline -- 1977 vol. II 1806 1977

requiring water or sewage disposal is to be erected on the additional acquired parcel; and

(c) divisions made for purposes other than the construction of water supply or sewage and solid waste disposal facilities as the department specifies by rule.

(10) Within 90 days after (the effective date of this act), the department and the department of community affairs shall prepare and distribute a joint application form that can be used by an applicant to apply for approval of a subdivision under the provisions of this act and the provisions of Title 11, chapter 38. When an application is received by either the department or a local government, the department or local government is responsible for forwarding the appropriate parts of the application to the other entity. The review required by Title 69, chapter 50, and the provisions of Title 11, chapter 38, shall occur concurrently.

(11) The department shall adopt rules to determine the distribution of lot fees between the local governing body and the department as provided in 69-5005."

Approved May 11, 1977.

CHAPTER NO. 555

AN ACT TO AMEND SECTION 11-3866, R.C.M. 1947, RELATIVE TO THE IMPOSITION OF CONDITIONS AFTER APPROVAL OF A PRELIMINARY PLAT AND THE REVIEW OF MINOR SUBDIVISIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 11-3866, R.C.M. 1947, is amended to read as follows:

"**11-3866. Submission of subdivision plat to governing body — notice — hearing — approval — disapproval.** (1) Except where a plat is eligible for summary approval the subdivider shall present to the governing body, or the agent or agency designated thereby, the preliminary plat of the proposed subdivision for local review. When the proposed subdivision lies within the boundaries of an incorporated city or town, the preliminary plat shall be submitted to and approved by the city or town governing body. When the proposed subdivision is situated entirely in an unincorporated area the preliminary plat shall be submitted to and approved by the governing body of the county; however, if the proposed subdivision lies within one (1) mile of a third class city or town or within two (2) miles of a second class city or within three (3) miles of a first class city the county governing body shall submit the preliminary plat to the city or town governing body or its designated agent for review and comment. If the proposed subdivision lies partly within an incorporated city or town, the proposed plat thereof must be submitted to and approved by both the city or town and the county governing bodies. This section

HeinOnline -- 1977 vol. II 1807 1977

does not limit the authority of certain municipalities to regulate subdivisions beyond their corporate limits pursuant to section 11-3305.

(2) The governing body shall approve, conditionally approve, or reject the preliminary plat within sixty (60) days of its presentation unless the subdivider consents to an extension of the review period. The preliminary plat shall show all pertinent features of the proposed subdivision and all proposed improvements. The governing body or its designated agent or agency shall review the preliminary plat to determine whether it conforms to the local master plan if one has been adopted pursuant to sections 11-3801 through 11-3856 to the provisions of this act, and to rules and regulations prescribed or adopted pursuant to this act.

(3) The governing body or its authorized agent or agency shall hold a public hearing on the preliminary plat and shall consider all relevant evidence relating to the public health, safety and welfare, including the environmental assessment, to determine whether the plat should be approved, conditionally approved, or disapproved by the governing body. Notice of such hearing shall be given by publication in a newspaper of general circulation in the county not less than fifteen (15) days prior to the date of the hearing. The subdivider and each property owner of record immediately adjoining the land included in the plat shall also be notified of the hearing by registered mail not less than fifteen (15) days prior to the date of the hearing. When a hearing is held by an agent or agency designated by the governing body, the agent or agency shall act in an advisory capacity and recommend to the governing body the approval, conditional approval, or disapproval of the plat. This recommendation must be submitted to the governing body in writing not later than ten (10) days after the public hearing. If the governing body rejects or conditionally approves the preliminary plat, it shall forward one (1) copy of the plat to the subdivider accompanied by a letter over the appropriate signature stating the reason for rejection or enumerating the conditions which must be met to assure approval of the final plat. *After the preliminary plat is approved, the governing body and its subdivisions may not impose any additional conditions as a prerequisite to final plat approval providing said approval is obtained within one year.*

(4) The basis for the governing body's decision to approve, conditionally approve, or disapprove a subdivision shall be whether the preliminary plat, environmental assessment, public hearing, planning board recommendations and additional information demonstrate that development of the subdivision would be in the public interest. The governing body shall disapprove any subdivision which it finds not to be in the public interest. To determine whether the proposed subdivision would be in the public interest the governing body shall issue written findings of fact which weigh the following criteria for public interest:

(a) the basis of the need for the subdivision;

(b) expressed public opinion;

(c) effects on agriculture;

(d) effects on local services;

HeinOnline -- 1977 vol. II 1808 1977

(e) effects on taxation;

(f) effects on the natural environment;

(g) effects on wildlife and wildlife habitat, and

(h) effects on the public health and safety.

(5) Upon approving or conditionally approving a preliminary plat, the governing body shall provide the subdivider with a dated and signed statement of approval. This approval shall be in force for not more than one (1) calendar year; at the end of this period the governing body may, at the request of the subdivider, extend its approval for no more than one (1) calendar year.

(6) Subdivisions containing 5 or fewer parcels where proper access to all lots is provided and in which no land is to be dedicated to the public for parks or playgrounds are to be reviewed as follows:

(a) The governing body must approve, conditionally approve, or disapprove the first such subdivision from a tract of record within 35 days of the submission of an application for approval thereof;

(b) The governing body shall state in writing the conditions which must be met if the subdivision is conditionally approved or, if it disapproves the subdivision, what local regulations would not be met by the subdivision;

(c) The requirements for holding a public hearing and preparing an environmental assessment shall not apply to the first such subdivision created from a tract of record;

(d) Subsequent subdivisions from a tract of record shall be reviewed under section 11-3863(5) and regulations adopted pursuant to that section."

Approved May 11, 1977.

CHAPTER NO. 556

AN ACT TO REVISE TITLE 69, CHAPTER 49, TO GIVE THE STATE PRIMARY ENFORCEMENT RESPONSIBILITY UNDER THE FEDERAL SAFE DRINKING WATER ACT; AUTHORIZING THE BOARD OF HEALTH AND ENVIRONMENTAL SCIENCES TO ESTABLISH SAFE DRINKING WATER STANDARDS; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO ADMINISTER AND ENFORCE THE PROVISIONS OF TITLE 69, CHAPTER 49; PROVIDING FOR THE ISSUANCE OF VARIANCES; REQUIRING THAT LABORATORIES PERFORMING ANALYSIS OF PUBLIC WATER SUPPLIES BE LICENSED; PROVIDING FOR THE COLLECTION OF CIVIL PENALTIES; AMENDING SECTIONS 69-4902, 69-4903, 69-4904, AND 69-4907, R.C.M. 1947; AND REPEALING SECTION 69-4908, R.C.M. 1947.

HeinOnline -- 1977 vol. II 1809 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 69-4902, R.C.M. 1947, is amended to read as follows:

"69-4902. Definitions. As used in this chapter, unless the context clearly indicates otherwise, *the following definitions apply*:

(1) "Contamination" means impairment of the quality of state waters by sewage, industrial, *or other* wastes creating a hazard to human health.

(2) "Pollution" means *contamination or other alteration of the physical, chemical, or biological properties of any state waters which exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor or the discharge or introduction of any liquid, gaseous, solid, radioactive, or other substance into any state water which will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, welfare, livestock, wild animals, birds, fish, or other wildlife. A discharge which is authorized under the pollution discharge permit rules of the board is not "pollution" under this chapter.*

(3) "Drainage" means rainfall, surface, and subsoil water.

(4) "Sewage" means *water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings together with ground water infiltration and surface water present.*

(5) "State waters" means any body of water, irrigation system, or drainage system either surface or underground.

(6) "Public water supply" means *the provision of water for human consumption from* any community well, water hauler for cisterns, water bottling plant, water dispenser, or other water supply that serves 10 or more families or 25 or more persons *for at least 60 days out of the calendar year.*

(7) "Person" means any *individual*, firm, corporation, water or ice company, public institution, municipality, or other political subdivision of the state.

(8) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6.

(9) "Board" means the board of health and environmental sciences provided for in Title 82A, chapter 6.

(10) "Industrial waste" means any waste substance from the processes of business or industry or from the development of any natural resource together with any sewage that may be present.

(11) "Other waste" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters."

HeinOnline -- 1977 vol. II 1810 1977

Section 2. Section 69-4903, R.C.M. 1947, is amended to read as follows:

"**69-4903. Functions, powers, and duties of the board.** (1) *The board has* general supervision over all state waters which are directly or indirectly being used by a person for a public water supply or domestic purposes or as a source of ice.

(2) *The board shall adopt* rules and standards *concerning:*

(a) maximum contaminant levels for waters that are or will be used as a public water supply;

(b) fees for services rendered by the department in analyzing water and conducting inspections;

(c) monitoring, record keeping, and reporting by persons who own or operate a public water supply;

(d) requiring public notice to all users of a public water supply when a person has been granted a variance or is in violation of this chapter or a rule or order issued pursuant to this chapter;

(e) the issuance of licenses by the department to laboratories that conduct analysis of public water supplies;

(f) the siting, construction, operation, and modification of a public water supply;

(g) the collection and analysis of samples of water used for drinking or domestic purposes;

(h) the issuance of variances as authorized by this chapter; and

(i) any other requirement necessary for the protection of public health as described in this chapter.

(3) The board may issue orders necessary to fully implement the provisions of this chapter."

Section 3. Section 69-4904, R.C.M. 1947, is amended to read as follows:

"**69-4904. Powers and duties of the department.** The department shall:

(1) *upon its own initiative or* complaint to the department or to the mayor or health officer of a municipality or to the managing board or officer of a public institution, make an investigation of alleged pollution of a water supply and, if required, prohibit the continuance of the pollution by ordering removal of the cause of pollution;

(2) *have* waters examined to determine their purity and the possibility that they may endanger public health;

(3) *consult* and advise authorities of cities and towns and persons having or about to construct systems for water supply, drainage, waste water, and sewage as to the most appropriate source of water supply and the best method of assuring its purity;

HeinOnline -- 1977 vol. II 1811 1977

(4) *advise* persons as to the best method of purifying and disposing of their drainage, sewage, or waste water with reference to the existing and future needs of other persons and to prevent pollution;

(5) *consult* with persons engaged in or intending to engage in manufacturing or other business whose drainage or sewage may tend to pollute waters as to the best method of preventing pollution;

(6) *collect* fees for services rendered in analyzing water and *conducting* inspections to cover costs of the service and deposit *the fees collected* in *an earmarked revenue fund for use by the department*;

(7) *establish* and maintain experiment stations and conduct experiments to study the best methods of purifying water, drainage, waste water, sewage, and industrial waste to prevent pollution, including investigation of methods used in other states;

(8) *enter* on premises at reasonable times to determine sources of pollution or danger to water supplies and whether rules and standards of the board are being obeyed;

(9) *enforce and administer the provisions of this chapter;*

(10) establish a plan for the provision of safe drinking water under emergency circumstances;

(11) maintain an inventory of public water supplies and establish a program for conducting sanitary surveys; and

(12) enter into agreements with local boards of health wherever appropriate for the performance of surveys and inspections under the provisions of this chapter."

Section 4. There is a new R.C.M. section numbered 69-4905.1 that reads as follows:

69-4905.1. Variance. The department may grant a variance from the requirements of this chapter or the rules adopted under this chapter pursuant to the terms and conditions of the variance rules adopted by the board. A variance granted pursuant to this section shall be accompanied by a compliance plan specifying a time schedule for compliance. A person aggrieved by a decision of the department to grant, deny, revoke, or modify a variance may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

Section 5. There is a new R.C.M. section numbered 69-4905.2 that reads as follows:

69-4905.2. Licensing of laboratories. (1) No laboratory analysis of water taken from a public water supply or any report of such an analysis required by this chapter or a rule adopted under this chapter may be accepted by the department or board unless the analysis or report is made by the laboratory of the department or by a laboratory licensed by the department for such purposes. The department shall issue a license to any laboratory that can meet criteria for licensing established in the rules adopted by the board.

HeinOnline -- 1977 vol. II 1812 1977

(2) An application for a license under this section shall be made on forms furnished by the department.

(3) A person aggrieved by a decision of the department to grant, deny, or revoke a license may appeal the department's decision to the board as provided in the Montana Administrative Procedure Act.

Section 6. Section 69-4907, R.C.M. 1947, is amended to read as follows:

"**69-4907. Appeal from rule or standard — injunction to require compliance — penalties.** *(1)* A person aggrieved by a rule, standard, *or order adopted or issued pursuant to this chapter* may appeal to the district court. While the appeal is pending, the rule, standard, *or order* is in force.

(2) The department may seek an injunction from the appropriate district court to require compliance with this chapter or a rule or order issued as authorized by this chapter. The department may also initiate an action to collect a civil penalty as provided in this section.

(3) Penalty for violations. Any person violating this act or any rule or order of the board or department issued under the provision of this act, shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than $50 nor more than $500. Each day upon which a violation of this act occurs shall be considered a separate offense."

Section 7. **Repealer.** Section 69-4908, R.C.M. 1947, is repealed.

Approved May 11, 1977.

CHAPTER NO. 557

AN ACT TO GENERALLY REVISE TITLE 69, CHAPTER 50, AND TO GIVE THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES THE POWER TO INSPECT AND MONITOR WATER SUPPLY AND SEWAGE DISPOSAL SYSTEMS; TO ADD A DEFINITION OF PUBLIC WATER SUPPLY OR PUBLIC SEWAGE DISPOSAL SYSTEM; TO PROVIDE FOR LOCAL GOVERNMENT REVIEW IN CERTAIN CASES; AMENDING SECTIONS 69-5002 AND 69-5005, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 69-5010 that reads as follows:

69-5010. Authority to inspect and monitor. In order to carry out the objectives of Title 69, chapter 50, to monitor the installation of sewage disposal and water supply systems and to prevent the occurrence of water pollution problems associated with subdivision development, the department or the board may:

(1) whenever a public water supply or public sewage disposal system

is proposed or has been constructed, at reasonable times, after presentation of appropriate credentials by an authorized representative of the department, enter upon any public or private property to inspect such systems in order to assure that the plans and specifications approved for the system have been adhered to and that the provisions of Title 69, chapter 50, rules, or orders are being satisfied;

(2) whenever a public water supply or public sewage disposal system is proposed or has been constructed, require as a condition of approval that records concerning the operation of a public sewage disposal or public water supply system be maintained or that monitoring equipment or wells be installed, used, and maintained for the collection of water-quality-related data.

Section 2. Section 69-5002, R.C.M. 1947, is amended to read as follows:

"**69-5002. Definitions.** As used in this chapter, unless the context clearly indicates otherwise, the following words or phrases have the following meanings:

(1) "Subdivision" means a division of land, or land so divided, which creates one or more parcels containing less than 20 acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and includes any resubdivision; and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes. A subdivision shall comprise only those parcels of less than 20 acres which have been *created by a division of land*, and the plat thereof shall show all such parcels, whether contiguous or not; provided, however, condominiums constructed on land divided in compliance with the Montana Subdivision and Platting Act and this chapter are exempt from provisions of this chapter.

(2) "Board" means the board of health and environmental sciences.

(3) "Department" means department of health and environmental sciences.

(4) "Sanitary restriction" means a prohibition against the erection of any dwelling, shelter or building requiring facilities for the supply of water or the disposition of sewage or solid waste *or the construction of water supply or sewage or solid waste disposal facilities* until the department has approved plans for those facilities.

(5) "Facilities" means public or private facilities for the supply of water or disposal of sewage or solid waste *and any pipes, conduits, or other stationary method by which water, sewage, or solid wastes might be transported or distributed.*

(6) "Solid wastes" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, street cleanings, dead animals, yard clippings, and solid market and solid industrial wastes.

(7) "Public water supply system" or "public sewage disposal system" means respectively, a water supply or sewage disposal system that serves

HeinOnline -- 1977 vol. II 1814 1977

10 or more families or 25 or more persons for at least 60 days out of the calendar year."

Section 3. Section 69-5005, R.C.M. 1947, is amended to read as follows:

"**69-5005. Rules for administration and enforcement of chapter.** (1) The department shall adopt reasonable rules, including adoption of sanitary standards, and setting forth fees, not to exceed *$25* per parcel for services rendered in the review of plats and subdivisions necessary for administration and enforcement of this chapter.

(2) The rules and standards shall provide the basis for approving subdivision plats for various types of water, sewage facilities, and solid waste disposal, both public and private, and shall be related to size of lots, contour of land, porosity of soil, ground water level, distance from lakes, streams, and wells, type and construction of private water and sewage facilities, and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation, and wildlife.

(3) The rules shall further provide for:

(a) the furnishing to the department of a copy of the plat and other documentation showing the layout or plan of development, including:

(i) total development area,

(ii) total number of proposed dwelling units;

(b) adequate evidence that a water supply that is sufficient in terms of quality, quantity and dependability will be available to ensure an adequate supply of water for the type of subdivision proposed;

(c) evidence concerning the potability of the proposed water supply for the subdivision;

(d) adequate evidence that a sewage disposal facility is sufficient in terms of capacity and dependability;

(e) standards and technical procedures applicable to storm drainage plans and related designs, in order to insure proper drainage ways;

(f) standards and technical procedures applicable to sanitary sewer plans and designs, including soil percolation testing and required percolation rates and site design standards for on-lot sewage disposal systems when applicable;

(g) standards and technical procedures applicable to water systems;

(h) standards and technical procedures applicable to solid waste disposal;

(i) requiring evidence to establish that, if a public sewage disposal system is proposed, provision has been made for the system and, if other methods of sewage disposal are proposed, evidence that the systems will comply with state and local laws and regulations which are in effect at the time of submission of the preliminary or final plan or plat;

HeinOnline -- 1977 vol. II 1815 1977

(j) a schedule of fees to be paid by the applicant for plat or subdivision review to the department for deposit in the agency fund provided for in section 79-410. The fees shall be used for review of plats and subdivisions based on the complexity of the subdivision, including but not limited to:

(i) number of lots in the subdivision;

(ii) the type of water system to serve the development;

(iii) the type of sewage disposal to serve the development; and

(iv) the degree of environmental research necessary to supplement the review procedure.

(4) A fee as described in this section is not required for the review of subdivisions in which divisions are made for the purpose of relocating common boundary lines unless the division will result in the installation of additional water supply or sewage disposal facilities.

(5) The department shall delegate to a local government the authority to review a subdivision under Title 69, chapter 50, when the subdivision involves five or fewer parcels and the local government has qualified personnel to adequately review the water supply and sewage and solid waste disposal facilities proposed for the subdivision. In delegating authority pursuant to this subsection, the department shall enter into an agreement with the local government wherein the department shall agree to transfer not less than $10 of the fee per parcel collected pursuant to this section to the local government for the review of subdivisions containing five or fewer parcels. When a local government has conducted a review of a subdivision containing five or fewer parcels pursuant to this section, it shall advise the department of its recommendation for approval or disapproval of the subdivision. The department shall, within 10 days after receiving the recommendation of the local government, make a final decision on the subdivision."

Approved May 11, 1977.

CHAPTER NO. 558

AN ACT TO ENCOURAGE COMPETITION AMONG WORKERS' COMPENSATION INSURERS BY AUTHORIZING COMPETITIVE RATING PURSUANT TO THE PROVISIONS OF TITLE 40, CHAPTER 36, R.C.M. 1947; AMENDING SECTIONS 40-3639, 40-3643, 40-5601, 40-5602, 40-5616, AND 40-5618, R.C.M. 1947; AND REPEALING SECTIONS 40-5607 THROUGH 40-5615, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 40-3639, R.C.M. 1947, is amended to read as follows:

"**40-3639. Scope of chapter.** This chapter applies to all insurers and all kinds of insurance, except that nothing contained in this chapter shall apply to:

HeinOnline -- 1977 vol. II 1816 1977

(1) Life insurance.

(2) Disability insurance.

(3) Reinsurance, except joint reinsurance as provided in section 20 [40-3653] of this chapter.

(4) Insurance against loss of or damage to aircraft, their hulls, accessories and equipment, or against liability, other than *workers'* compensation and employers' liability, arising out of the ownership, maintenance or use of aircraft.

(5) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.

(6) Title insurance."

Section 2. Section 40-3643, R.C.M. 1947, is amended to read as follows:

"**40-3643. Use of rates, rating systems, underwriting rules and policy or bond forms of rating or advisory organizations—agreements to adhere thereto.** Members and subscribers of rating or advisory organizations may use the rates, rating systems, underwriting rules or policy or bond forms of such organizations, either consistently or intermittently, but, except as provided in 40-3642, 40-3645, 40-3653, 40-3654 *and 40-5616,* shall not agree with each other or rating organizations or others to adhere thereto. The fact that two or more admitted insurers, whether or not members or subscribers of a rating or advisory organization, use, either consistently or intermittently, the rates or rating systems made or adopted by a rating organization, or the underwriting rules or policy or bond forms prepared by a rating or advisory organization, shall not be sufficient in itself to support a finding that an agreement to so adhere exists, and may be used only for the purpose of supplementing or explaining direct evidence of the existence of any such agreement."

Section 3. Section 40-5601, R.C.M. 1947, is amended to read as follows:

"**40-5601. Declaration of policy — purpose of act.** (1) It is declared that the public welfare is served by the making of *advisory* premium rates for *workers'* compensation insurance coverage in concert.

(2) It is the purpose of this act:

(a) to authorize such rate-making in concert and the operating of rating organizations thereto; *and*

(b) to establish the general bases and standards for the making of such rates."

Section 4. Section 40-5602, R.C.M. 1947, is amended to read as follows:

"**40-5602. Applicability of act.** This act *together and in conjunction*

with Title 40, chapter 36, applies to the making of premium rates for *workers'* compensation insurance issued under compensation plan Number 2 of the *Workers'* Compensation Act, sections 92-1001 to and including 92-1012."

Section 5. Section 40-5616, R.C.M. 1947, is amended to read as follows:

"40-5616. Membership in rating organization required. *(1)* Every insurer, including the *division of workers' compensation,* writing *workers'* compensation insurance in this state, shall be a member of a *workers'* compensation rating organization. No insurer may, at the same time, belong to more than one rating organization with respect to such insurance.

(2) A rating organization shall file with the insurance commissioner every manual of classifications and rules and every rating plan and advisory manual rates, including every modification of the foregoing. Every such filing shall state the effective date thereof. Any insurer writing pursuant to compensation plan number 2 shall adhere to the manual rules and classifications and rating plans of the rating organization of which it is a member and may adopt by reference, in whole or in part, the advisory manual rates filed under this section. Nothing in this section, however, requires adherence by any insurer to any rates established or published by any rating organization."

Section 6. Section 40-5618, R.C.M. 1947, is amended to read as follows:

"40-5618. Division of workers' compensation as member of committee on operation of rating organization — other members. In a rating organization of which the *division of workers' compensation* is a member, it shall be entitled, without election, to membership on any committee thereof established in connection with the operation of the rating organization in this state. One member of each such committee shall be chosen by the stock insurers and one by the nonstock insurers. Such committee shall consist of three (3) members as herein provided for."

Section 7. **Repealer.** Sections 40-5607, 40-5608, 40-5609, 40-5610, 40-5611, 40-5612, 40-5613, 40-5614, and 40-5615, R.C.M. 1947, are repealed.

Approved May 11, 1977.

CHAPTER NO. 559

AN ACT TO GENERALLY REVISE THE MONTANA DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES ACT OF 1974; TO BRING THE DEFINITION OF "DEVELOPMENTAL DISABILITIES" INTO CONFORMITY WITH FEDERAL GUIDELINES; TO CHANGE THE ADVISORY COUNCIL TO A PLANNING AND ADVISORY COUNCIL, TO DELINEATE THE TERMS OF ITS MEMBERS, AND TO AUTHORIZE IT TO ELECT ITS OWN OFFICERS; TO BROADEN

HeinOnline -- 1977 vol. II 1818 1977

THE DUTIES OF THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES, THE PLANNING AND ADVISORY COUNCIL, AND THE REGIONAL COUNCILS; TO EXTEND THE PROVISIONS FOR INTERDEPARTMENTAL COOPERATION AND TRANSFER OF FUNDS WITH RESPECT TO DEVELOPMENTAL DISABILITY PROGRAMS; TO AMEND SECTIONS 71-2402, 71-2403, 71-2404, 71-2406, 71-2407, AND 71-2414, R.C.M. 1947; TO REPEAL SECTION 9, CHAPTER 239, LAWS OF 1975; AND TO PROVIDE EFFECTIVE DATES.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 71-2402, R.C.M. 1947, is amended to read as follows:

"**71-2402. Definitions.** As used in this *chapter, the following definitions apply*:

(1) "Department" means the department of social and rehabilitation services.

(2) "Developmental disabilities" means disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurological handicapping *condition* closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals *if the disability originated before the person attained age 18,* has continued or can be expected to continue indefinitely, and constitutes a substantial handicap of *the person.*

(3) "Developmental disabilities facility" means any service or group of services offering care to the developmentally disabled on an inpatient, outpatient, residential, clinical, or other programmatic basis.

(4) "Comprehensive developmental disability system" means a system of services including, but not limited to, the following basic services with the intention of providing alternatives to institutionalization:

(a) evaluation services;

(b) diagnostic services;

(c) treatment services;

(d) day care services;

(e) training services;

(f) education services;

(g) employment services;

(h) recreation services;

(i) personal care services;

(j) domiciliary care services;

(k) special living arrangements services;

HeinOnline -- 1977 vol. II 1819 1977

(l) counseling services;

(m) information and referral services;

(n) follow-along services;

(o) protective and other social and sociolegal services; *and*

(p) transportation services.

(5) "Planning and advisory council" means the developmental disabilities planning and advisory council created in 71-2406."

Section 2. Section 71-2403, R.C.M. 1947, is amended to read as follows:

"**71-2403. Responsibilities of department.** The department shall:

(1) take cognizance of matters affecting the developmentally disabled citizens of the state;

(2) initiate a preventive developmental disabilities program which shall include but not be limited to the implementation of developmental disabilities care, treatment, prevention, and research as can best be accomplished by community centered services. Every means shall be utilized to initiate and operate *the* service program in cooperation with local agencies under *the* provisions of 71-2405 and 71-2407 of this *chapter.*

(3) promote scientific and medical research investigations relative to the incidence, cause, prevention, and care of developmental disabilities;

(4) collect and disseminate information relating to developmental disabilities;

(5) prepare, with the *assistance* of the *planning and* advisory council created under 71-2406, an annual comprehensive plan for the initiation and maintenance of developmental disabilities services in the state. *The* services shall include but not be limited to community comprehensive developmental disabilities services as referred to in 71-2402.

(6) provide to the planning and advisory council a written quarterly report of planning, program, and fiscal activities of the department in regard to community-based services for the developmentally disabled;

(7) provide by *rule* for the evaluation of persons who apply for services or persons admitted into a program at a developmental disability facility;

(8) provide state personnel to assist regional councils provided for in 71-2407; *and*

(9) receive from agencies of the government of the United States and other agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions to initiate and maintain developmental disabilities services within the state."

Section 3. Section 71-2404, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1820 1977

"**71-2404. Rules.** *(1) The department may adopt rules necessary for the proper administration of this chapter.*

(2) The department may contract for programs for developmental disabilities services. Contracts entered into by the department shall contain specific conditions for performance by the contractor. It shall set minimum standards for programs *and* establish appropriate qualifications for persons employed in such programs.

(3) All developmental disabilities facilities and services shall comply with existing federal guidelines and with requirements which will enable the services and facilities to qualify for available aid funds. However, nothing *herein requires* facilities serving the developmentally disabled to meet the same or equal standards as licensed medical facilities unless the developmental disabilities facility is providing professional or skilled medical care.

(4) The department shall adopt rules in cooperation with the board of nursing under which a properly trained staff member of a facility providing services to developmentally disabled persons under this chapter may assist and supervise a client of the facility in taking medication if the medication is usually self-administered and if a physician has prescribed the assistance."

Section 4. Section 71-2406, R.C.M. 1947, is amended to read as follows:

"**71-2406. Planning and advisory council.** (1) The governor shall appoint a developmental disabilities *planning and* advisory council in accordance with *the provisions of this section.*

(2) The council is composed of *22* members and consists of the following:

(a) the directors of the departments of social and rehabilitation services, health and environmental sciences, and institutions or their designees;

(b) the superintendent of public instruction or a designee;

(c) one recognized private professional in each discipline of medicine, law, psychology, social work, *and special education*;

(d) two members of the state senate;

(e) two members of the state house of representatives;

(f) four consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities; and

(g) one member of each of the five regional councils provided for in 71-2407, who shall also be consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities.

(3) (a) Each member or his designee who serves on the council pursuant to subsections (2)(a) or (2)(b) of this section shall serve for a term concurrent with his respective term as a director or the superintendent of

public instruction, as the case may be. Upon his removal from office, his or his designee's term as a member of the council is automatically terminated and his successor in office or his successor's designee is automatically a member of the council.

(b) Each member who serves on the council pursuant to subsections (2)(d) or (2)(e) of this section shall be appointed or reappointed annually by the governor.

(c) Eight of the members serving on the council pursuant to subsections (2)(c), (2)(f), or (2)(g) of this section shall be appointed by the governor to serve for terms concurrent with the gubernatorial term and until their successors are appointed. The remaining six members serving on the council shall be appointed by the governor to serve for terms ending on January 1 of the third year of the succeeding gubernatorial term and until their successors are appointed.

(4) The council may elect from among its members the officers necessary for the proper management of the council.

(5) The council may adopt rules governing its own organization and procedures.

(6) A majority of the members of the council constitutes a quorum for the transaction of business.

(7) The council may employ and fix the compensation and duties of necessary staff.

(8) A council member, unless he is a full-time salaried officer or employee of this state or any of the political subdivisions of this state, is entitled to be paid in an amount to be determined by the council, not to exceed $25 for each day in which he is actually and necessarily engaged in the performance of council duties. A council member is also entitled to be reimbursed for travel expenses incurred while in the performance of council duties, as provided for in 59-538, 59-539, and 59-801. Members who are full-time salaried officers or employees of this state or any political subdivisions of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses, as provided for in 59-538, 59-539, and 59-801.

(9) The council shall:

(a) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the developmentally disabled;

(b) develop a plan for a statewide system of community based services for the developmentally disabled; and

(c) serve in any capacity required by federal law for the administration of federal programs for services to the developmentally disabled.

(10) The council is allocated to the department *for administrative purposes only and, unless inconsistent with the provisions of this section, the provisions of 82A-108 apply.*"

HeinOnline -- 1977 vol. II 1822 1977

Section 5. Section 71-2407, R.C.M. 1947, is amended to read as follows:

"**71-2407. Regional councils.** (1) The department shall approve a citizens' organization as a regional council for each of the following five regions:

(a) Region one, consisting of Phillips, Valley, Daniels, Sheridan, Roosevelt, Garfield, McCone, Richland, Dawson, Prairie, Wibaux, Treasure, Rosebud, Custer, Fallon, Powder River, and Carter Counties;

(b) Region two, consisting of Glacier, Toole, Liberty, Hill, Blaine, Pondera, Teton, Chouteau, and Cascade Counties;

(c) Region three, consisting of Judith Basin, Fergus, Petroleum, Wheatland, Golden Valley, Musselshell, Sweet Grass, Stillwater, Yellowstone, Big Horn, and Carbon Counties;

(d) Region four, consisting of Powell, Lewis and Clark, Granite, Deer Lodge, Silver Bow, Jefferson, Broadwater, Meagher, Beaverhead, Madison, Gallatin, and Park Counties; and

(e) Region five, consisting of Lincoln, Flathead, Sanders, Lake, Mineral, Missoula, and Ravalli Counties.

(2) Under guidelines adopted by the department, a citizens' organization approved by the department shall be broadly representative of the region and at least *one-third* of its members shall be consumers or representatives of consumers or consumer organizations in the discipline of developmental disabilities.

(3) A citizens' organization shall be approved under procedures and rules adopted by the department.

(4) A regional council member who is not a full-time employee of the state or of a county is entitled to be reimbursed in an amount to be determined by the department, not to exceed $25, for each day actually and necessarily engaged in the performance of board duties and for travel as provided in 59-801.

(5) A regional council shall:

(a) make an annual *written* review and evaluation of needs and services within the region *and provide a copy of the review and evaluation to the planning and advisory council*;

(b) advise the department, other state agencies, councils, local governments, and private organizations on programs for services to the developmentally disabled within the region; and

(c) develop a plan for a system of community based services for the developmentally disabled within the region *and provide a copy of the plan to the planning and advisory council.*"

Section 6. Section 71-2414, R.C.M. 1947, is amended to read as follows:

"**71-2414. Departments to cooperate.** (1) The department of insti-

HeinOnline -- 1977 vol. II 1823 1977

tutions, the department of social and rehabilitation services, *the* department of health and environmental sciences, and *the office* of superintendent of public instruction shall cooperate on all aspects of each agency's respective programs for the developmentally disabled.

(2) Funds appropriated to the department of institutions, *Warm Springs state hospital, Galen state hospital, or* Boulder *River* school and hospital may be transferred by budget amendment as provided in appropriation acts and with the approval of the governor to the department of social and rehabilitation services for comprehensive developmental disability systems if residents *of any of those institutions are transferred to a comprehensive developmental disability system resulting* in less expenditures at that institution than allowed by legislative appropriation."

Section 7. **Repealer.** Section 9, Chapter 239, Laws of 1975, is repealed.

Section 8. **Effective dates.** Sections 1 through 6 of this act are effective on July 1, 1977. Section 7 of this act is effective on passage and approval of this act.

Approved May 11, 1977.

CHAPTER NO. 560

AN ACT REQUIRING ADMINISTRATIVE RULES TO CONFORM TO LEGISLATIVE INTENT; PROVIDING FOR THE DOCUMENTATION OF SOME LEGISLATIVE INTENT; AMENDING SECTION 82-4219, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 43-519 that reads as follows:

43-519. Short title. Sections 43-520 through 43-522 may be cited as the "Legislative History Act".

Section 2. There is a new R.C.M. section numbered 43-520 that reads as follows:

43-520. Statement of policy. The legislature finds that it must accept the ultimate responsibility for the increase in the discretionary authority of state executive branch agencies, as evidenced by proliferating rules, forms, orders, and licensing proceedings before state agencies. The purpose of this Legislative History Act is to assure that statutes henceforth enacted to grant additional discretionary authority to state agencies are accompanied by a clear indication of the legislature's intent as to how such discretion is to be exercised and the legislature's purpose for delegating the authority.

Section 3. There is a new R.C.M. section numbered 43-521 that reads as follows:

HeinOnline -- 1977 vol. II 1824 1977

43-521. Delegation of authority defined. As used in 43-522, "delegation of authority" means a statutory authorization to:

(1) adopt rules implementing a statute; or

(2) license (as defined in 82-4202) an activity or establishment regulated by statute.

Section 4. There is a new R.C.M. section numbered 43-522 that reads as follows:

43-522. Statement of intent in bills — legislative rules for. The legislature by its joint rules shall provide a procedure by which a statement of legislative intent shall be included with each bill containing a delegation of authority and may be included with all bills. A statement of intent shall be placed before each component of the legislature which sequentially considers the subject bill, and may be amended in the same manner as the bill.

Section 5. Section 82-4219, R.C.M. 1947, is amended to read as follows:

"82-4219. Declaratory judgments on validity or application of rules. *A* rule may be *declared invalid or inapplicable* in an action for declaratory judgment if it is found that the rule or its threatened application interferes with or impairs or threatens to interfere with or impair the legal rights or privileges of the plaintiff. *A rule may also be declared invalid in such an action on the grounds that the rule was adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute, as evidenced by documented legislative intent. If the administrative code committee has objected to the adoption or amendment of a rule on the grounds set forth in the preceding sentence, the agency bears the burden, in any action brought under this section, of proving that its rule was not adopted with an arbitrary or capricious disregard for the purpose of the authorizing statute.* The action may be brought in the district court for the county in which the plaintiff resides or has his principal place of business or in which the agency maintains its principal office. The agency shall be made a party to the action. A declaratory judgment may be rendered whether or not the plaintiff has requested the agency to pass upon the validity or applicability of the rule in question."

Approved May 11, 1977.

CHAPTER NO. 561

AN ACT TO PROVIDE FOR THE APPROVAL OF AN ADMINISTRATIVE RULE DURING THE INTERIM BETWEEN LEGISLATIVE SESSIONS BY MAIL BALLOT OF ALL MEMBERS OF THE LEGISLATURE; AMENDING SECTIONS 82-4203.5 AND 82-4205, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-4203.5, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1825 1977

"**82-4203.5. Powers of the committee.** (1) The committee shall review all proposed rules referred to it under section 82-4204 and may:

(a) prepare written recommendations for the adoption, amendment or rejection of a rule and submit those recommendations to the department proposing the rule when a rule-making hearing will not be held in accordance with the provisions of section 82-4204;

(b) prepare recommendations for the adoption, amendment or rejection of a rule and submit oral or written testimony at a rule-making hearing;

(c) request that a rule-making hearing be held in accordance with the provision of section 82-4204;

(d) if the legislature is not in session, poll all members of the legislature by mail to determine whether a proposed rule is consistent with the intent of the legislature, provided that the poll shall include an opportunity for the agency to present a written justification for the rule to the members of the legislature; or

(e) should 20 or more legislators object to any rule, the committee shall poll the members of the legislature under subsection (d).

(2) The committee shall prepare a report to the legislature at least once each biennium and may recommend amendments to the Administrative Procedure Act or the repeal, amendment or adoption of a rule as provided in section 82-4203.1."

Section 2. Section 82-4205, R.C.M. 1947, is amended to read as follows:

"**82-4205. Filing of rules — effective date of rules.** (1) On or before the 60th day following the effective date of this act, each agency shall file with the secretary of state a certified copy of each rule adopted by it on or before the effective date of this act and remaining in effect. Any rule not so filed shall be deemed to have been abrogated by the agency and shall be void and of no effect.

(2) Each agency shall file with the secretary of state a certified copy of each rule adopted by it subsequent to the effective date of this act. Each rule shall become effective 10 days after publication in the Montana administrative register or code as provided in section 6 [82-4206] of this act, except that:

(a) *if* a later date is required by statute or specified in the rule, the later date shall be the effective date.

(b) *subject* to applicable constitutional or statutory provisions, an emergency rule shall become effective immediately upon filing with the secretary of state, or at a stated date less than 10 days following publication in the Montana administrative code or register, if the agency finds that this effective date is necessary because of imminent peril to the public health, safety or welfare. The agency's finding and a brief statement of reasons therefor shall be filed with the rule. The agency shall take appropriate measures to make emergency rules known to every person who may be affected by them.

HeinOnline -- 1977 vol. II 1826 1977

(3) The secretary of state may prescribe a format, style and arrangement for rules which are filed pursuant to this act and may refuse to accept the filing of any rule that is not in substantial compliance therewith. He shall keep and maintain a permanent register of all rules filed (including superseded and repealed rules), which shall be open to public inspection, and shall provide copies of any rule upon request of any person or agency. Unless otherwise provided by statute, the secretary of state may require the payment of the cost of providing such copies.

(4) In the event that the administrative code committee has conducted a poll of the legislature in accordance with 82-4203.5, the results of the poll shall be published with the rule, and shall be admissible in any court proceeding involving the validity of the rule. In the event that the poll determines that a majority of the members of both houses find the proposed rule is contrary to the intent of the legislature, the rule shall be conclusively presumed to be contrary to the legislative intent in any court proceeding involving its validity."

Approved May 11, 1977.

CHAPTER NO. 562

AN ACT RELATING TO LEGISLATIVE REVIEW OF AGENCIES WHICH REGULATE A PROFESSION, OCCUPATION, BUSINESS, INDUSTRY, OR OTHER ENDEAVOR; PROVIDING FOR ABOLISHMENT OF AGENCIES; AND PROVIDING FOR PERIODIC LEGISLATIVE REVIEW, MODIFICATION, AND REESTABLISHMENT OF AGENCIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 82-4601 that reads as follows:

82-4601. Purpose. (1) The legislature finds state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules. The legislature questions whether conditions causing the establishment of these agencies, programs, and rules have not changed to such an extent as to remove the need for some or all of the agencies, programs, and rules.

(2) It is the intent of the legislature, by establishing a system of periodic evaluation of the need for and the performance of agencies preparatory to termination, modification, or reestablishment, to be in a better position to ensure as follows:

(a) The executive department is responsive to the needs of all of the people of the state.

(b) No agency, program, or rule exists which is not responsive to those needs.

HeinOnline -- 1977 vol. II 1827 1977

(c) No profession, occupation, business, industry, or other endeavor are subject to the state's regulatory power unless the exercise of such power is necessary to protect the public health, safety, or welfare from significant and discernible harm or damage. The exercise of the state's police power shall be done only to the extent necessary for that purpose.

(d) The state may not regulate a profession, occupation, industry, business, or other endeavor in a manner which will unreasonably adversely affect the competitive market.

(e) There exists a systematic legislative review of the need for and public benefits derived from a program or function which licenses or otherwise regulates a profession, occupation, business, industry, or other endeavor by a periodic review and termination, modification, or reestablishment of such programs and functions.

Section 2. There is a new R.C.M. section numbered 82-4602 that reads as follows:

82-4602. Definitions. As used in this act, the following definitions apply:

(1) "Agency" means an office, position, commission, committee, board, department, council, division, bureau, section, or any other entity or instrumentality of the executive department of state government.

(2) "Performance audit" means an examination of the effectiveness of administration and its efficiency and adequacy in terms of the program of a state agency authorized by law to be performed and the conformance of expenditures with legislative intent. Audits conducted shall include an analysis of the operation of the agency with special regard to the duplication of efforts between the audited agency and other agencies, and the quality of service being rendered.

Section 3. There is a new R.C.M. section numbered 82-4603 that reads as follows:

82-4603. Agencies to terminate. (1) The following agencies shall terminate on July 1, 1979:

(a) board of abstracters, department of professional and occupational licensing, created by 82A-1602.1;

(b) board of public accountants, department of professional and occupational licensing, created by 82A-1602.2;

(c) board of architects, department of professional and occupational licensing, created by 82A-1602.3;

(d) state banking board, department of business regulation, created by 82A-407;

(e) state electrical board, department of professional and occupational licensing, created by 82A-1602.10;

(f) board of professional engineers and land surveyors, department of professional and occupational licensing, created by 82A-1602.11;

HeinOnline -- 1977 vol. II 1828 1977

(g) office of commissioner of insurance and the insurance department, state auditor's office, created by 40-2701 and 40-2702;

(h) office of the investment commissioner, state auditor's office, created by 15-2001;

(i) board of landscape architects, department of professional and occupational licensing, created by 82A-1602.30;

(j) board of county printing, department of community affairs, created by 82A-904;

(k) board of plumbers, department of professional and occupational licensing, created by 82A-1602.22;

(l) board of real estate, department of professional and occupational licensing, created by 82A-1602.23;

(m) state board of warm air heating, ventilation, and air conditioning, department of professional and occupational licensing, created by 82A-1602.29;

(n) board of institutions, department of institutions, created by 82A-806.

(2) The following agencies shall terminate on July 1, 1981:

(a) commission for human rights, department of labor and industry, created by 82A-1015;

(b) board of athletics, department of professional and occupational licensing, created by 82A-1602.4;

(c) board of barbers, department of professional and occupational licensing, created by 82A-1602.5;

(d) board of chiropractors, department of professional and occupational licensing, created by 82A-1602.7;

(e) board of cosmetologists, department of professional and occupational licensing, created by 82A-1602.8;

(f) board of dentists, department of professional and occupational licensing, created by 82A-1602.9;

(g) board of hearing aid dispensers, department of professional and occupational licensing, created by 82A-1602.12;

(h) board of massage therapists, department of professional and occupational licensing, created by 82A-1602.14;

(i) Montana state board of medical examiners, department of professional and occupational licensing, created by 82A-1602.15;

(j) board of morticians, department of professional and occupational licensing, created by 82A-1602.16;

(k) board of nursing, department of professional and occupational licensing, created by 82A-1602.18;

HeinOnline -- 1977 vol. II 1829 1977

(l) board of nursing home administrators, department of professional and occupational licensing, created by 82A-1602.17;

(m) board of optometrists, department of professional and occupational licensing, created by 82A-1602.19;

(n) board of osteopathic physicians, department of professsional and occupational licensing, created by 82A-1602.20;

(o) board of pharmacists, department of professional and occupational licensing, created by 82A-1602.21;

(p) board of podiatry examiners, department of professional and occupational licensing, created by 82A-1602.6;

(q) board of psychologists, department of professional and occupational licensing, created by 82A-1602.27;

(r) board of radiologic technologists, department of professional and occupational licensing, created by 82A-1602.28;

(s) board of speech pathologists and audiologists, department of professional and occupational licensing, created by 82A-1602.31;

(t) board of veterinarians, department of professional and occupational licensing, created by 82A-1602.24;

(u) board of veterans' affairs, department of social and rehabilitation services, created by 82A-1905.

(3) The following units of state government shall terminate on July 1, 1983:

(a) board of areonautics, department of community affairs, created by 82A-905;

(b) state board of hail insurance, department of agriculture, created by 82-1501;

(c) board of horse racing, department of professional and occupational licensing, created by 82A-1602.13;

(d) board of livestock, department of livestock, created by 82A-1303;

(e) board of milk control, department of business regulation, created by 82A-406;

(f) board of oil and gas conservation, department of natural resources and conservation, created by 82A-1508;

(g) Montana outfitters council, department of fish and game, created by 82A-2005;

(h) public service commission, department of public service regulation, created by 70-101;

(i) board of sanitarians, department of professional and occupational licensing, created by 69-3412;

(j) board of water and waste water operators, department of health and environmental sciences, created by 82A-612;

HeinOnline -- 1977 vol. II 1830 1977

(k) board of water well contractors, department of professional and occupational licensing, created by 82A-1602.26.

Section 4. There is a new R.C.M. section numbered 82-4604 that reads as follows:

82-4604. Legislative audit committee review. (1) The legislative audit committee is responsible for having conducted a review of each agency scheduled for termination by 82-4603. The review shall be completed at least 6 months prior to the date set for termination.

(2) The review conducted shall include a performance audit of the agency and a thorough examination of the following:

(a) Would the absence of regulation significantly harm or endanger the public health, safety, or welfare?

(b) Is there a reasonable relationship between the exercise of the state's police power and the protection of the public health, safety, or welfare?

(c) Is there another less restrictive method of regulation available which could adequately protect the public?

(d) Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?

(e) Is the increase in cost more harmful to the public than the harm which could result from the absence of regulation?

(f) Are all facets of the regulatory process designed solely for the purpose of and have as their primary effect the protection of the public?

(3) The legislative audit committee shall assist in the implementation of the provisions of this act and shall establish administrative procedures which facilitate the review and evaluation as required in this act.

(4) Upon completion of its review, the legislative audit committee shall make a report of its recommendations for continuation, modification, or termination and submit a proposed bill for the ensuing legislative session. If termination is recommended, the bill should repeal or otherwise deal with all statutes and parts of statutes for which the agency reviewed is responsible.

Section 5. There is a new R.C.M. section numbered 82-4605 that reads as follows:

82-4605. Prereview agency responsibilities. An agency designated by 82-4603 or 82-4609 for termination shall by 22 months preceding the date set for termination:

(1) delineate goals of programs for which they are responsible, which goals reflect the state's constitution, statutes, and authoritative judicial, legislative, and executive decisions or pronouncements;

(2) delineate objectives of programs and layout clearly enough to be tested, the logic in the assumptions linking expenditures to outcome antic-

HeinOnline -- 1977 vol. II 1831 1977

ipated, outcome anticipated to objectives, and objectives to impact on problems addressed in goals.

Section 6. There is a new R.C.M. section numbered 82-4606 that reads as follows:

82-4606. Hearings by standing committee — criteria for termination. (1) Prior to abolishment of an agency terminated by 82-4603 or 82-4609, the appropriate standing committee in each house of the legislature or a joint committee of both houses composed of members of the standing committee assigned to conduct the hearing shall hold a public hearing, receiving testimony from the public and the head of the department to which the agency involved is attached, the head of the agency involved, and persons who conducted the review.

(2) In the event termination is recommended by the legislative audit committee, the agency has the burden of demonstrating a public need for its continued existence and the extent to which a change in the composition, structure, and operation of the agency would increase the protection of the public health, safety, or welfare from harm or damage or decrease the adverse effect on the competitive market.

(3) In determining whether to reestablish an agency, the legislature shall consider the performance audit and review conducted by the legislative audit committee, the public testimony responsive to the questions set forth in subsection (2) of 82-4604, and other matters considered relevant by the committee.

Section 7. There is a new R.C.M. section numbered 82-4607 that reads as follows:

82-4607. Effect of termination. Upon termination each agency or unit shall continue in existence until July 1 of the next succeeding year for the purpose of winding up its affairs. During the windup period, termination does not reduce or otherwise limit the powers or authority of each respective agency except that no action may be taken which would continue in effect beyond the 1 year windup period. Upon the expiration of the 1 year after termination, each agency not modified or reestablished shall be abolished and all unexpended balances of appropriations, allocations, or other funds shall revert to the fund from which they were appropriated or, if that fund is abolished, to the general fund.

Section 8. There is a new R.C.M. section numbered 82-4608 that reads as follows:

82-4608. Reestablishment. (1) Any agency scheduled for termination under this act or any subsequent act may be reestablished by the legislature for any period of time specified by law, not to exceed 6 years, at the end of which time the legislature shall again review the agency pursuant to 82-4604 and may again reestablish, modify, or allow the termination of the agency pursuant to this section.

(2) No more than one agency may be continued or reestablished in any bill for an act, and the agency shall be mentioned in the bill's title.

Section 9. There is a new R.C.M. section numbered 82-4609 that reads as follows:

HeinOnline -- 1977 vol. II 1832 1977

82-4609. Future regulatory agencies subject to act. Any agency or program created in part to regulate any profession, occupation, business, or other endeavor by law enacted after January 1, 1977, shall terminate on July 1 of the year of the third regular biennial legislative session following enactment of such law. Any such agency or program shall be reviewed as required in 82-4604 through 82-4608, and such review shall be completed prior to the convening of the third regular biennial legislative session following enactment of such law.

Section 10. **Saving clause.** This act shall not affect the right to institute or prosecute any cause of action by or against an agency terminated pursuant to this act if the cause of action accrued prior to the date the agency was terminated. Any causes of action pending on the date the agency is terminated, or instituted thereafter, shall be prosecuted or defended in the name of the state by the department of justice.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 11, 1977.

CHAPTER NO. 563

AN ACT TO ESTABLISH AND FUND A COMPENSATION PLAN FOR STATE EMPLOYEES FOR THE 1979 BIENNIUM; AMENDING SECTION 11-1024, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 59-915 that reads as follows:

59-915. Definitions. As used in this act, except for the section amending 11-1024, the following definitions apply:

(1) "Employee" means any state employee other than an employee excepted under 59-904 from the statewide classification system.

(2) "Compensation" means the annual wage or salary plus the annual state contribution of health insurance premiums under provisions of 11-1024.

Section 2. There is a new R.C.M. section numbered 59-916 that reads as follows:

59-916. Procedures for utilizing pay schedules. (1) The pay matrix provided in 59-917 indicates the annual compensation for the fiscal year ending June 30, 1978, for each step and grade for positions classified under provisions of law. Except as provided in 59-921 for collective bargaining units, the compensation of each employee shall, on the first day of the first pay period in July, 1977, as determined by the budget director,

HeinOnline -- 1977 vol. II 1833 1977

be that amount which corresponds to the grade and step occupied on June 30, 1977. The employee will advance one step on the employee's anniversary date as determined by the department of administration. Provided that if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of 1977, he or she will advance one step on the first day of that pay period.

(2) The pay matrix provided in 59-918 indicates the annual compensation for the fiscal year ending June 30, 1979, for each step and grade for positions classified under provisions of law. Except as provided in 59-921 for collective bargaining units, the compensation of each employee shall, on the first day of the first pay period in July, 1978, as determined by the budget director, be that amount which corresponds to the grade and step occupied on June 30, 1978. The employee will advance one step on the employee's anniversary date as determined by the department of administration. Provided that if the employee's anniversary date falls between (inclusive) July 1 and the first day of the first pay period of 1978, he or she will advance one step on the first day of that pay period.

Section 3. There is a new R.C.M. section numbered 59-917 that reads as follows:

59-917. Pay matrix for fiscal year ending June 30, 1978.

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9	STEP 10	STEP 11	STEP 12	STEP 13
1.0			5,206	5,323	5,410	5,498	5,611	5,725	5,846	5,968	6,047	6,128	6,209
2.0	5,377	5,498	5,611	5,725	5,846	5,968	6,094	6,222	6,349	6,477	6,564	6,651	6,738
3.0	5,836	5,968	6,094	6,222	6,349	6,477	6,617	6,759	6,900	7,041	7,133	7,228	7,329
4.0	6,334	6,477	6,617	6,759	6,900	7,041	7,189	7,336	7,497	7,658	7,766	7,872	7,980
5.0	6,885	7,041	7,189	7,336	7,497	7,658	7,826	7,994	8,168	8,342	8,457	8,570	8,691
6.0	7,488	7,658	7,826	7,994	8,168	8,342	8,523	8,705	8,893	9,081	9,208	9,336	9,463
7.0	8,156	8,342	8,523	8,705	8,893	9,081	9,282	9,483	9,691	9,900	10,040	10,181	10,322
8.0	8,878	9,081	9,282	9,483	9,691	9,900	10,121	10,342	10,570	10,798	10,953	11,108	11,261
9.0	9,678	9,900	10,121	10,342	10,570	10,798	11,040	11,282	11,530	11,778	11,946	12,114	12,289
9.5	10,117	10,349	10,580	10,812	11,050	11,289	11,540	11,792	12,057	12,321	12,496	12,670	12,853
10.0	10,556	10,798	11,040	11,282	11,530	11,778	12,040	12,302	12,583	12,865	13,046	13,227	13,416
10.5	11,037	11,291	11,540	11,793	12,057	12,321	12,598	12,875	13,165	13,459	13,650	13,839	14,037
11.0	11,513	11,778	12,040	12,302	12,583	12,865	13,153	13,442	13,744	14,046	14,248	14,449	14,657
11.5	12,044	12,321	12,598	12,875	13,165	13,459	13,758	14,060	14,376	14,691	14,904	15,115	15,334
12.0	12,575	12,865	13,153	13,442	13,744	14,046	14,361	14,677	15,006	15,335	15,557	15,778	16,006
12.5	13,155	13,459	13,758	14,060	14,376	14,691	15,023	15,357	15,700	16,047	16,277	16,509	16,745
13.0	13,729	14,046	14,361	14,677	15,006	15,335	15,684	16,033	16,395	16,757	16,999	17,240	17,489
14.0	14,988	15,335	15,670	16,006	16,342	16,676	17,012	17,348	17,684	18,019	18,355	18,690	18,857
15.0	16,378	16,757	17,093	17,429	17,764	18,099	18,435	18,770	19,106	19,442	19,777	20,112	20,280
16.0	17,912	18,327	18,663	18,999	19,334	19,670	20,005	20,341	20,676	21,012	21,348	21,682	21,850
17.0	19,578	20,032	20,367	20,703	21,039	21,374	21,710	22,046	22,380	22,716	23,052	23,387	23,555
18.0	21,413	21,911	22,246	22,582	22,918	23,253	23,588	23,924	24,259	24,595	24,931	25,267	25,433
19.0	23,433	23,978	24,314	24,648	24,984	25,320	25,656	25,990	26,326	26,662	26,997	27,333	27,501
20.0	25,636	26,233	26,567	26,903	27,239	27,575	27,910	28,246	28,582	28,916	29,252	29,588	29,756
21.0	28,062	28,716	29,091	29,386	29,722	30,058	30,393	30,728	31,064	31,399	31,735	32,071	32,239
22.0	30,723	31,439	31,775	32,111	32,446	32,782	33,117	33,453	33,788	34,124	34,460	34,795	34,962
23.0	33,634	34,419	34,754	35,090	35,426	35,762	36,096	36,432	36,768	37,103	37,439	37,775	37,942
24.0	36,834	37,694	38,030	38,365	38,700	39,036	39,371	39,707	40,043	40,378	40,713	41,049	41,217
25.0	40,348	41,291	41,626	41,962	42,298	42,632	42,968	43,304	43,639	43,975	44,310	44,646	44,813

HeinOnline -- 1977 vol. II 1835 1977

Section 4. There is a new R.C.M. section numbered 59-918 that reads as follows:

59-918. Pay matrix for fiscal year ending June 30, 1979.

HeinOnline -- 1977 vol. II 1836 1977

GRADE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9	STEP 10	STEP 11	STEP 12	STEP 13
1.0			5,784	5,911	6,031	6,120	6,210	6,326	6,443	6,567	6,691	6,772	6,855
2.0	5,955	6,086	6,210	6,326	6,443	6,567	6,691	6,820	6,951	7,081	7,212	7,301	7,390
3.0	6,414	6,556	6,691	6,820	6,951	7,081	7,212	7,356	7,501	7,645	7,790	7,884	7,981
4.0	6,912	7,066	7,212	7,356	7,501	7,645	7,790	7,941	8,092	8,256	8,421	8,532	8,640
5.0	7,463	7,630	7,790	7,941	8,092	8,256	8,421	8,593	8,765	8,943	9,121	9,239	9,355
6.0	8,066	8,247	8,421	8,593	8,765	8,943	9,121	9,306	9,493	9,685	9,878	10,008	10,139
7.0	8,734	8,931	9,121	9,306	9,493	9,685	9,878	10,083	10,289	10,502	10,716	10,859	11,003
8.0	9,456	9,670	9,878	10,083	10,289	10,502	10,716	10,942	11,168	11,402	11,635	11,794	11,952
9.0	10,256	10,489	10,716	10,942	11,168	11,402	11,635	11,883	12,130	12,384	12,638	12,810	12,982
9.5	10,695	10,938	11,175	11,412	11,649	11,893	12,137	12,394	12,652	12,923	13,194	13,373	13,551
10.0	11,134	11,387	11,635	11,883	12,130	12,384	12,638	12,906	13,174	13,462	13,750	13,936	14,121
10.5	11,615	11,879	12,139	12,394	12,653	12,923	13,194	13,477	13,761	14,058	14,358	14,554	14,747
11.0	12,091	12,367	12,638	12,906	13,174	13,462	13,750	14,045	14,341	14,650	14,959	15,166	15,372
11.5	12,622	12,910	13,194	13,477	13,761	14,058	14,358	14,664	14,974	15,297	15,619	15,837	16,053
12.0	13,153	13,454	13,750	14,045	14,341	14,650	14,959	15,282	15,605	15,942	16,278	16,506	16,732
12.5	13,733	14,047	14,358	14,664	14,974	15,297	15,619	15,959	16,301	16,652	17,007	17,243	17,480
13.0	14,307	14,635	14,959	15,282	15,605	15,942	16,278	16,636	16,993	17,363	17,734	17,982	18,228
14.0	15,566	15,923	16,278	16,621	16,965	17,309	17,651	17,995	18,339	18,683	19,026	19,369	19,712
15.0	16,956	17,346	17,734	18,078	18,422	18,765	19,107	19,451	19,794	20,138	20,482	20,825	21,168
16.0	18,490	18,916	19,341	19,685	20,029	20,371	20,715	21,058	21,402	21,745	22,089	22,433	22,775
17.0	20,156	20,621	21,086	21,429	21,773	22,117	22,459	22,803	23,147	23,489	23,833	24,177	24,520
18.0	21,991	22,499	23,009	23,352	23,696	24,040	24,383	24,725	25,069	25,412	25,756	26,100	26,444
19.0	24,011	24,567	25,125	25,469	25,810	26,154	26,498	26,842	27,184	27,528	27,872	28,215	28,558
20.0	26,214	26,822	27,433	27,774	28,118	28,462	28,806	29,149	29,493	29,837	30,179	30,523	30,866
21.0	28,640	29,305	29,974	30,358	30,660	31,004	31,347	31,690	32,033	32,377	32,720	33,064	33,408
22.0	31,301	32,028	32,761	33,105	33,449	33,792	34,135	34,478	34,822	35,165	35,509	35,853	36,196
23.0	34,212	35,008	35,811	36,154	36,498	36,842	37,186	37,527	37,871	38,215	38,558	38,902	39,246
24.0	37,412	38,283	39,163	39,507	39,850	40,193	40,536	40,879	41,223	41,567	41,910	42,253	42,597
25.0	40,926	41,879	42,844	43,187	43,531	43,875	44,217	44,561	44,905	45,248	45,592	45,934	46,278

HeinOnline -- 1977 vol. II 1837 1977

Section 5. There is a new R.C.M. section numbered 59-919 that reads as follows:

59-919. Allocation between wages and health insurance. (1) The dollar amounts shown in the respective matrices in 59-917 and 59-918 represent the maximum amount allocated by the state for wages and health insurance benefits, exclusive of longevity as defined in 59-920. Except as provided in subsection (2) of this section, that amount specifically allocated for health insurance benefits shall be determined by 11-1024. An employee who elects not be to covered by a state health insurance plan will receive as wages the amount shown in the appropriate matrix less the state contribution for health insurance as determined by 11-1024.

(2) Employees may, through collective bargaining, determine the allocation of the amounts shown in the matrices of 59-917 and 59-918 between wages and health insurance benefits, except that in no case may the health insurance allocation be less than the amounts provided in 11-1024.

Section 6. There is a new R.C.M. section numbered 59-920 that reads as follows:

59-920. Longevity allowance. In addition to the compensation determined above, each employee who has completed at least 5 years of uninterrupted state service shall receive the amount obtained by multiplying the larger of $10 a month or 10% of the difference between the base compensation for his grade and step and the base compensation for the corresponding step in the next highest grade by the number of completed, contiguous 5-year periods of uninterrupted service he has with the state. Service to the state may not be considered to have been interrupted by authorized leaves of absence.

Section 7. There is a new R.C.M. section numbered 59-921 that reads as follows:

59-921. Exceptions for collective bargaining. (1) The procedure established in this act for increasing compensation for state employees is in lieu of and supersedes any other such plans or systems except those plans negotiated with the blue collar crafts and teachers in accordance with provisions of Title 59, chapter 16. The total amount of compensation which may be used to implement any such plan may not exceed the total amount of funding that would be required to fund application of the matrices in 59-917 and 59-918 to the employees covered by the negotiated plan.

(2) A member of a bargaining unit may receive negotiated increases in compensation only after the bargaining unit has ratified the negotiated plan or system for the biennium. Should such negotiations and subsequent ratification process not be completed by the beginning of the biennium, retroactivity to the beginning of the biennium shall be negotiable.

Section 8. There is a new R.C.M. section numbered 59-922 that reads as follows:

HeinOnline -- 1977 vol. II 1838 1977

59-922. Rules. The department of administration, subject to approval by the budget director, may promulgate rules not inconsistent with the provisions of this act, collective bargaining statutes or negotiated contracts, to carry out the purposes of the act.

Section 9. **Appropriation.** There is appropriated to the budget director $2,208,225 for the fiscal year ending June 30, 1978, and $4,902,600 for the fiscal year ending June 30, 1979, from the state general fund to carry out the provisions of this act as it pertains to executive branch agencies, not including units of the university system. The budget director is authorized to increase the expenditure authority of executive branch agencies, not including units of the university system, by $3,581,692 for the fiscal year ending June 30, 1978, and by $8,097,724 for the fiscal year ending June 30, 1979, from funds other than the state general funds which accrue under provisions of law to the respective agencies to carry out the provisions of this act.

Section 10. **Reversion.** Appropriated funds not spent at the end of the fiscal year shall revert to the fund from which they were appropriated.

Section 11. Section 11-1024, R.C.M. 1947, is amended to read as follows:

"11-1024. Group insurance for all departments, bureaus, boards, commissions and agencies of the state of Montana, county, city, and town officers and employees — authority — approval of employees — limit on contributions. (1) All departments, bureaus, boards, commissions and agencies of the state of Montana, and all counties, cities and towns shall upon approval by two-thirds (⅔) vote of the officers and employees of each such department, bureau, board, commission, agency, county, city and town, enter into group hospitalization, medical, health including long-term disability, accident and/or group life insurance contracts or plans for the benefit of their officers, employees and their dependents, and the respective administrative and governing bodies shall pay for such insurance *the amount specified in this section. For* all employees as defined in subsection (2) of this section *other than members of collective bargaining units* and for members of the legislature, such payment for insurance *shall be $240 per year for the fiscal year ending June 30, 1978, and $360 per year for each fiscal year thereafter. The employer shall prorate this amount for employees who work less than 2,080 hours* per year. *For* employees of elementary and high school districts and of local government units, the employer's premium contributions may exceed but shall not be less than *$10 per month.*

For state employee members of a collective bargaining unit, the employer shall pay the amount negotiated with the collective bargaining unit.

(2) In this section, as it applies to a person employed in the executive or legislative branches of state government, "employee" means:

(a) a permanent full-time employee as defined in section 59-1007.1;

(b) a part-time employee as defined in section 59-1007.1 who is scheduled to work at least twenty (20) hours per week;

(c) a person employed in a seasonal position as defined in section

HeinOnline -- 1977 vol. II 1839 1977

59-1007.1 who is employed on a regular basis at least eight (8) months of the fiscal year."

Section 12. There is a new R.C.M. section numbered 43-310.2 that reads as follows:

43-310.2. Participation of legislators in state insurance group. Members of the senate and the house of representatives may enroll in the state employees insurance group during the terms to which they have been elected, without the approval of two-thirds of the appropriate house under 59-1505. The insurer shall enroll and collect employee contributions directly from such legislators. The employer contribution shall be paid from funds appropriated for that purpose.

Approved May 11, 1977.

Note: Section 12 was erroneously enrolled as 43-310.2. This section will appear in R.C.M. 1947 as 43-310.3.

CHAPTER NO. 564

AN ACT VALIDATING, RATIFYING, APPROVING, AND CONFIRMING BONDS AND OTHER INSTRUMENTS OR OBLIGATIONS ISSUED BY PUBLIC BODIES OF THIS STATE, AND ALL PROCEEDINGS TAKEN BY SUCH PUBLIC BODIES TO AUTHORIZE AND ISSUE SUCH BONDS, INSTRUMENTS, AND OTHER OBLIGATIONS, HOWEVER DESCRIBED; AMENDING SECTIONS 79-2001, 79-2002, 79-2003, AND 79-2004, R.C.M. 1947; PROVIDING THAT SUCH SECTIONS MAY BE CITED AS THE "BOND VALIDATING ACT"; PROVIDING FOR THE EXTENSION OF THE APPLICATION OF SUCH ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 79-2001, R.C.M. 1947, is amended to read as follows:

"79-2001. Short title. This *chapter* may be cited as *the "Bond* Validating Act"."

Section 2. Section 79-2002, R.C.M. 1947, is amended to read as follows:

"79-2002. Definitions. The following terms, wherever used or referred to in this *chapter*, have the following meanings:

(1) The term "public body" *includes* a county, city, town, school district, irrigation district, drainage district, special improvement district, or any other political or governmental subdivision of the state of Montana, and also *includes* the board of public education, the board of regents of higher education, the state board of examiners, the board of natural resources and conservation, the state highway commission, or any other governmental agency of this state.

HeinOnline -- 1977 vol. II 1840 1977

(2) The term "bonds" *includes* bonds, notes, warrants, debentures, certificates of indebtedness, temporary bonds, temporary notes, interim receipts, interim certificates, and all instruments or obligations evidencing or representing indebtedness, or evidencing or representing the borrowing of money, or evidencing or representing a charge, lien, or encumbrance on specific revenues, income, or property of a public body, including all instruments or obligations payable from a special fund."

Section 3. Section 79-2003, R.C.M. 1947, is amended to read as follows:

"**79-2003. Validation.** All bonds issued by any public body of this state and all proceedings taken for the authorization and issuance of such bonds, for the levy, establishment, pledge and appropriation of taxes, special assessments and other charges, and revenues to pay such bonds, and for the sale, exchange, execution and delivery thereof, *prior to the date set by and subject to the conditions set forth in 79-2004,* are validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing board or commission or officers thereof, to authorize and issue such bonds, or to sell, exchange, execute, or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings or in such sale, exchange, execution, or delivery, and bonds of such public bodies, under the authority of *such* proceedings, are binding, legal, valid, and enforceable obligations of such *public* body."

Section 4. Section 79-2004, R.C.M. 1947, is amended to read as follows:

"**79-2004. Period of application.** *(1)* This *chapter does* not apply to or affect any action or appeal instituted on or before the date *to which it has most recently been extended,* in which the validity of any such proceeding or of any such bonds is at issue.

(2) This chapter applies to bonds issued and proceedings taken prior to January 1, 1977. The application of this chapter may be extended by act of the legislature to any date provided therein."

Section 5. There is a new R.C.M. section numbered 79-2005 that reads as follows:

79-2005. Application. The application of the Bond Validating Act, Title 79, chapter 20, R.C.M. 1947, as hereby amended, is extended to bonds issued and proceedings taken prior to the effective date of this act.

Approved May 13, 1977.

CHAPTER NO. 565

AN ACT TO EXEMPT TEACHERS AT STATE INSTITUTIONS FROM THE STATE CLASSIFICATION AND PAY PLAN; AMENDING SECTION 59-904, R.C.M. 1947.

HeinOnline -- 1977 vol. II 1841 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 59-904, R.C.M. 1947, is amended to read as follows:

"59-904. Officers and employees excepted from provisions of act. This act does not apply to the following positions in state government:

(1) elected officials and their chief deputy and executive secretary;

(2) officers and employees of the legislative branch;

(3) judges and employees of the judicial branch;

(4) members of boards and commissions appointed by the governor, appointed by the legislature or appointed by other elected state officials;

(5) officers or members of the militia;

(6) agency heads appointed by the governor;

(7) academic and professional administrative personnel with individual contracts under the authority of the board of regents of higher education;

(8) academic and professional administrative personnel who have entered into individual contracts with the state school for the deaf and blind under the authority of the state board of public education;

(9) teachers under the authority of the department of institutions;

(10) personal staff of the elected officials enumerated in Article VI, section 1, of the constitution of Montana are exempt from sections 59-909, 59-910, and 59-911 of this act, and section 82A-1014."

Approved May 13, 1977.

CHAPTER NO. 566

AN ACT TO CLARIFY THE PROPERTY TAX SYSTEM BY GENERALLY REVISING AND RECODIFYING SECTIONS RELATING TO PROPERTY CLASSIFICATION AND TAXATION AND BY ESTABLISHING MARKET VALUE AS THE BASIS OF TAXATION, EXCEPT FOR CERTAIN CASES, AND ADJUSTING THE TAXABLE PERCENTAGE ACCORDINGLY; AMENDING SECTIONS 11-988, 11-1011, 11-1019, 11-1301, 11-1909, 11-1919, 11-2201, 11-2205, 11-2303, 11-3921, 11-4111, 14-307, 16-502, 16-807, 16-808, 16-1152, 16-1412, 16-2010.1, 16-4020, 32-3107, 46-1914, 53-114, 53-1025, 69-3504, 75-7104, 75-8104, 84-101, 84-401, 84-402, 84-404, 84-406, 84-602, 84-708.1, 84-728, 84-4605, 84-4701, 84-4701.2, 84-4713, 84-5103, 84-5211, 84-5214, 84-5216, 84-5406, 84-6008, 84-6102, 84-6103, 84-6205, 84-6407, 84-7513, AND 89-3403, R.C.M. 1947; AND REPEALING SECTIONS 69-3923, 84-301, AND 84-302, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-301.1 that reads as follows:

HeinOnline -- 1977 vol. II 1842 1977

84-301.1. Classification of taxable property. For the purpose of taxation, the taxable property in the state shall be classified in accordance with 84-301.2 through 84-301.19.

Section 2. There is a new R.C.M. section numbered 84-301.2 that reads as follows:

84-301.2. Class one property — description — taxable percentage. (1) Class one property includes the right of entry which is a property right reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise, or succession to enter land whose surface title is held by another to explore, prospect, or dig for oil, gas, coal, or minerals. The market value of the right of entry is determined by the department of revenue.

(2) Class one property is taxed at 100% of its market value.

Section 3. There is a new R.C.M. section numbered 84-301.3 that reads as follows:

84-301.3. Class two property — description — taxable percentage. (1) Class two property includes the annual net proceeds of all mines and mining claims, except coal and metal mines.

(2) Class two property is taxed at 100% of its annual net proceeds after deducting the expenses specified and allowed by 84-5403.

Section 4. There is a new R.C.M. section numbered 84-301.4 that reads as follows:

84-301.4. Class three property — description — percentage. (1) Class three property includes the annual gross proceeds of coal mines using the strip mining method.

(2) Class three property is taxed at 45% of its assessed value, which is 100% of annual gross proceeds.

Section 5. There is a new R.C.M. section numbered 84-301.5 that reads as follows:

84-301.5. Class four property — description — taxable percentage. (1) Class four property includes the annual gross proceeds of underground coal mines.

(2) Class four property is taxed at 33 ⅓ % of its assessed value, which is 100% of annual gross proceeds.

Section 6. There is a new R.C.M. section numbered 84-301.6 that reads as follows:

84-301.6. Class five property — description — taxable percentage. (1) Class five property includes moneyed capital and shares of banks.

(2) Class five property is valued and taxed as provided under 84-304, 84-305, 84-307, 84-308, and chapter 46, Title 84.

Section 7. There is a new R.C.M. section numbered 84-301.7 that reads as follows:

HeinOnline -- 1977 vol. II 1843 1977

84-301.7. Class six property — description — taxable percentage. (1) Class six property includes agricultural land, as defined in 84-437.2.

(2) Class six property is taxed at 30% of its assessed value.

Section 8. There is a new R.C.M. section numbered 84-301.8 that reads as follows:

84-301.8. Class seven property — description — taxable percentage. (1) Class seven property includes:

(a) centrally assessed utility allocations after deductions of locally assessed properties, except as provided in:

(i) class fourteen for rural telephones; and

(ii) class eighteen for cooperatives;

(b) all other property not included in classes one through six and classes eight through nineteen;

(c) large trucks and commercial trailers valued in the department of revenue's truck and commercial trailer schedule.

(2) Class seven property is taxed at 16% of its market value.

Section 9. There is a new R.C.M. section numbered 84-301.9 that reads as follows:

84-301.9. Class eight property — description — taxable percentage. (1) Class eight property includes:

(a) all agricultural and other tools, implements, and machinery except:

(i) large farm machinery included in class twelve; and

(ii) tools, implements and machinery included in class fourteen;

(b) gas and other engines and boilers and threshing machines and outfits used therewith;

(c) harness, saddlery, and robes;

(2) Class eight property is taxed at 13% of its market value.

Section 10. There is a new R.C.M. section numbered 84-301.10 that reads as follows:

84-301.10. Class nine property — description — taxable percentage. (1) Class nine property includes:

(a) automobiles, motor trucks, and other power-driven cars and vehicles of all kinds, except mobile homes, motorcycles, aircraft, camper trailers, and truck campers;

(b) livestock, poultry, and unprocessed products of both; and

(c) furniture and fixtures used in commercial, office, and hotel activities, except improvements included in class thirteen.

(2) Class nine property is taxed at 13.3% of its market value.

HeinOnline -- 1977 vol. II 1844 1977

Section 11. **Instructions to code commissioner and publisher.** If House Bill 85 is enacted into law, the code commissioner and the publisher shall transfer livestock, poultry, and unprocessed products of both from class eight property to class fourteen property.

Section 12. There is a new R.C.M. section numbered 84-301.11 that reads as follows:

84-301.11. Class ten property — description — taxable percentage. (1) Class ten property includes:

(a) aerial, surface, and portable ski lifts and ski tows, including the towers, cables, ropes, sheave assemblies, conveying devices, power units, and all accessories;

(b) manufacturing and mining machinery, fixtures, and supplies, except those included in class eighteen; and

(c) camper trailers and truck campers valued in the "N.A.D.A. Recreational Vehicle Appraisal Guide".

(2) Class ten property is taxed at 12% of market value.

Section 13. There is a new R.C.M. section numbered 84-301.12 that reads as follows:

84-301.12. Class eleven property — description — taxable property. (1) Class eleven property includes:

(a) all land, except agricultural land meeting the qualification of 84-437.2;

(b) all improvements, except those included in classes fifteen and eighteen;

(c) all trailers affixed to land owned, leased, or under contract for purchase by the trailer owner; and

(d) all mobile homes, except:

(i) those held by a distributor or dealer of mobile homes as part of his stock in trade; and

(ii) those included in class fifteen.

(2) Class eleven property is taxed at 12% of its market value, or so much of 12% as is determined under 84-309, whichever is less.

Section 14. There is a new R.C.M. section numbered 84-301.13 that reads as follows:

84-301.13. Class twelve property — description — taxable percentage. (1) Class twelve property includes:

(a) boats and all watercraft;

(b) aircraft;

(c) motorcycles; and

HeinOnline -- 1977 vol. II 1845 1977

(d) large farm machinery valued in the official guide tractors and farm implements and department valuation schedules.

(2) Class twelve property is taxed at 11% of its market value.

Section 15. There is a new R.C.M. section numbered 84-301.14 that reads as follows:

84-301.14. Class thirteen property — description — taxable percentage. (1) Class thirteen property includes the incremental increase in the value of real estate produced by repairing, maintaining, or improving existing improvements.

(2) Class thirteen property is taxed at:

(a) 2.4% of the market value for the first full year following completion of the repair, maintenance, or improving of existing improvements;

(b) 4.8% of the market value for the second full year following completion of the repair, maintenance, or improving of existing improvements;

(c) 7.2% of the market value for the third full year following completion of the repair, maintenance, or improving of existing improvements;

(d) 9.6% of the market value for the fourth full year following completion of the repair, maintenance, or improving of existing improvements; and

(e) 12% of the market value for the fifth full year and every year thereafter following completion of the repair, maintenance, or improving of existing improvements.

Section 16. There is a new R.C.M. section numbered 84-301.15 that reads as follows:

84-301.15. Class fourteen property — description — taxable percentage. (1) Class fourteen property includes:

(a) all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property, except that included in class eighteen, used and owned by persons, firms, corporations, or other organizations that are engaged in the business of furnishing telephone communications exclusively to rural areas or to rural areas and cities and towns of 800 persons or less. The average circuit miles for each station on the telephone communications system must be more than 1 ¼ miles to qualify for this classification;

(b) tools, implements, and machinery used to repair and maintain machinery not used for manufacturing and mining purposes; and

(c) electric transformers and meters, electric light and power substation machinery, and natural gas measuring and regulating station equipment, meters, and compressor station machinery owned by centrally assessed public utilities, and tools used in the repair and maintenance of the property included in this subsection.

(2) Class fourteen is taxed at 8% of its market value.

HeinOnline -- 1977 vol. II 1846 1977

Section 17. There is a new R.C.M. section numbered 84-301.16 that reads as follows:

84-301.16. Class fifteen property — description — taxable percentage. (1) Class fifteen property includes:

(a) any improvement on real property, a trailer affixed to land, or a mobile home and appurtenant land not exceeding 5 acres, which together meet the following conditions:

(i) have a market value of not more than $27,500;

(ii) are owned or under contract for deed and are actually occupied for at least 10 months per year as the primary residential dwelling of:

(A) a widow or widower 62 years of age or older who qualifies under the income limitations of (C) of this section;

(B) a widow or widower of any age with dependent children who qualifies under the income limitations of (C) of this section; or

(C) a recipient or recipients of retirement or disability benefits whose total income from all sources is not more than $6,000 a year for a single person or $6,800 for a married couple.

(2) (a) A person applying for classification of property under this class must make an affidavit to the department of revenue on a form provided by the department without cost as to:

(i) his income, if applicable;

(ii) his retirement benefits, if applicable;

(iii) his marital status, if applicable; and

(iv) the fact that he maintains the land and improvements as his primary residential dwelling.

(b) The county welfare board may investigate the applicant as to the answers given on the form. For the purpose of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for the purposes of 94-7-203, relating to the criminal offense of false swearing.

(c) The assessed value of the property may not be increased during the life of the recipient of retirement benefits or widow or widower covered under this class, unless the owner-resident makes a substantial improvement in the dwelling.

(3) Class fifteen property is taxed at 6% of its market value or so much of 6% as is determined under 84-309, whichever is less.

Section 18. There is a new R.C.M. section numbered 84-301.17 that reads as follows:

HeinOnline -- 1977 vol. II 1847 1977

84-301.17. Class sixteen property — description — taxable percentage. (1) Class sixteen property includes:

(a) business inventories as defined in this section; and

(b) mobile machines, valued as other heavy construction equipment is valued, used in new industries, as defined in class eighteen.

(2) Mobile machines used in new industry are subject to the conditions imposed in class eighteen for other property used in new industries.

(3) "Business inventories" includes goods intended for sale or lease in the ordinary course of business and raw materials and work in progress with respect to such goods. Business inventories shall not include goods leased or rented or mobile homes held by a dealer or distributor as part of his stock in trade.

(4) The market value of business inventories, for property tax purposes, is the cost to the person subject to the inventory tax.

(5) Class sixteen property is taxed at 4.2% of market value.

Section 19. There is a new R.C.M. section numbered 84-301.18 that reads as follows:

84-301.18. Class seventeen property — description — taxable percentage. (1) Class seventeen property includes all unprocessed agricultural products on the farm or in storage, except:

(a) all perishable fruits and vegetables in farm storage and owned by the producer; and

(b) livestock and poultry and the unprocessed products of both.

(2) Class seventeen property is taxed at 3.5% of market value.

Section 20. There is a new R.C.M. section numbered 84-301.19 that reads as follows:

84-301.19. Class eighteen property — description — taxable percentage. (1) Class eighteen property includes:

(a) a dwelling house and the lot on which it is erected, owned, and occupied by a resident of the state who:

(i) has been honorably discharged from active service in any branch of the armed services; and

(ii) is rated 100% disabled due to a service-connected disability by the United States veterans administration or its successor. In the event of the veteran's death, the dwelling house and the lot on which it is erected shall remain in this class as long as the surviving spouse remains unmarried and the owner and occupant of the property.

(b) all property used and owned by cooperative rural electrical and cooperative rural telephone associations as provided in (2)(a) of this section;

(c) air pollution control equipment as defined in this section; and

HeinOnline -- 1977 vol. II 1848 1977

(d) new industrial property as defined in this section.

(2) (a) The property of all cooperative rural electrical and cooperative rural telephone associations organized under the laws of Montana is included in this class; except that when less than 95% of the electricity consumers or telephone users within the incorporated limits of a city or town are served by the cooperative organization, the property is included in class eighteen.

(b) "Air pollution control equipment" means facilities, machinery, or equipment, attached or unattached to real property, utilized to reduce, eliminate, control, or prevent air pollution. The department of health and environmental sciences determines if such utilization is being made.

(c) "New industrial property" means any new industrial plant, including land, buildings, machinery, and fixtures, except mobile machinery, which is used by a new industry during the first 3 years of its operation. The property may not have been assessed prior to July 1, 1961, within the state of Montana.

(i) New industrial property is limited to industries that:

(A) manufacture, mill, mine, produce, process, or fabricate materials;

(B) do similar work, employing capital and labor, in which materials unserviceable in their natural state are extracted, processed, or made fit for use or are substantially altered or treated so as to create commercial products or materials; or

(C) engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual prepared by the United States office of management and budget.

(ii) New industrial property does not include:

(A) property used by retail or wholesale merchants, commercial services of any type, agriculture, trades, or professions;

(B) a plant that will create adverse impact on existing state, county, or municipal services; or

(C) property used or employed in any industrial plant that has been in operation in this state for 3 years or longer.

(c) "New industry" means any person, corporation, firm, partnership, association, or other group that establishes a new plant or plants in Montana for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries.

(3) The department of revenue shall promulgate rules for the determination of what constitutes an adverse impact, taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the department of revenue

HeinOnline -- 1977 vol. II 1849 1977

in such a manner and form as the department requires. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then, upon proper notice, hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing and may waive its objection to retention of this classification if the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during the construction period. When a prepayment of taxes is required, the maximum amount of prepayment shall be the amount of tax the industry would have paid without the application of the class seven percentage to such property.

(4) If a major new industrial facility qualifies under class eighteen, the reduction of its yearly payment of property taxes for reimbursement of its prepaid taxes as provided for in 84-41-105 does not begin until the class eighteen qualification expires.

(5) Class eighteen property shall be taxed at 2.8% of its market value, or in the case of property classified under (1)(a) of this section, so much of 2.8% as is determined under 84-309, whichever is less.

Section 21. Section 84-401, R.C.M. 1947, is amended to read as follows:

"**84-401. Assessments, definitions, and exceptions.** *(1)* All taxable property must be assessed at *100%* of its *market* value except *as provided in subsection (5) of this section and in 84-429.14 through 84-429.17.*

(2) Market value is the value at which property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of relevant facts.

(3) The department of revenue or its agents may not adopt a lower or different standard of value from market value in making the official assessment and appraisal of the value of property in class one and classes seven through eighteen. For purposes of taxation, assessed value is the same as appraised value.

(4) The taxable value for all property in class one and classes seven through eighteen is the percentage of market value established for each class of property in 84-301.2 and 84-301.8 through 84-301.19.

(5) The assessed value of properties in 84-301.3 through 84-301.7 is as follows:

(a) Property in 84-301.6, under class five, is assessed at 100% of book value, by the method established in 84-301.6 and the sections cited therein.

(b) Properties in *84-301.3*, under *class two, are* assessed at 100% *of the annual net proceeds after deducting the expenses specified and allowed by 84-5403.*

(c) Properties in 84-301.4, 84-301.5, and 84-301.20, under classes three, four, and nineteen are assessed at 100% of the annual gross proceeds.

HeinOnline -- 1977 vol. II 1850 1977

(d) Properties in 84-301.7, under class six, are assessed at 100% of the productive capacity of the lands when valued for agricultural purposes. All lands *that meet the qualifications of 84-437.2 are* valued as agricultural lands for tax purposes.

(6) Land and the improvements thereon *are* separately assessed when any of the following conditions occur:

(a) ownership of the improvements is different from ownership of the land*;*

(b) *the taxpayer makes a written request;* or

(c) the land is outside an incorporated city or town.

(7) The taxable value of all property *in classes two through six is the percentage of assessed value established in 84-301.3 through 84-301.7 for each class of property.*"

Section 22. Section 11-988, R.C.M. 1947, is amended to read as follows:

"**11-988. Power of cities and towns to acquire natural gas and distributing system.** The city or town council has power to contract an indebtedness of a city or town upon the credit thereof by borrowing money or issuing bonds for the construction, purchase, or development of an adequate supply of natural gas and to construct or purchase a system of gas lines for the distribution thereof to the inhabitants of *the* city or town or vicinity. *The* total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, must not at any time exceed *11%* of the total *taxable value* of the property of the city or town *subject to taxation* as ascertained by the last assessment for state and county taxes. *No* money *may* be borrowed or bonds issued for the purposes specified *in this section* until the proposition has been submitted to the vote of the taxpayers of the city or town *affected thereby* and the majority vote cast in *its* favor."

Section 23. Section 11-1011, R.C.M. 1947, is amended to read as follows:

"**11-1011. Tax levy for band concerts.** For the purpose of providing band concerts, the council or other governing body in any town or city of the first, second, or third class or *of* any incorporated town may assess and levy, in addition to the levy for general municipal or administrative purposes, *an amount* not *to exceed 1* mill on the dollar on the *taxable* value of the property of the city or town *subject to taxation.*"

Section 24. Section 11-1019, R.C.M. 1947, is amended to read as follows:

"**11-1019. Operation of bus lines — contracting indebtedness.** Whenever a city or town is not being served by a bus company or operator operating on a regular schedule and under the jurisdiction of the public service commission or if such service is likely to be discontinued in the immediate future, the city or town council of any incorporated city or town *may* contract an indebtedness of any such city or town upon the credit

HeinOnline -- 1977 vol. II 1851 1977

thereof by borrowing money or issuing bonds for the purchase, development, operation, or leasing of motor buses and bus lines for the transportation of passengers within the corporate limits of such cities and towns and to operate the same to any point or points beyond *these* limits not *to* exceed 8 miles, measured along the route of *the* bus line. *The* total amount of indebtedness authorized to be contracted in any form, including the then-existing indebtedness, *may* not at any time exceed *18%* of the total *taxable value* of the property of the city or town *subject to taxation* as ascertained by the last assessment for state and county taxes. *No* money *may* be borrowed or bonds issued for the purposes specified *in this section* until the proposition has been submitted to the vote of the taxpayers of the city or town and the majority vote cast in *its* favor."

Section 25. Section 11-1301, R.C.M. 1947, is amended to read as follows:

"**11-1301. Presentation of claims — limitation of actions.** All accounts and demands against a city or town must be presented to the council duly itemized. All claims against a city or town shall contain the following statement: "I certify that this claim is correct and just in all respects and that payment or credit has not been received." Claims need not be accompanied by affidavit by the party or his agent. These claims must be presented with all necessary and proper vouchers within 1 year from the date the same accrued. *Any* claim or demand not so presented within *this* time is forever barred, and the council has no authority to allow any account or demand not so presented. *No* action *may* be maintained against the city or town for or on account of any demand or claim against the *city or town* until such demand or claim has first been presented to the council. *In* case the total indebtedness of a city or town has reached *11%* of the total *taxable value* of the property of *the* city or town *subject to taxation* as ascertained by the last assessment for state and county taxes, *the* city or town *may* conduct its affairs and business on a cash basis as provided by *11-1302*."

Section 26. Section 11-1909, R.C.M. 1947, is amended to read as follows:

"**11-1909. Levy of tax for volunteer fire departments.** For the purpose of supporting volunteer fire departments in any city or town which does not have a paid fire department and for the purpose of purchasing the necessary equipment *for them*, the council in any city or town may levy, in addition to other levies permitted by law, a special tax not exceeding 2 mills on each dollar of the *taxable value* of the property of the city or town *subject to taxation*."

Section 27. Section 11-1919, R.C.M. 1947, as amended by Section 6, Chapter 157, Laws of 1977 is amended to read as follows:

"**11-1919. State auditor to pay association out of insurance premium taxes.** (1) At the end of the fiscal year, the state auditor shall issue and deliver the payment described in this subsection to the treasurer of every city or town of the first and second class which has a fire department relief association entitled by law to receive payments. The payment shall be for the use and benefit of the association. It shall be paid out

HeinOnline -- 1977 vol. II 1852 1977

of the premium taxes on insurance risks enumerated in subsection (6) collected by the state auditor and shall be equal to 10% of the total annual compensation paid by the city or town to its paid or part-paid firemen for services in the previous calendar year. The city clerk of the city or town shall certify in writing to the state auditor, on or before April 1 of each year, the amount paid by the city or town as compensation for services to paid or part-paid firemen.

(2) When there is a disaster resulting in death or injury sufficient to draw the pensions of 10% of the active force and the fund, after receiving all moneys provided for in 11-1911, 11-1912, and subsection (1) of this section, does not show at least the 1-mill growth referred to in 11-1912, the treasurer of the association shall request and the state auditor shall issue and deliver an additional payment under the same conditions described in subsection (1). The payment shall be in an amount sufficient to cause at least the above-mentioned 1-mill growth in the fund.

(3) If a city is not entitled to receive a sum equal to *1 ½ mills* of its total *taxable value* under subsections (1) and (2), the association of the city shall receive its money in the manner provided in subsections (4) and (5) for cities of the third class.

(4) At the end of the fiscal year, the state auditor shall issue and deliver the warrant described in this subsection to the treasurer of every city or town, except cities and towns of the first or second class, which has a fire department relief association entitled by law to receive payments. The warrant shall be for the use and benefit of the association. It shall be for an amount equal to *1 ½ mills* of the total *taxable value* of the city or town and shall be paid out of the premium taxes on insurance risks enumerated in subsection (6) collected by the state auditor.

(5) If the payment provided for in subsection (4) is less than $100, the association shall receive an additional payment from the same tax moneys so that the total amount received is $100.

(6) The risks referred to in subsections (1) and (4) are:

(a) insurance of houses, buildings, and all other kinds of property against loss or damage by fire or other casualty;

(b) all kinds of insurance on goods, merchandise, or other property in the course of transportation, whether by land, water, or air;

(c) insurance against loss or damage to motor vehicles resulting from accident, collision, or marine and inland navigation and transportation perils;

(d) insurance of growing crops against loss or damage resulting from hail or the elements;

(e) insurance against loss or damage by water to any goods or premises arising from the breakage or leakage of sprinklers, pumps, or other apparatus;

(f) insurance against loss or legal liability for loss because of damage to property caused by the use of teams or vehicles, whether by accident

HeinOnline -- 1977 vol. II 1853 1977

or collision or by explosion of any engine, tank, boiler, pipe, or tire of any vehicle; and

(g) insurance against theft of the whole or any part of any vehicle."

Section 28. Section 11-2201, R.C.M. 1947, is amended to read as follows:

"**11-2201. Special improvements — powers of city council.** *(1)* All streets, alleys, places, or courts in the municipalities of this state, now open or dedicated or which may hereafter be opened or dedicated to public use, *are* open public streets, alleys, places, or courts for the purposes of this chapter, and the city council of each municipality *may* establish and change the grades of *the* streets, alleys, places, or courts and fix the width thereof and *may* acquire private property for *right-of-way* and order to be done any of the work mentioned in this chapter under the proceedings hereinafter described.

(2) When the public interest or convenience requires, the governing body of a municipality may:

(a) establish pedestrian malls;

(b) prohibit, in whole or in part, vehicular traffic on a pedestrian mall;

(c) pay, from general funds of the municipality or other available moneys or from the proceeds of assessments levied on lands benefited by the establishment of a pedestrian mall, the damages, if any, allowed or awarded to any property owner by reason of the establishment of a pedestrian mall. *The* resolution of intention *must contain* a statement that an assessment will be levied to pay the whole or a stated portion of such damages, if any, allowed or awarded to any property owner by reason of the establishment of such pedestrian mall;

(d) construct improvements on public streets *that* have been or will be established as a pedestrian mall, including but not limited to paving, sidewalks, curbs, sewers, covered walkways or areas, air conditioning, drainage works, street lighting facilities, fire protection facilities, flood protection facilities, water distribution facilities, vehicular parking areas, retaining walls, landscaping, tree planting, statuary, fountains, decorative structures, benches, rest rooms, child care facilities, display facilities, information booths, public assembly facilities, and other structures, works, or improvements necessary or convenient to serve members of the public using such pedestrian mall, including the reconstruction or relocation of existing municipally owned works, improvements, or facilities on such streets. *The* improvements or structures may be attached to abutting private buildings or structures, provided that *the* improvements or structures *are* located on public property.

(3) An improvement district may *also* be formed for the sole purpose of *operating, maintaining, repairing, and improving* pedestrian malls, off-street parking facilities, and parkings and parkways.

(4) Subject to the powers granted and the limitations contained in this section, the powers and duties of the municipality and the procedure to be followed *are* as provided in this *chapter* for other types of special improvement districts.

HeinOnline -- 1977 vol. II 1854 1977

(5) If a petition for the formation of an improvement district under the provisions of this section is presented to the governing body purporting to be signed by all of the real property owners in the proposed district, exclusive of mortgagees and other lien holders, the governing body, after verifying such ownership and making a finding of *the* fact, shall adopt a resolution of intention to order the improvement *as provided in* 11-2204 and shall have immediate jurisdiction to adopt the resolution ordering the improvement pursuant to the following provisions, without the necessity of the publication and posting of the resolution of intention provided for in 11-2204.

(6) The governing body shall make annual statements and estimates of the expenses of the district, which shall be provided for by the levy and collection of ad valorem taxes upon the *taxable* value of all the real and personal property in the district, shall publish notice thereof, *and* shall have hearings *on the statements and estimates* and adopt them *as* provided for incorporated cities and towns by 11-2204 and 11-2206. The governing body, on or before the second Monday in August of each year, shall fix, levy, and assess the amount to be raised by ad valorem taxes upon all of the property of the district. All statutes providing for the levy and collection of state and county taxes, including the collection of delinquent taxes and sale of property for nonpayment of taxes, shall be applicable to the district taxes provided for under this section.

(7) An improvement district formed for the purposes of establishing a pedestrian mall or off-street parking may be financed in accordance with the provisions of 11-2214 and in accordance with the methods of financing set forth for the construction of water or sewer systems as set forth in 11-2218.

(8) The governing body may create special lighting districts on any street or streets or public highway for the purposes of lighting *them and* assess *the* costs for installation and maintenance to property abutting thereto and collect *the* costs by special assessment against *the* property.

(9) Further, the city or town council *may* make assessments in the manner provided in 11-2245 on property abutting *the* street or highway and lying outside the boundaries of *the* city or town, *as* long as that portion of the street or public highway to be lighted is adjacent to the boundary line of *the* city or town, lies partially within *the* city or town, or extends from one point within *the* city or town to another point within *the* city or town."

Section 29. Section 11-2205, R.C.M. 1947, is amended to read as follows:

"**11-2205. Assessment of extended district including lots not fronting on improvement.** Whenever the contemplated work of improvement, in the opinion of the city council, is of more than local or ordinary public benefit or whenever, according to estimates furnished by the city engineer, the total estimated costs and expenses thereof would exceed *1/5* of the total *taxable* value of the lots and lands fronting upon said proposed work or improvement according to the valuation fixed by the last assessment roll, the city council may *charge* the expenses of *the*

HeinOnline -- 1977 vol. II 1855 1977

work or improvement *to* an extended district *that* may include other lots not fronting on the improvement and which the city council in its resolution of intention *declares* to be the district benefited by *the* work or improvements."

Section 30. Section 11-2303, R.C.M. 1947, is amended to read as follows:

"**11-2303. Limitation on amount of indebtedness.** No city or town *may* issue bonds for any purpose in an amount which with all outstanding and unpaid indebtedness will exceed *18%* of the *taxable* value of the property therein *subject to taxation*, to be ascertained by the last assessment for state and county taxes. *For* the purpose of constructing a sewerage system, procuring a water supply, or constructing or acquiring a water system for a city or town which shall own and control *the* water supply and water system and devote the revenues therefrom to the payment of the debt, a city or town may incur an additional indebtedness by borrowing money or issuing bonds. The additional *total* indebtedness *that* may be incurred by borrowing money or issuing bonds for the construction of a sewerage system, for the procurement of a water supply, or for both such purposes, including all indebtedness theretofore contracted which is unpaid or outstanding, *may* not in the aggregate exceed 10% over and above the *18%* heretofore referred to of the total *taxable* value of the property therein *subject to taxation* as ascertained by the last assessment for state and county taxes. The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds *is* not the incurring of a new or additional indebtedness but *is* merely the changing of the evidence of outstanding indebtedness."

Section 31. Section 11-3921, R.C.M. 1947, is amended to read as follows:

"**11-3921. Allocation of taxes.** (1) Any urban renewal plan, as defined in 11-3901, may contain a provision or be amended to contain a provision providing that taxes levied on taxable property in an urban renewal area each year by or for the benefit of the state, any city, county, or other political subdivisions for which taxes are levied shall be allocated after the effective date of such provision as provided in subsections (3) and (4) of this section.

(2) For the purposes of this section:

(a) "prior *taxable* value" means the *taxable* value of the property in the urban renewal area *subject to taxation* as shown on the assessment roll last equalized prior to the effective date of the urban renewal plan. *Notwithstanding* the provisions of this act, any increase resulting from a comprehensive revaluation of all property within the county may be applied to the property for the purpose of determining the "prior *taxable* value".

(b) the word "taxes" includes but is not limited to all levies on an ad valorem basis upon land or real property;.

(c) "taxing body" is any city, county, or other political subdivision for which taxes are levied.

HeinOnline -- 1977 vol. II 1856 1977

(3) The portion of taxes produced by levies upon the total sum of the prior *taxable* value of the property in the urban renewal area *subject to taxation* shall be allocated and paid into the funds of the taxing body like taxes paid by or for the taxing body on all other property. For the purpose of allocating taxes levied by a taxing body that did not include the urban renewal area on the effective date of the provision allocating the taxes but to which the urban renewal area has since been annexed or otherwise included, the assessment roll of the county last equalized prior to the effective date of the provision shall be used in determining the prior *taxable* value.

(4) The portion of taxes levied by *the* taxing body each year in excess of the amount levied under subsection (3) shall be paid by the county treasurer into a special fund held by the city treasurer to pay the principal and interest on bonds issued under authority of 11-3910, except that taxes for the payment of all bonds and interest of each taxing body must be levied against all taxable property within the taxing body without limitation by the provisions of this subsection. Until the actual *taxable value* of all property in the urban renewal area exceeds the prior *taxable* value of all taxable property within such area, the actual *taxable* value of all property shall be used for taxation purposes.

(5) The portion of taxes allocated in subsection (4) above and the special fund into which they are paid may be pledged by a municipality for the payment of the principal and interest on bonds issued under the authority of 11-3910 or bonded indebtedness incurred by a municipality to refinance in whole or in part the urban renewal project. Prior to the sale of any bonds, there shall be an election under 11-2308 and 11-2309 approving such sale or a petition for the sale signed by the owners of record of at least 51% of the land within the urban renewal district.

(6) After all bonds and interest have been paid, all *moneys* received from taxes upon property within the urban renewal area shall be allocated as taxes on all other property."

Section 32. Section 11-4111, R.C.M. 1947, is amended to read as follows:

"**11-4111. Levy authorized — uses — restrictions.** (1) Upon an affirmative vote of a majority of the qualified voters voting in a city, county, or town on the question of whether the governing body may levy a tax for economic development, the governing body of that city, county, or town is authorized to levy *in any one election* up to 1 mill upon the *taxable* value of all the property in the county, city, or town *subject to taxation* for the purpose of economic development, for a period not to exceed 5 years.

(2) Funds derived from this levy may be used for purchasing land for industrial parks, constructing buildings to house manufacturing and processing operations, conducting preliminary feasibility studies, promoting economic development opportunities in a particular area, and other activities generally associated with economic development. These funds may not be used to directly assist an industry's operations by loan or grant *or* to pay the salary or salary supplements of government employees.

HeinOnline -- 1977 vol. II 1857 1977

(3) The governing body of the county, city, or town may use the funds derived from this levy to contract with local development companies and other associations or organizations capable of implementing the economic development function."

Section 33. Section 14-307, R.C.M. 1947, is amended to read as follows:

"**14-307. Lien of corporate indebtedness upon membership lands.** *After* the date of the inclusion of any land or property as a member in any corporation or district organized under the provisions *of this section*, all mortgage or bonded indebtedness created by such corporation or district *is* a first lien upon *the* membership lands to *an* extent not to exceed *18%* of the *taxable value* thereof if the *land is* grazing or agricultural and not to exceed *36%* of the *taxable value* thereof if the *land is* horticultural or vegetable-producing. The recording of the copy of the articles of incorporation or petition to become a member of such corporation or district *is* notice to all subsequent lien claimants that *the* lands are subject to a first lien. *However,* nothing *in this section may* be construed as placing a limit upon the indebtedness that may be made a lien against any of the corporate or property assets of the corporation or district, as distinguished from membership lands individually owned."

Section 34. Section 16-502, R.C.M. 1947, is amended to read as follows:

"**16-502. Basis of taxation upon creation of new county — terms used in law defined.** For the purposes of this act, the assessed valuation of all property, whether included within the boundaries of a proposed new county or remaining within the boundaries of any existing county or counties from which territory is taken, shall be fixed and determined on the same basis as is used for the imposition of taxes in the state of Montana."

Section 35. Section 16-807, R.C.M. 1947, is amended to read as follows:

"**16-807. Limit of indebtedness.** No county may become indebted in any manner or for any purpose to an amount, including existing indebtedness, in the aggregate exceeding *18%* of the *taxable* value of the property therein *subject to taxation, as* ascertained by the last assessment for state and county taxes previous to the incurring of such indebtedness. *All* bonds or obligations in excess of such amount given by or on behalf of *the* county are void. No county may incur indebtedness or liability for any single purpose to an amount exceeding $40,000 without the approval of a majority of the electors thereof voting at an election to be provided by law, except as provided in 16-1407.1 and 16-1407.2."

Section 36. Section 16-808, R.C.M. 1947, is amended to read as follows:

"**16-808. Counties indebted beyond constitutional limit may operate on cash basis.** *In* case the total indebtedness of a county, lawful when incurred, exceeds the limit of *18%, by reason of great diminution of taxable value, the* county *may* conduct its business affairs on a cash basis and pay the reasonable and necessary current expenses of *the* county

HeinOnline -- 1977 vol. II 1858 1977

out of the cash in the county treasury and derived from its current revenue and under such restrictions and regulations as may be imposed by the board of county commissioners of *the* county by a resolution duly adopted and *included in* the minutes of *the* board. *Nothing in this section restricts* the right of *the* board to make the necessary tax levies for interest and sinking fund purposes, and nothing *in this section affects* the right of any creditor of *the* county to pursue any remedy now given him by law to obtain payment of his claim."

Section 37. Section 16-1152, R.C.M. 1947, is amended to read as follows:

"**16-1152. Tax levy for payment of warrants.** The board of county commissioners shall annually determine the amount of *the* warrants drawn on the general fund for the purposes of controlling insect pests under a cropland spraying program approved by the department of agriculture. *In* the succeeding year, *the board* shall levy a tax for the purpose of insect pest extermination sufficient to reimburse *the* general fund for the money paid out on *the* warrants. *The* tax shall be levied upon all the property in the county and shall not exceed 3 mills on each dollar of *taxable value.* If there *is* no money in the general fund with which to pay such warrants, they shall be registered and bear interest in the same manner as other county warrants. *In this* case the interest shall be computed and added to the amount for which such tax is levied."

Section 38. Section 16-1412, R.C.M. 1947, is amended to read as follows:

"**16-1412. Budget for district fairs — consideration by county commissioners — tax levy — district fair fund — expenditures.** (1) *To raise the revenue necessary to hold district fairs, the* board of directors shall meet during the first week of May of each year and make a budget of the amounts required in the conduct of the affairs of the district for the following year. *The board* shall deduct *from the budget* the probable income from the annual district fair and other exhibitions to be held by *the* district during the following year and shall then apportion the remaining balance among the various counties forming *the* district in proportion to the assessed property of each county as determined by the assessment rolls of the preceding year. *By mutual agreement of the directors,* the *share apportioned to the* county in which the fair is being conducted *may* be made larger than in other counties comprising the district. *The* secretary shall certify to each board of county commissioners the amount of *the* budget and the amount of revenue to be raised by *the* county for *these* purposes and shall file a certified copy thereof with the clerk of the board of county commissioners of each of the counties in *the* district on or before June *1* of each year. The respective boards of county commissioners of the counties comprising *the* district shall meet in joint assembly with their county fair commissioners during the first week of June of each year and jointly consider the budget proposed by the board of directors of the district and give such approval or suggest such amendments or modifications as *they think* proper and desirable.

(2) If the county commissioners fail to hold *the* joint meeting or fail to take any action, then the budget certified by the secretary of the fair

HeinOnline -- 1977 vol. II 1859 1977

district shall be without further action approved and the sums of money apportioned to the county shall be the sums to be raised by special levy for *this* purpose. For the purpose of raising the revenues, the board of county commissioners of each county in the district shall annually make a levy to raise the required sum apportioned to the respective counties. *However,* the levy shall not exceed 1 mill on the dollar of the *taxable value* of all the taxable property in the county, except in the case of the county in which the fair is being conducted. *In this* county, the levy shall not exceed 1 ½ mills on the dollar of taxable property in the county. *In* addition *to this levy,* any and all moneys available *for* the holding of county fairs may be allotted and transferred to the use of the district fair as the respective county fair commissioners may elect. *The* funds available to a district fair shall, on the first Monday in August or as soon thereafter as may be possible, be deposited with the county treasurer of the county in which the district fair is to be held and credited to a fund to be known as the district fair fund, held and paid out in the same manner as the county fair fund, except that it shall be paid out on district fair board warrants signed by the chairman or the vice-chairman and the secretary of the district fair board. *The* treasurer of the county in which the district fair *will* be held shall carry the moneys received from the various counties in the district in the regular county fair fund in the same manner as regular county fair moneys, payable, however, only on district fair warrants."

Section 39. Section 16-2010.1, R.C.M. 1947, is amended to read as follows:

"**16-2010.1. Limit on city-county consolidated indebtedness.** No city-county consolidated local government may issue bonds for any purpose which, with all outstanding indebtedness, *may* exceed *27%* of the *taxable* value of the property therein *subject to taxation, as* ascertained by the last assessment for state and county taxes. *However,* for the purpose of constructing a sewerage system or procuring a water supply or constructing or acquiring a water system for a city-county consolidated government which shall own and control such water supply and water system and devote the revenues therefrom to the payment of the debt, a city-county consolidated government may incur an additional indebtedness by borrowing money or issuing bonds. The additional indebtedness, which may be incurred by borrowing money or issuing bonds for the construction of a sewerage system or for the procurement of a water supply or for both such purposes, may not in the aggregate exceed 10% over and above the *27%* heretofore referred to of the *taxable* value of the property therein *subject to taxation* as ascertained by the last assessment for state and county taxes. The issuing of bonds for the purpose of funding or refunding outstanding warrants or bonds is not the incurring of a new or additional indebtedness but is merely the changing of the evidence of outstanding indebtedness."

Section 40. Section 16-4020, R.C.M. 1947, is amended to read as follows:

"**16-4020. Disposal of property — leasing — sale.** (1) Each county to which any part of an abandoned and abolished county is attached *becomes* the owner under the provisions of this act of the real and tangible

HeinOnline -- 1977 vol. II 1860 1977

personal property of *the* abandoned and abolished county *and* may use all of *this* property for county purposes, may lease any of *this* real estate, or *may* sell any of *the* real estate or personal property.

(2) No personal property having a value in excess of $100 *may* be sold unless *it* has been appraised within *1* year immediately prior to the date of sale by three taxpayers *who reside* within the territory of the abandoned and abolished county *and who were* appointed by the judge of the district court to which the county succeeding to the ownership of *the* property is attached, on petition of the board of county commissioners thereof. *No* sale of any personal property *may* be made except at public sale after notice or for a price less than 90% of *the* appraised value.

(3) No real property *may* be leased unless the board of county commissioners *presents* to the judge of the district court to which the county is attached a petition describing the real estate, with any improvements thereon, and setting forth the terms of the proposed lease. *The petition* shall be approved by *the* judge and filed in the office of the clerk of *the* county.

(4) No real estate *may* be sold by *the* board of county commissioners unless the *property* has been appraised within *1* year immediately prior to the date of sale by three taxpayers *who reside* within the territory of the abandoned and abolished county *and who were* appointed by the judge of the district court to which the county is attached, on petition of the board of county commissioners of such county. *Every* sale of real estate shall be made at public sale, and notice shall be published once a week for at least two weeks immediately prior to the date for holding the same, in the official newspaper of the county, and no such real estate shall be sold for a price less than ninety per centum (90%) of the appraised value thereof.

(5) The full purchase price of any real estate so sold shall not be required to be made in one payment but the purchaser thereof may pay the same in four installments, the first of which shall be not less than twenty five per centum (25%) of the purchase price to be paid at the time of purchase, the remainder to be paid in three equal annual installments with interest thereon at not less than five per centum (5%) per annum. All real estate sold, with any improvements thereon, shall be subject to assessment and taxation annually to the purchaser or his successor in interest, at a value equal to the amount paid on the purchase price thereof until the purchase price is fully paid when such real estate shall be assessed at its full cash value, and any and all improvements placed on any such real estate, after its purchase, shall be subject to assessment and taxation at the full cash value thereof. Whenever the purchase price of any real estate is to be paid in installments the board of county commissioners shall enter into a contract with the purchaser thereof and such contract shall be recorded in the office of the county clerk. When payment in full has been made for any personal property or real estate the chairman of the board of county commissioners shall execute and deliver the proper bill of sale or deed to the purchaser or his successor in interest.

(6) The compensation of all appraisers appointed under the provisions of this section shall be fixed by the district judge appointing the same.

HeinOnline -- 1977 vol. II 1861 1977

Moneys received from leases or sales of real or personal property by any county other than the county designated in the petition for abandonment as the county to which the territory of the abandoned county is to be allocated shall be transmitted by the officers of such counties to the treasurer of the county designated in such petition for abandonment.

(7) All moneys received from the sales of personal property and from the leasing or sales of real estate, after deducting therefrom the amounts paid appraisers and for publishing notices of sale, shall be used and applied as follows:

If there are any warrants issued and outstanding against any of the funds of the abandoned and abolished county, such moneys shall be applied in payment of such warrants and interest;

(b) if there are no warrants outstanding but district bonds have been issued under the provisions of subdivision (b) of 16-4016, then *the* moneys shall be deposited in the sinking and interest fund for district *bonds*;

(c) if there *are* no district bonds outstanding, then *the* moneys shall be deposited to the credit of the sinking and interest funds for bonds issued and outstanding when the abandoned and abolished county ceased to exist; and

(d) if there *are* no bonds outstanding, then *the* moneys shall be apportioned to all of the counties to which parts of the abandoned county were attached in the proportion which the *taxable value* of the property in each part on January *1* immediately preceding the abandonment bears to the *taxable value* of all the property in *the* abandoned county. *The apportioned moneys shall be* deposited in *the* funds of *each* county as the boards of county commissioners of *the* counties may direct."

Section 41. Section 32-3107, R.C.M. 1947, is amended to read as follows:

"**32-3107. Report of county road superintendent — order creating district.** (1) At the next annual meeting of the board after the road superintendent has completed surveying the road and making estimates, he shall make a detailed report. The report shall state that the maps, descriptions, plans, specifications, and details and estimates of damages, costs, and expenses have been completed.

(2) The whole amount of damages, costs, and expenses shall not exceed *135%* of the total *taxable value* of the parcels of land in the district, as determined from the last annual assessment roll of the county. If it does not, the board shall make and enter upon the report an order that the road be made.

(3) That order shall create the local improvement district to be known and designated as local improvement district No ..... in .... county, Montana. Copies of the report shall be kept in the offices of the board and road superintendent."

Section 42. Section 46-1914, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1862 1977

"**46-1914. Levy of tax for purpose of paying for destruction of wild animals — limitation on levy.** The department of revenue shall annually prescribe the levy recommended by the department to be made against livestock of all classes for paying for the destruction of wild animals killed in this state. The tax in any one year may not exceed 7.5 mills on the *taxable value* of the livestock. The money received shall be used only for the payment of claims for the destruction of wild animals and for the administration of this act, approved by the department. The money received for the taxes levied shall be sent annually with other taxes to the state treasurer by the county treasurer of each county. *When the money is* received by the state treasurer, *it* shall be placed in the earmarked revenue fund and may then be paid out on claims approved under the law governing the payment of claims."

Section 43. Section 53-114, R.C.M. 1947, is amended to read as follows:

"**53-114. Application for registration of motor vehicles and payment of license fees thereon — assessment of motor vehicles in the stock of licensed motor vehicle dealers as merchandise.** (1) Every owner of a motor vehicle operated or driven upon the public highways of this state shall, for each motor vehicle owned, except as herein otherwise expressly provided, file or cause to be filed in the office of the county treasurer *where the* motor vehicle is owned or taxable an application for registration or reregistration upon *a* blank form to be prepared and furnished by the registrar of motor vehicles. *The* application shall contain:

(a) *name* and address of owner, giving county, school district, and town or city within whose corporate limits the motor vehicle is taxable;

(b) *name* and address of conditional sales vendor, mortgagee, or holder of other lien against *the* motor vehicle, with statement of amount owing under such contract or lien;

(c) *description* of motor vehicle, including make, year model, engine or serial number, manufacturer's model or letter, gross weight, type of body, and if truck, the rated capacity;

(d) *in* case of reregistration, the license number for the preceding year; *and*

(e) *such* other information as the registrar of motor vehicles may require.

(2) *A person who* files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 84-101, shall before filing such application with the county treasurer submit the same to the county assessor of *the* county. *The* county assessor shall enter on *the* application in a space to be provided for that purpose the *market value and taxable value* of *the* vehicle for the year for which *the* application for registration is made.

(3) *A person who* files an application for registration or reregistration of a motor vehicle, except of a mobile home as defined in 84-101, shall upon the filing of *the* application pay to the county treasurer the registration fee, as provided in 53-122 and 53-115, and pay the personal property

HeinOnline -- 1977 vol. II 1863 1977

taxes assessed or the new motor vehicle sales tax against *the* vehicle for the current year of registration, unless the same shall have been theretofore paid for *the* year, before the application for registration or reregistration may be accepted by the county treasurer. The county treasurer *may* make full and complete investigation of the tax status of *the* vehicle. *Any* applicant for registration or reregistration must submit proof from the tax records of the proper county at the request of the county treasurer.

(4) The amount of taxes on *the* motor vehicle, except a mobile home as defined in 84-101, *is* computed and determined by the county treasurer on the basis of the levy of the year preceding the current year of application for registration or reregistration. *The* determination *is* entered on the application form in a space provided therefor.

(5) Motor vehicles, except mobile homes as defined in 84-101, are *assessed* for *taxes* on January *1* in each year irrespective of the time fixed by law for the assessment of other classes of personal property and irrespective of whether the levy and tax may be a lien upon real property within the state of Montana. *In* no event *may* any motor vehicle be subject to assessment, levy, and taxation more than once in each year.

(6) The applicant for original registration of any wholly new and unused motor vehicle, except a mobile home as defined in 84-101, acquired by original contract after January *1* of any year shall be required, whenever such vehicle has not been otherwise assessed, to pay the motor vehicle sales tax provided by 32-3315, irrespective of whether *the* vehicle was in the state of Montana on January *1* of *the* year.

(7) Upon accepting application for registration or reregistration of any motor vehicle which is subject to taxation in this state on January 1 in any year and upon payment of taxes, the county treasurer shall stamp on *the* application: "taxes on this vehicle due January 1 of current year paid by applicant, prior applicant, or owner, and this vehicle is eligible for registration." Upon accepting application for registration of any motor vehicle which was not subject to taxation in this state on January *1* in any year, the county treasurer shall indicate *the* fact by proper entry on *the* application.

(8) The registrar of motor vehicles *may* make proper entry *of the payment of taxes in accord with the facts* on any certificate of title to *a* motor vehicle.

(9) Motor vehicles subject to anniversary date registration as provided in 53-154 through 53-162 are exempt from the provisions of *subsections* (5), (6), and (7) of this section."

Section 44. Section 53-1025, R.C.M. 1947, is amended to read as follows:

"53-1025. Display of tax-paid decals on snowmobiles required — application and issuance. *(1)* No snowmobile *may* be operated by any person in the state of Montana unless there is displayed in a conspicuous place *on it* a decal as visual proof that Montana personal property taxes have been paid *on it* for the current year.

(2) Application for the tax-paid decal shall be made to the county

HeinOnline -- 1977 vol. II 1864 1977

treasurer upon forms to be furnished for this purpose, which may be obtained from the registrar of motor vehicles or at the county assessor's office in the county *where* the owner resides. *The application shall contain* the following information:

(a) name of owner;

(b) address;

(c) registration number;

(d) name of manufacturer;

(e) model number;

(f) make;

(g) horsepower;

(h) year of manufacture;

(i) statement evidencing assessment *and* payment of property tax; and

(j) such other information as the registrar of motor vehicles may require.

(3) The application shall be signed by the county treasurer and transmitted by him to the registrar of motor vehicles accompanied by a fee of $2. All moneys collected from payment of *the* fees shall be turned over to the state treasurer and placed in the earmarked revenue fund to the credit of the state fish and game commission, with $1 designated for use in enforcing the purposes of this act and $1 designated for use in developing snowmobile facilities. Upon receipt of the application in approved form, the registrar of motor vehicles or county treasurer shall issue to the applicant a decal in the style and design prescribed by the registrar of motor vehicles and of a different color than the preceding year, numbered *in sequence.*

(4) Before filing the application with the county treasurer, the applicant shall submit *it* to the county assessor of the county and the county assessor shall enter on the application in a place provided for that purpose the *market value and taxable value* of the snowmobile for the year for which the application is made.

(5) The applicant shall pay the county treasurer the application fee and the personal property taxes assessed against the snowmobile for the current year before the application for registration or reregistration may be accepted by the county treasurer."

Section 45. Section 69-3504, R.C.M. 1947, is amended to read as follows:

"**69-3504. Identification number.** *(1)* The owner of each motorboat requiring numbering by this state shall file an application for number in the office of the county treasurer *where* the motorboat or vessel is owned or taxable on forms prepared and furnished by the registrar of motor vehicles. The application shall be signed by the owner of the motorboat and shall be accompanied by a fee of $1. Any alteration, change,

HeinOnline -- 1977 vol. II 1865 1977

or false statement contained in the application for certificate of registration will render the certificate of number null and void. Upon receipt of the application in approved form, the county treasurer shall issue to the applicant a certificate of number prepared and furnished by the registrar of motor vehicles, stating the number awarded to the motorboat and the name and address of the owner. The number awarded must be painted on or attached to each outboard side of the forward half of the motorboat or, if there are no such sides, at a corresponding location on both outboard sides of the foredeck of the motorboat. The number awarded shall read from left to right, in Arabic numerals, in block characters of good proportion *at least* 3 inches *tall*, excluding border or trim, and of a color *that contrasts* with the color of the background and so maintained as to be clearly visible and legible. The number *may* not be placed on the obscured underside of the flared bow where *it* cannot be easily seen from another vessel or ashore. No numerals, letters, or devices other than those used in connection with the identifying number issued *may* be placed in the proximity of the identifying number. *No* numerals, letters, or devices which might interfere with the ready identification of the motorboat by its identifying number *may* be carried as to interfere with the motorboat's identification. The certificate of number shall be pocket size and available to federal, state, or local law enforcement officers at all reasonable times for inspection on the motorboat, whenever the motorboat is on waters of this state. *Boat* liveries are not required to have the certificate of number on board each motorboat. *A* rental agreement must be carried on board livery motorboats in place of the certificate of number.

(2) Before filing *the* application with the county treasurer, the applicant shall submit *it* to the county assessor of *the* county and *the* county assessor shall enter on *the* application in a space to be provided for that purpose the *market value and taxable value* of *the* vehicle for the year for which *the* application for registration is made.

(3) The applicant shall upon the filing of the application pay to the county treasurer the registration fee and the personal property taxes assessed against the motorboat or vessel for the current year of registration before the application for registration or reregistration may be accepted by the county treasurer.

(4) A dealer or manufacturer may apply directly to the registrar of motor vehicles for one identifying number and one or more certificates of number. A dealer's or manufacturer's identifying number shall be displayed on *his* boat while the boat is operating for a purpose related to the buying, selling, or exchanging of the boat by the dealer *or manufacturer.* The application for a dealer's or manufacturer's identifying number shall include *his* name and business address. Each dealer or manufacturer *will* have one identifying number assigned to his business. An application for dealer's or manufacturer's identifying number and certificate of number *must* be accompanied by the following fees:

(a) for the identifying number, first certificate of number, and set of license decals, $5;

(b) for each additional certificate of number and set of license decals applied for in any application, $2.

HeinOnline -- 1977 vol. II 1866 1977

(5) The registrar of motor vehicles shall issue certificates of number for *the* identifying number awarded to a dealer or manufacturer in the same manner as provided in 69-3504(a), except that no boat shall be described in the certificate and each certificate shall state that the identifying number has been awarded to a dealer or manufacturer. A dealer's or manufacturer's certificate of number expires on April 30 of the year for which it is issued. A dealer's or manufacturer's identifying number shall be displayed in the same manner as provided in 69-3504(a) of this act, except that the number may be temporarily attached and that the last three letters shall be "DLR" for dealer and "MFR" for manufacturer. *These* letters shall be included, respectively, in dealer or manufacturer identification numbers only. No person other than a dealer or manufacturer or an employee of a dealer or manufacturer shall display or use a dealer's or manufacturer's identifying number. A dealer's or manufacturer's identifying number may be displayed only on motorboats owned by the dealer or manufacturer. No dealer or manufacturer or employee of a dealer or manufacturer *may* use a dealer's or manufacturer's identifying number for any purpose other than the purpose described in subsection *(4)* of this section.

(6) The owner of any motorboat already covered by a number in full force and effect *that* has been awarded to it *under* operative federal law or a federally approved numbering system of another state shall record the number prior to operating the motorboat on the waters of this state in excess of the 60-day reciprocity period provided for in 69-3506(1) of this act. *The record* shall be *made according to the* procedure required for the award of number under subsection *(1)* of this section.

(7) Should the ownership of a motorboat change, a new application form with fee shall be filed *within a reasonable time* with the county treasurer and a new certificate of number awarded in the same manner as provided for in an original award of number.

(8) If an agency of the United States government has in force *a comprehensive* system of identification numbering for motorboats in the United States, the numbering system employed pursuant to this act by the registrar of motor vehicles shall be in conformity.

(9) Every certificate of number and the license decals awarded under this act shall continue in effect for a period not to exceed 1 year unless sooner terminated or discontinued in accordance with the provisions of this act. Certificates of number and license decals shall show the date of expiration and may be renewed by the owner in the same manner provided for in the initial securing of the certificate.

(10) Certificates of number shall expire on April 30 of each year and *may not* be *in* effect unless renewed under this act.

(11) In event of transfer of ownership, the purchaser shall furnish the county treasurer notice *within reasonable time* of the acquisition of all or any part of his interest, other than the creation of a security interest, in a motorboat numbered in this state or of the loss, theft, destruction, or abandonment of the motorboat. *The* transfer, loss, theft, destruction, or abandonment *terminates* the certificate of number for the motorboat.

HeinOnline -- 1977 vol. II 1867 1977

Recovery from theft or transfer of a part interest *that* does not affect the owner's right to operate the motorboat does not terminate the certificate of number.

(12) A holder of a certificate of number shall notify the county treasurer within reasonable time if his address no longer conforms to the address appearing on the certificate and furnish the county treasurer with his new address. The registrar of motor vehicles may provide in *bureau* rules for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or the alteration of an outstanding certificate to show the new address of the holder.

(13) No number other than the number and license decal awarded to a motorboat or granted reciprocity under this act shall be painted, attached, or otherwise displayed on either side of the forward half of the motorboat.

(14) Fees collected under this section shall be transmitted to the state treasurer who shall deposit the fees in the motorboat certificate identification account of an earmarked revenue fund. These fees shall be used only for the administration and enforcement of 69-3501 through 69-3518.

(15) An owner of a motorboat must *within reasonable time* notify the registrar of motor vehicles, giving the motorboat's identifying number and the owner's name when that motorboat becomes documented as a vessel of the United States *or* is transferred, lost, destroyed, abandoned, frauded, or within 60 days after change of state of principal use."

Section 46. Section 75-7104, R.C.M. 1947, is amended to read as follows:

"**75-7104. Limitations on amount of bond issue.** (1) The maximum amount for which each school district *may* become indebted by the issuance of bonds, including all indebtedness represented by outstanding bonds of previous issues and registered warrants, is *29%* of the *taxable* value of the property *subject to taxation* as ascertained by the last completed assessment for state, county, and school taxes previous to the incurring of such indebtedness. The *29%* maximum, however, *may* not pertain to indebtedness imposed by special improvement district obligations or assessments against the school district. All bonds issued in excess of such amount shall be null and void, except as provided in *this section.*

(2) When the total indebtedness of a school district has reached the *29%* limitation prescribed in this section, *the* school district *may* pay all reasonable and necessary expenses of the school district on a cash basis in accordance with the financial administration provisions of this *chapter.* Whenever bonds are issued for the purpose of refunding bonds, any moneys to the credit of the debt service fund for the payment of the bonds to be refunded *are* applied towards the payment of such bonds and the refunding bond issue *is* decreased accordingly.

(3) In a school district within which a new major industrial facility which seeks to qualify for taxation as class *eighteen* property under *84-301.19* is being constructed or is about to be constructed, the school district may require, as a precondition of the new major industrial facility

HeinOnline -- 1977 vol. II 1868 1977

qualifying as class *eighteen* property, that the owners of the proposed industrial facility enter into an agreement with the school district concerning the issuing of bonds in excess of the *29%* limitation prescribed in *this section.* Under such an agreement, the school district may with the approval of the voters issue bonds which exceed the limitation prescribed in *this section* by a maximum of *29%* of the estimated *taxable* value of the property of the new major industrial facility *subject to taxation* when completed. The estimated *taxable* value of the property of the new major industrial facility *subject to taxation* shall be computed by the department of revenue when requested to do so by a resolution of the board of trustees of the school district. *A* copy of the department's statement of estimated *taxable* value shall be printed on each ballot used to vote on a bond issue proposed under this *section.*

(4) Pursuant to the agreement between the new major industrial facility and the school district and as a precondition to qualifying as class *eighteen* property, the new major industrial facility and its owners shall *pay,* in addition to *the* taxes imposed by the school district on property owners generally, so much of the principal and *interest* on the bonds provided for under this *section* as *represents* payment on an indebtedness in excess of the limitation prescribed in *this section.* After the completion of the new major industrial facility and when the indebtedness of the school district no longer exceeds the limitation prescribed in *this section,* the new major industrial facility shall be entitled, after all the current indebtedness of the school district has been paid, to a tax credit over a period of no more than 20 years. *The* credit shall as a total amount be equal to the amount which the facility paid the principal and interest of the school district's bonds in excess of its general liability as a taxpayer within the district.

(5) A major industrial facility is a facility subject to the taxing power of the school district whose construction or operation will increase the population of the district, *imposing* a significant burden upon the resources of the district and *requiring* construction of new school facilities. A significant burden is an increase in ANB of at least 20% in a single year."

Section 47. Section 75-8104, R.C.M. 1947, is amended to read as follows:

"75-8104. Requirements for organization of community college district. The registered electors in any area of the state of Montana may request an election for the organization of a community college district where the proposed community college district conforms to the following requirements:

(1) The proposed area *coincides* with the then-existing boundaries of contiguous elementary districts of one or more counties.

(2) The *taxable value* of the proposed area is at least *$10 million.*

(3) There are at least 700 pupils regularly enrolled in public and private high schools located in the proposed area."

Section 48. Section 84-101, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1869 1977

"**84-101. Definition of terms.** *When* terms mentioned in this section are *used in connection with* taxation, they are *defined in the following manner:*

(1) The term "property" includes moneys, credits, bonds, stocks, franchises, and all other matters and things real, personal, and mixed capable of private ownership. *This definition* must not be construed to authorize the taxation of the stocks of any company or corporation when the property of such company or corporation represented by *the* stocks is within the state and has been taxed.

(2) The term "real estate" includes:

(a) the possession of, claim to, ownership of, or right to the possession of land;

(b) all mines, minerals, and quarries in and under the land subject to the provisions of 84-5401; all timber belonging to individuals or corporations growing or being on the lands of the United States; and all *rights* and privileges appertaining thereto.

(3) The term "improvements" includes all buildings, structures, fixtures, fences, and improvements situated upon, erected upon, or affixed to land. *When* the department of revenue or its agent determines that the permanency of location of *a* mobile home *or housetrailer* has been established, *the* mobile home *or housetrailer* is presumed to be an improvement to real property. If the mobile home or house trailer is an improvement located on land not owned by the owner of such improvement, the improvement *is* assessed as a leasehold improvement to real property and delinquent taxes can be a lien only on the leasehold improvement.

(4) The term "personal property" includes everything *that* is the subject of ownership *but that is* not included within the meaning of the term "real estate" and "improvements".

(5) The term "credit" means solvent debts, secured or unsecured, owing to a person.

(6) The term "mobile home" means forms of housing known as "trailers", "house trailers", or "trailer coaches" exceeding 8 feet in width or 32 feet in length, designed to be moved from one place to another by an independent power connected *to them.*

(7) The term "assessed value" means the value of property as defined in 84-401.

(8) The term "taxable value" means the percentage of assessed value as provided for in 84-301.2 through 84-301.19."

Section 49. Section 84-402, R.C.M. 1947, is amended to read as follows:

"**84-402. County assessor to be agent of the department of revenue.** *(1)* The county assessors of the various counties of the state of Montana are agents of the department of revenue for the purpose of locat-

HeinOnline -- 1977 vol. II 1870 1977

ing and providing the department a description of all taxable property within the county together with other pertinent information and for the purpose of performing such other administrative duties as are required for placing taxable property on the assessment roles. The assessors shall perform such other duties as are required by law, not in conflict with the provisions of this subsection.

(2) The department of revenue shall have full charge of *assessing* all property subject to taxation and equalizing values and shall secure such personnel as is necessary to properly perform *its* duties.

(3) The *salary* of the county assessor shall be the same amount as provided by law for the salary of the county clerk and recorder; deputy assessors' salaries shall be the same as paid the deputy clerk and recorder.

(4) The county commissioners of the various counties shall provide existing office space in the county courthouse for use by the county assessor, his deputies and staff, and the state appraiser and staff, if such space is reasonably available. *If* such space is not reasonably available in the courthouse and the same must be contracted for, the department shall pay the cost thereof. Additional personal property required by the department for the assessor to perform his duties as agent of the department shall be provided by the department."

Section 50. Section 84-404, R.C.M. 1947, is amended to read as follows:

"**84-404. Department of revenue to assign percentage basis — when.** The percentage basis of *assessed* value as provided for in *84-301.2 through 84-301.19 is* determined and assigned by the department of revenue when it makes its annual assessment of the property which it is required to assess *centrally* under the laws of this state. *The department* shall transmit such determination and assignment to the various county clerks with the assessments so made, and its determination *is* final except as to the right of review in the proper court."

Section 51. Section 84-406, R.C.M. 1947, is amended to read as follows:

"**84-406. General assessment day.** (1) The department of revenue or its agent must, between January *1* and the second Monday of July in each year, ascertain the names of all taxable inhabitants and assess all property in each county subject to taxation. *The* department *or its agent* must assess property to the *person* by whom it was owned or claimed or in whose possession or control it was at 12 midnight of January *1* next preceding. It must also ascertain and assess all mobile homes arriving in the county after 12 midnight of January *1* next preceding.

(2) The procedure provided by this section *may* not apply to:

(a) *motor* vehicles *that* are required by *subsection (4)* to be assessed *on* January *1* or upon their anniversary registration date. *No* mistake in the name of the owner or supposed owner of real property, *however,* renders the assessment invalid.

(b) *livestock* which are required by *subsection (6)* of this section to be assessed on an average inventory basis in each county;

HeinOnline -- 1977 vol. II 1871 1977

(c) *property* defined in 53-642 as "special mobile equipment" *that* is subject to assessment *for* personal property taxes on the date that application is made for a special mobile equipment plate;

(d) *mobile* homes held by a distributor or dealer of mobile homes as a part of his stock in trade; *and*

(e) snowmobiles that are required by *subsection (8)* to be assessed as of July *1.*

(3) Credits must be assessed as provided in 84-101, subsection (5).

(4) The department or its agent must ascertain and assess all motor vehicles except mobile homes in each county subject to taxation as of January 1 or as of the anniversary registration date of those vehicles subject to 53-154 through 53-162, in each year. *The motor vehicles* shall be assessed to the persons by whom owned or claimed or in whose possession or control *they were* at 12 midnight of January *1* or the anniversary registration date thereof, whichever is applicable, in each year. *No* tax *may* be assessed against motor vehicles *that* constitute inventory of motor vehicle dealers as of January 1. *These* vehicles and all other motor vehicles brought into the state subsequent to January 1 as motor vehicle *dealers' inventories* shall be assessed to their respective purchasers as of the dates *the* vehicles are registered by *the* purchasers. *"Purchasers"* includes dealers who apply for registration or *reregistration* of motor vehicles, except as otherwise provided by 32-3315. Goods, wares, and merchandise of motor vehicle dealers, other than new motor vehicles and new mobile homes, shall be assessed at *market* value as of January *1.*

(5) The applicant for registration or reregistration of *a* motor vehicle, *other than a mobile home, is not relieved* of the duty of paying taxes *if the* taxes have not been paid by *a* prior applicant or owner in all cases where *taxes were* required to be paid.

(6) The assessed value of livestock in each county on the assessment date *is* computed by adding the assessed value of all livestock more than 9 months of age owned by the taxpayer in each county on the last day of each month since the last assessment date and dividing the sum by 12. For purposes of this *subsection,* "livestock" means cattle, sheep, horses, and mules.

(7) The department of revenue or its agent must assess all campers in each county subject to taxation as of January 1 in each year. *The campers* shall be assessed to the persons *including dealers* by whom owned or claimed or in whose possession or control *they were* at 12 midnight of January *1* in each year.

(8) The department of revenue or its agent must assess all snowmobiles in each county subject to taxation as of July 1 in each year. *A snowmobile* shall be assessed to the *person* by whom owned or claimed or in whose possession or control *it* was at 12 midnight of July *1* in each year, *except* snowmobiles *in the* inventory of dealers *which* shall be assessed to the dealers as of 12 midnight of January *1* in each year."

Section 52. Section 84-602, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1872 1977

"**84-602. Equalization of assessments.** *After* giving notice in writing to *a* taxpayer by registered or certified mail addressed to him at his last known place of residence of its intention, *the department of revenue may* increase or lower *the taxpayer's* assessment contained in the assessment book to equalize the assessment of the property and make the assessment conform to the *assessed* value of such property *as defined in 84-401. The* notice shall specify when *the taxpayer* may appear and be heard thereon, *at a date and hour* not less than 5 days from date of mailing *the* notice. *Immediately* after reaching a decision, the department shall notify the taxpayer in writing of *the* decision, specifying the change, if any, made in the assessment. *The* notice *must* be given by registered or certified mail *and* addressed to the taxpayer at his last known place of residence. The department *may* also raise or lower the valuation of all the property in a class by a certain percentage, *if* any class of property is assessed as a class at more or less than its *assessed* value *as defined by 84-401 by the department's* agent and *if* the valuation of property within the county demands a general reclassification."

Section 53. Section 84-708.1, R.C.M. 1947, is amended to read as follows:

"**84-708.1. Powers and duties of the department of revenue.** (1) *The department of revenue shall centrally assess the properties described in 84-7801.*

(2) The department may adopt rules necessary for the taxation of property under chapters 8, 9, 13, 54, 62, 64, and 78.

(3) The department shall transmit to the county clerk of each county its apportionment of all assessments made by the department.

(4) The department shall adjust and equalize the valuation of taxable property among the several counties and the different classes of taxable property in any county and in the several counties and between individual taxpayers; supervise and review the acts of agents of the department; change, increase, or decrease valuations made by its agents; and exercise such authority and do all things necessary to secure a fair, just, and equitable valuation of all taxable property among counties between the different classes of property and between individual taxpayers.

(5) The department shall exercise general supervision over the administration of the assessment and tax laws of the state and over its agents and any officers of municipal corporations having any duties to perform under any of the laws of this state relating to taxation to the end that all assessments of property be made relatively just and equal at *a* value in substantial compliance with law and supervise the administration of all revenue laws of the state and assist in their enforcement. *The* department of revenue shall schedule and hold area schools within the state for appraisers and assessors as often as *it considers* necessary. *The* costs of such appraisers and assessors attending shall be borne by the state. The department shall notify all assessors and appraisers at least 6 months before such school is scheduled. *All* assessors and appraisers *shall* attend.

(6) The department shall confer with, advise, and direct officers of

HeinOnline -- 1977 vol. II 1873 1977

municipal corporations as to their duties with respect to taxation under the statutes of the state.

(7) The department may direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to the penalties, liabilities, and punishment of public officials and persons or their agents for failure or neglect to comply with the provisions of the statutes governing the revenue of the state or municipal corporations. *The department shall* cause complaints to be made against assessors and other public officers to the proper district court for their removal from office for official misconduct or neglect of duty.

(8) The department may require county attorneys to assist in the commencement and prosecution of actions and proceedings for penalties, forfeitures, removals, and punishment for violations of the laws of the state in respect to the assessment of property and other revenue laws, in their respective counties.

(9) The department shall collect annually from the proper officers of the municipal corporations information *about* the assessment of property, collection of taxes, receipts from licenses and other sources, the expenditure of public funds for all purposes, and such other information as may be needful and helpful in the work of the department in such form and upon such blanks as the department shall prescribe. *It* shall be the duty of all public officers so called upon to fill out properly and return promptly to the department all blanks so transmitted and in every way aid the department in its work. *The department shall* examine the records of all municipal corporations for such purposes as are deemed needful or helpful.

(10) The department may, in its discretion, inspect and examine or cause an inspection and examination of the records of the officers of any municipality whenever *an* officer *has* failed, neglected, or refused to return properly the information required by this section within the time set by the department. Upon completion of such inspection and examination, the department shall transmit to the clerk or other proper official of the municipality a statement of the expenses incurred by the department to secure the necessary information. Within 60 days after the receipt by the municipality of the above statement, the same shall be audited as other claims of the municipal corporation are audited and shall be paid into the state treasury. *If* the *statement* is not paid, the attorney general shall institute an action in the proper court against the municipality to recover the same. The officers responsible for the furnishing of the information collected pursuant to this section shall be jointly and severally liable for any loss the municipality may suffer through their delinquency. *No* payment *may* be made to them for salary or on any other account until the cost of such inspection and examination as provided above *has* been paid into the treasury or to the proper officers of such municipality. They shall also be subject to *the* other fines and penalties prescribed by law.

(11) The department may require persons, as defined above, to furnish information concerning their capital, funded or other debt, current assets and liabilities, cost and value of property, earnings, operating and other

HeinOnline -- 1977 vol. II 1874 1977

expenses, taxes, and all other facts which may enable the department to ascertain the value of the relative burdens borne by all kinds of property and occupations in the state.

(12) The department may summon witnesses to appear and give evidence and to produce records, books, papers, and documents relating to any matter which the department *has* authority to investigate and determine.

(13) The department may cause the deposition of witnesses residing within or without the state or absent therefrom to be taken upon notice to the interested party, if any, in like manner that depositions are taken in actions pending in the district court, in any matter which the department *has* authority to investigate and determine.

(14) The department may examine all cases where evasion or violation of the laws for taxation of property, proceeds, occupation, or business is alleged, complained of, or discovered and ascertain wherein existing laws are ineffective or are improperly or negligently administered.

(15) The department may investigate the tax systems of other states and countries and formulate and recommend legislation for the better administration of the fiscal laws so as to secure just and equal taxation and improvement in the system of taxation and the economical expenditure of public revenue in the state.

(16) The department shall consult and confer with the governor of the state upon the subject of taxation, the administration of the laws relating thereto, and the progress of the work of the department and furnish the governor such assistance as he may require.

(17) The department shall transmit to the governor and to each member of the legislature 20 days before the meeting of the legislature a report of the department, showing all the taxable property of the state and *its* value in tabulated form, with recommendations for improvements in the system of taxation together with measures as may be formulated for the consideration of the legislature. *The department may* include a report showing the selling price of gasoline at the wholesale level in prime market centers of Montana and in surrounding states during the biennium with indexes tabulated at sufficient intervals to show the comparative state price structures.

(18) In its discretion, *the department may* waive the assessment of penalty for the late filing of any tax statement or return required to be filed with the department when the filing is done within 5 days of the date specified for filing the return or statement and the late payment of any tax collected by the department when the payment is made within 5 days of the date specified for payment of the tax.

(19) In its discretion, *the department may* enter into reciprocal agreements with the taxing authorities of states contiguous to the state of Montana which tax the income of Montana residents earned in that state to provide that the tax imposed by Title 84, chapter 49 on income derived by persons who are nonresidents of this state *is not payable* when such other state or states agree to grant similar treatment to residents of Montana."

HeinOnline -- 1977 vol. II 1875 1977

Section 54. Section 84-728, R.C.M. 1947, is amended to read as follows:

"**84-728. Valuation of interstate fleets — determination of aggregate tax due.** The department of revenue shall assess any interstate motor vehicle fleet making application for proportional registration as follows:

(1) The purchase price depreciated by a schedule as prescribed by the department shall determine the depreciated value.

(2) The depreciated value multiplied by the *percent* of miles traveled in Montana as prescribed by 53-712 shall be the assessed value.

(3) The sum of the assessed value of all vehicles included in the fleet multiplied by *12%* shall be the taxable value for the entire fleet.

(4) To determine the amount of tax due, the taxable value of the entire fleet shall be multiplied by the *statewide* average county mill levy plus state levies as hereinafter provided."

Section 55. Section 84-4605, R.C.M. 1947, is amended to read as follows:

"**84-4605. Taxation of banks and shares of stock in.** (1) Every state bank or banking corporation located and doing business in this state and every private banker doing business in this state shall be *taxed* upon the value of all real estate and personal property owned by *the* bank, banking corporation, or private banker, upon the moneyed capital employed in *the* business, *and such* moneyed capital to be ascertained as provided by *84-301.6. The* cashier or secretary of every bank or banking corporation and every private banker shall furnish to the department of revenue or its agent in the county in which its or his bank is located, within *5* days after demand therefor, a statement verified by his oath, showing all the resources and liabilities of *the* bank as disclosed by its books at the close of business on December 31 of the preceding year. *If the* cashier, secretary, or private banker *fails* to make the statement, the department or its agent shall forthwith obtain *the* information from any other available source and for this purpose shall have access to the books of *the* bank, banking corporation, or private banker. The department or its agent shall thereupon make an assessment of the real estate and personal property owned by *the* bank, banking corporation, or private banker and of the moneyed capital employed in the business of *the* bank, banking corporation, or private banker. *The* assessment shall be as fair and equitable as can be made from the best information available. *For* the purpose of *the* assessment, the figures disclosed by any prior report made by *the* bank, banking corporation, or private banker to any state or federal officer pursuant to any state or federal law may be adopted. Any person required by this section to make the statement hereinabove provided who *fails* to furnish *it* shall be guilty of a misdemeanor and punished accordingly.

(2) All shares of stock in any bank or banking corporation shall be assessed at their full cash value, except to the extent that that value is represented in property which is assessable and taxable to *the* bank or banking corporation in this state, and shall be taxable to the owners of

HeinOnline -- 1977 vol. II 1876 1977

the shares in the county, school district, city, town, or place where *the* bank or banking corporation is located, whether the owners of *the* shares are residents of such county, school district, city, town, or place.

(3) The cashier or secretary of any bank or banking corporation shall furnish to the department or its agent, upon demand, the name of each stockholder with his residence and the number of shares belonging to him at the close of business on December 31 of the preceding year. *If the* cashier or secretary, for more than *5* days after *the* demand, *fails* to furnish such information, he *is* guilty of a misdemeanor and the department or its agent may obtain information from any other available source *or from* the books of *the* bank or banking corporation. For convenience, the assessment of *the* shares shall be entered on the personal property assessment list under the name of the bank or banking corporation concerned, but in the assessment list the names of the owners of such shares shall be set forth and the number of shares owned by each. *The* assessment, when so entered, *has* all the force and effect as if made in the names of the owners of *the* shares individually. The bank or banking corporation in which *the* shares are owned *is* liable for the payment of taxes assessed against *the* shares, and *the* taxes *are* payable by and collected from *the* bank or banking corporation in the same manner and under the same penalties as other taxes. *The* bank or banking corporation may recover from *the* owners of shares any taxes paid on *the* shares and *has* a lien therefor upon *the* shares and upon any dividends accrued or to accrue thereon."

Section 56. Section 84-4701, R.C.M. 1947, is amended to read as follows:

"**84-4701. Limitation on amount of tax for municipal purposes — distribution of funds — levy for parks, swimming pools, playgrounds, youth centers, and other purposes.** The amount of taxes to be levied for general municipal or administrative purposes in cities and towns *may* not exceed 2.4% of the *taxable* value of the property of the city or town *subject to taxation. The* council or commission in each city or town may distribute the money collected into *the* funds prescribed by ordinance. *For* the purpose of procuring, equipping, and maintaining public parks, swimming pools, skating rinks, playgrounds, civic centers, youth centers, museums, and combinations thereof, the council or commission in any city or town may levy, in addition to the levy for general municipal or administrative purposes, *an amount* not exceeding 7 mills on the dollar on the *taxable* value of the property *to be taxed* of the city or town."

Section 57. Section 84-4701.2, R.C.M. 1947, is amended to read as follows:

"**84-4701.2. Maximum rate of all-purpose levy.** *(1) Except as provided elsewhere,* the cities and towns of the state of Montana may make an all-purpose annual levy upon the *taxable* value of all the property in *the* cities and towns *subject to taxation* for municipal purposes in lieu of the multiple levies now authorized by statute. The total of *the* all-purpose levy *may* not exceed 65 mills on the dollar. *This* levy *may* not include any levies necessary for bonded indebtedness, judgments, or special

HeinOnline -- 1977 vol. II 1877 1977

improvement district revolving *funds of municipalities, which levies may be made* in addition to all-purpose levy as provided in 84-4701.1 and 84-4701.6. The moneys received from *the* all-purpose levy shall be accounted for in a common fund known as the all-purpose general fund.

(2) An amount not to exceed 5% of the moneys received from and as a part of the all-purpose levy aforesaid may be placed in a separate fund known as the capital improvement program fund to be earmarked for the replacement and acquisition of property, plant, or equipment costing in excess of $5,000 with a life expectancy of 5 years or more, provided that a capital improvement program has been formally adopted by city or town ordinance.

(3) The moneys held in the capital improvement program fund shall, whenever possible, be invested in savings or time deposits in a state or national bank insured by the federal deposit insurance corporation or in direct obligations of the United States government and credited back to the fund plus interest earned."

Section 58. Section 84-4713, R.C.M. 1947, is amended to read as follows:

"**84-4713. Taxes in cities and towns that have exceeded the statutory limit of indebtedness.** All taxes levied and collected or to be collected for municipal and administrative purposes by any city or town *in which* the indebtedness equals or exceeds the limit *allowed* in statute may be used in payment of current expenses during the fiscal year for which *the* taxes were levied, as *if* a special levy had been made for each of *the* purposes. *The* council of any such city or town *may* designate the amount of *the* general levy applicable to each of *the* purposes. *The* amount so designated *constitutes* a special fund for the special purpose of paying the expenses incurred for *the* purpose. *The* expenses shall be payable out of *the* fund and not otherwise. *However,* the aggregate of all taxes authorized for general municipal and administrative purposes *may* not exceed *5 ½ %* annually *of* the *taxable* value of all property *subject to taxation* in such city or town."

Section 59. Section 84-5103, R.C.M. 1947, is amended to read as follows:

"**84-5103. Taxation of credits of insurance companies — other property.** All property other than credits of insurance companies required by law to have and maintain a legal reserve for the protection of policyholders shall be assessed, classified, and taxed as other property of like character. Credits, including evidence of indebtedness secured by mortgages, less legal reserves for the protection of policyholders and other indebtedness, shall be classified and taxed on the basis of 30% of *market* value as thus ascertained."

Section 60. Section 84-5211, R.C.M. 1947, is amended to read as follows:

"**84-5211. Limitation of levies — livestock moneys.** The amount of *the* levy *may* not in any event exceed *10* mills upon the *taxable value* of sheep and *15* mills upon the *taxable value* of other livestock. *The levy*

is raised to aid in the payment of the general *expenses* of the brands-enforcement functions of the department of livestock, including salaries, office, detective, prosecution, travel, and all incidental *expenses. A* separate levy not *to exceed 15* mills on all livestock *may be raised* for the use of the animal health functions of the department of livestock *and* placed in *an* earmarked revenue fund for the payment of indemnity for animals slaughtered, for salaries and expenses incurred in investigating, controlling, and suppressing diseases, including expenses of quarantine and salaries and expenses incurred for such purposes, and for laboratory maintenance. *At the written request of the department of livestock* the state treasurer and state controller shall set aside in a separate account in the earmarked revenue fund *any* moneys as may be available and requested. *The* moneys *may* be expended only when the department of livestock determines that a livestock disease emergency exists requiring its expenditure for such purposes as the department of livestock may order and direct."

Section 61. **Instructions to code commissioner and publisher.** In preparing a composite section of section 84-5211, as amended by this act and by Chapter 120, Laws of 1977, the code commissoner and the publisher of the Revised Codes of Montana, 1947, shall indicate the authority granted by Chapter 120 as authority to levy an additional 5 mills on the taxable value of all livestock.

Section 62. Section 84-5214, R.C.M. 1947, is amended to read as follows:

"**84-5214. Levy for bounty moneys — use of proceeds.** The department of revenue shall annually levy an ad valorem tax on all livestock in the state of Montana for the purpose of protecting *them against destruction, depredation, and injury by wild animals, whether the livestock is on lands in private ownership, in the ownership of the state, or in the ownership of the United States, including open ranges and all lands in or of the public domain. This protection may be* by *any* means of effective predatory animal destruction, extermination, and control, including systematic hunting *and* trapping and payment of bounties. The tax levy *may* not exceed in any one year *7.5* mills on the *taxable value* of all sheep and *5 mills* on the *taxable value* of other livestock. The moneys received from *the* tax levies shall be transmitted monthly with other taxes for state purposes by the county treasurer of each county to the state treasury. *The* state treasurer *shall place the money in an* earmarked revenue fund with *the* other moneys *as provided in* 46-1901. *The* moneys shall thereafter be paid out only on claims duly and regularly presented to the department of livestock and approved by *the* department in accordance with the law applicable either to claims for bounties or for other expenditures necessary and proper for predatory animal control by means and methods *other* than payment of bounties, as determined by the department of livestock. All *the* moneys shall be available for the payment of bounty claims and for expenditures for planned, seasonal, or other campaigns directed or operated by the department in cooperation with other agencies for the systematic destruction, extermination, and control of predatory wild animals, as determined by the department and *its* advisory committee. No claims *may* be approved in excess of moneys available for such purposes, and no warrants *may* be registered against *the* moneys."

HeinOnline -- 1977 vol. II 1879 1977

Section 63. Section 84-5216, R.C.M. 1947, is amended to read as follows:

"**84-5216. Tax levy for bounties on predatory animals.** Whenever the owners, agent, or agents of *the* owners representing *51%* of the livestock of any county in this state present a petition to the board of county commissioners of such county asking for the levy of a tax upon the livestock of *the* county for the purpose of paying bounties on predatory animals killed in *the* county, it *is* the duty of *the* board of county commissioners to make *the* levy, which *may* not exceed *50* mills on the dollar *of* the *taxable value* of all livestock in *the* county. *The* tax shall be assessed and collected in the same manner as all other state and county taxes."

Section 64. Section 84-5406, R.C.M. 1947, is amended to read as follows:

"**84-5406. Assessment of royalties.** Upon receipt of the list or schedule setting forth the names and addresses of any and all persons, corporations, and associations owning or claiming royalty and the amount paid or yielded as royalty to *the* royalty owners or claimants during the year for which *the* return is made, the department of revenue shall proceed to *assess and tax the* royalties on the same basis as net proceeds of mines are taxed as provided by *84-301.3.*"

Section 65. Section 84-6008, R.C.M. 1947, is amended to read as follows:

"**84-6008. Assessment of personal property brought into the state — exceptions.** *(1) Property in the following cases is subject to taxation and assessment for all taxes levied that year in the county in which it is located:*

(a) any personal property including livestock brought, driven, or coming into this state at any time during the year *that* is used in the state for hire, compensation, or profit;

(b) property whose owner or user is engaged in gainful occupation or business enterprise in the state; or

(c) the property *which* comes to rest and becomes a part of the general property of the state.

(2) The taxes on this property are levied in the same manner and to the same extent, except as otherwise provided, as though *the* property had been in the county on the regular assessment date, provided that *the* property has not been regularly assessed for the year in some other county of the state.

(3) Nothing in this section shall be construed to levy *a* tax against *a* merchant or dealer within this state on goods, wares, or merchandise brought into the county to replenish the stock of *the* merchant or dealer in addition to the tax levied against the inventory of said merchant or dealer on the regular assessment date.

(4) This section shall not apply to motor vehicles brought, driven, or coming into this state by any nonresident, migratory, bona fide agricul-

HeinOnline -- 1977 vol. II 1880 1977

tural workers temporarily employed in agricultural work in Montana *if the* motor vehicles are used exclusively for transportation of agricultural workers.

(5) Agricultural harvesting machinery classified under *classes eight and twelve*, licensed in other states, *and* operated on the lands of persons other than the owner of the machinery under contracts for hire shall be subject to a fee, in lieu of taxation, of $35 per machine for a 60-day period. *The* machines shall be subject to taxation under *classes eight and twelve* only if they are sold in Montana."

Section 66. Section 84-6102, R.C.M. 1947, is amended to read as follows:

"**84-6102. United States property held under contract of sale.** When *the* property is held under a contract of sale or other agreement whereby *upon* payment the legal title is or may be acquired by *the* person, corporation, or association, *the* real property shall be assessed and taxed as *defined in 84-301.2 through 84-301.19 and 84-401* without deduction on account of the whole or any part of the purchase price or other sum due on *the* property remaining unpaid. *The* lien for *the* tax *may not* attach to, impair, *or* be enforced against any interest of the United States in *the* real property."

Section 67. Section 84-6103, R.C.M. 1947, is amended to read as follows:

"**84-6103. United States property held under lease — assessment at value of leasehold.** When *the* property is held under lease, other interest, or estate therein less than the fee, except under contract of sale, *the* property shall be assessed and taxed as for the value *as defined in 84-301.2 through 84-301.19* of such leasehold, interest, or estate in *the* property and the lien for *the* tax shall attach to and be enforced against only the leasehold, interest, or estate in *the* property. *When* the United States authorizes the taxation of *the* property for the full *assessed* value of the fee thereof, *the* property shall be assessed for full *assessed* value, *as defined in 84-401.*"

Section 68. Section 84-6205, R.C.M. 1947, is amended to read as follows:

"**84-6205. Assessment of royalties.** The amount of royalty received shall be considered net proceeds to the recipient and shall be assessed as follows: *upon* receipt of the lists or schedules setting forth the names and addresses of any and all persons owning or claiming royalty and the amount paid or yielded as royalty to such royalty owners or claimants during the year for which such return is made, the department of revenue shall proceed to assess *and tax* the same as net proceeds of mines."

Section 69. Section 84-6407, R.C.M. 1947, is amended to read as follows:

"**84-6407. Transmission of statement of amount apportioned to counties.** On or before the second Monday in July, the department shall apportion *the* assessment to the counties in or through which the airline operates. The county assessor must enter the amount of the assessment

HeinOnline -- 1977 vol. II 1881 1977

apportioned to the county in the column of the assessment roll or book which shows the total value of all property for taxation in the county. The assessment shall be assigned to class *seven.*"

Section 70. Section 84-7513, R.C.M. 1947, is amended to read as follows:

"**84-7513. Valuation of commercial land.** After classification as commercial, land, whether occupied or not, *may* not change in value for tax purposes unless it meets or is governed by the following provisions:

(1) Class A—open undeveloped land. Open undeveloped land within the boundaries *of designated* commercial land which has value and is not designated for usage as a parking area or park and developed as such within 2 years from the effective date of this act shall be subject to taxation in the following method (after the 2-year grace period):

1st year taxation—1% over valuation existing at the beginning of the 2 years;
2nd year taxation—+2% over the previous year's valuation;
3rd year taxation—+10% over the previous year's valuation;
3-5 years taxation—+20% over the previous year's valuation;
over *5* years—+30% over the previous year's valuation.

(2) Class B—existing improved land. All land in a commercial class shall remain in the same taxable base until expanded or remodeled. No expansion or remodeling *may* occur without approval of the governing body. Upon remodeling or improving, it shall receive a reduction in valuation in the amount of its valuation change which shall apply as a reduction in valuation of the property for a period of 5 years, commencing in the amount of the cost of remodeling or improving in the first year and reducing in an amount of 20% per year for each remaining year thereafter.

(3) Class C—existing improved land. Existing structures and buildings shall be frozen in their existing tax base for a period of 10 years, unless remodeled, where section 12(1)(a) shall apply. If not remodeled after 10 years, the following shall apply:

	Tax increase according to the years since remodeled last			
Age of structure in years	1-5 years	5-10 years	10-15 years	15 years and over
10-12	1%	2%	4%	5%
12-15	2%	4%	6%	8%
15-20	4%	8%	12%	16%
21-25	10%	12%	16%	18%
26-30	15%	18%	20%	24%
31-40	25%	28%	30%	35%
40-50	40%	45%	50%	60%
50-Over	50%	60%	75%	100%

(4) Class D—new improved land.

(a) The construction cost and land cost of any commercial development

HeinOnline -- 1977 vol. II 1882 1977

within a classified commercial or residential area *may* not be taxed for its construction period.

(b) Following the nontaxable period the total cost of land and improvements developed as new commercial property shall be taxed as follows:

Commercial land location	Taxable schedule
(i) Land within and extending 900 feet beyond that area designated by the governing authority as the central business district of a community.	Improvements shall be taxed in additional increments as follows: 10% increase in *assessed* value per year until a total value for tax purposes is 100% of *assessed* value.
(ii) Land from that designation under subsection (4)(b)(i) to the corporate boundary or city limits.	Improvements shall be taxed in additional increments as follows: A 33 ⅓% increase in *assessed value* per year until a total value for tax purposes is 100% of *assessed* value.
(iii) Land lying from the corporate boundary to the 4 ½-mile limit.	An increase in taxes over the normally assessed value of 10% per year for a period of *10* years unless given a waiver by the governing authority.
(iv) Land lying beyond the 4 ½-mile limit.	An increase in taxes over the normally assessed value of 25% per year for 15 years unless given a waiver by the governing authority."

Section 71. Section 89-3403, R.C.M. 1947, is amended to read as follows:

"**89-3403. Definitions.** As used in this act, unless the context clearly indicates otherwise:

(1) "*district*" means a conservancy district, which is a public corporation and a political subdivision of the state;

(2) "*directors*" means the board of directors of a conservancy district;

(3) "*elector*" means a person qualified to vote under 89-3423;

(4) "*court*" means the district court of the judicial district in which the largest portion of the taxable valuation of real property of the proposed district is located and within the county in which the largest portion of the taxable valuation of real property of the proposed district is located within the judicial district;

HeinOnline -- 1977 vol. II 1883 1977

(5) "*person*" means a natural person; firm; partnership; *cooperative*; association; public or private corporation, including the state of Montana or the United States; foundation; state agency or institution; county; municipality; district or other political subdivision of the state; federal agency or bureau; or any other legal entity;

(6) "*department*" means the department of natural resources and conservation provided for in Title 82A, chapter 15;

(7) "*board* of supervisors" means the board of supervisors of the soil and water conservation district in which the largest portion of the taxable valuation of real property of the proposed district is located;

(8) "*works*" means all property, rights, easements, franchises, and other facilities including but not limited to land, reservoirs, dams, canals, dikes, ditches, pumping units, mains, pipelines, waterworks systems, recreational facilities, facilities for fish and wildlife, and facilities to control and correct pollution;

(9) "*cost* of works" means the cost of construction, acquisition, improvement, extension, and development of works, including financing charges, interest, and professional services;

(10) "*applicants*" means any person residing within the boundaries of the proposed district making a request for a study of the feasibility of forming a conservancy district;

(11) "*notice*" means publication at least once each week for 3 consecutive weeks in a newspaper published in each county or, if no newspaper is published in a county, a newspaper of general circulation in the county or counties in which a district is or will be located. The last published notice shall appear not less than 5 days prior to any hearing or election held under this act;

(12) "*owners*" are the person or persons who appear as owners of record of the legal title to real property according to the county records whether such title is held beneficially or in a fiduciary capacity, except that a person holding a title for purposes of security is not an owner nor *may* he affect the previous title for purposes of this act;

(13) "*taxable* valuation" *is* the *value as defined in 84-401* and does not mean assessed valuation."

Section 72. There is a new R.C.M. section numbered 84-309 that reads as follows:

84-309. Reappraised real property — limitation on increased appraisals — table of taxable percentages. (1) The director of revenue shall certify to the governor, before June 30, 1978, the percentage by which the market value of all property in the state classified under sections 84-301.12, 84-301.16(1)(b), and 84-301.19(1)(a) as of January 1, 1977 has increased due to the revaluation conducted under 84-429.14. This figure is the "certified statewide percentage increase".

(2) The taxable value of property in these three classes is determined as a function of the certified statewide percentage increase in accordance with the following table:

HeinOnline -- 1977 vol. II 1884 1977

Certified statewide percentage increase	84-301.12	84-301.16 (1) (b)	84-301.19 (1) (a)
0			
1%	11.89	one-half	7/30
2%	11.79	of the	of the
3%	11.69	equiva-	equiva-
4%	11.58	lent	lent
5%	11.49	taxable	taxable
6%	11.39	percent-	percent-
7%	11.29	age under	age under
8%	11.20	84-301.12	84-301.12
9%	11.11		
10%	11.02		
11%	10.93		
12%	10.84		
13%	10.76		
14%	10.67		
15%	10.59		
16%	10.51		
17%	10.43		
18%	10.35		
19%	10.28		
20%	10.20		
21%	10.13		
22%	10.05		
23%	9.98		
24%	9.91		
25%	9.84		
26%	9.77		
27%	9.70		
28%	9.64		
29%	9.57		
30%	9.51		
31%	9.44		
32%	9.38		
33%	9.32		
34%	9.26		
35%	9.20		
36%	9.14		
37%	9.08		
38%	9.03		
39%	8.97		
40%	8.91		
41%	8.86		
42%	8.81		
43%	8.75		
44%	8.70		
45%	8.65		
46%	8.60		
47%	8.55		
48%	8.50		

HeinOnline -- 1977 vol. II 1885 1977

49%	8.45
50%	8.40

Section 73. There is a new R.C.M. section numbered 84-310 that reads as follows:

84-310. Temporary authority to exceed mill levy limitations in certain cases. Taxing jurisdictions may adopt and levy for a budget equal to 105% of the preceding year's budget, statutory mill levy limitations notwithstanding, unless the taxable valuation therein has increased to a level which would allow statutory mill levies to produce a budget equal to 105% of the preceding year's budget.

Section 74. **Repealer.** Sections 69-3923, 84-301, and 84-302, R.C.M. 1947, are repealed. However, amendments to 84-301 or 84-302, R.C.M. 1947, enacted by this legislative session shall be incorporated into the equivalent sections enacted in this act as directed by such other amendatory acts.

Approved May 13, 1977.

CHAPTER NO. 567

AN ACT REVISING THE OPEN MEETINGS LAW; ALLOWING CLOSED MEETINGS FOR DISCUSSIONS OF COLLECTIVE BARGAINING OR LITIGATION; DEFINING APPROPRIATE MINUTES AND MEETINGS; PERMITTING TAPE RECORDINGS OF OPEN MEETINGS; PROVIDING FOR VOIDABILITY; AMENDING SECTIONS 82-3402 AND 82-3403, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 82-3402, R.C.M. 1947, is amended to read as follows:

"**82-3402. Meetings of public agencies to be open to public — exceptions.** All meetings of public or governmental bodies, boards, bureaus, commissions, or agencies of the state or any political subdivision of the state or *organizations* or agencies supported in whole or in part by public funds or expending public funds shall be open to the public. Provided, however, the presiding officer of any meeting may close the meeting during the time *the discussion relates to a matter of individual privacy, and then* if, and only if, the presiding officer determines that the demands of individual privacy clearly exceed the merits of public disclosure. *The right of individual privacy may be waived by the individual about whom the discussion pertains and, in that event, the meeting shall be open. However, a meeting may be closed to discuss a strategy to be followed with respect to collective bargaining or litigation when an open meeting would have a detrimental effect on the bargaining or litigating position of the public agency.*"

Section 2. There is a new R.C.M. section numbered 82-3404 that reads as follows:

HeinOnline -- 1977 vol. II 1886 1977

82-3404. Meeting defined. As used in this chapter, "meeting" means the convening of a quorum of the constituent membership of a public agency, whether corporal or by means of electronic equipment, to hear, discuss or act upon a matter over which the agency has supervision, control, jurisdiction, or advisory power.

Section 3. Section 82-3403, R.C.M. 1947, is amended to read as follows:

"**82-3403. Minutes of meetings — public inspection.** *(1)* Appropriate minutes of all meetings *required by 82-3402* to be open shall be kept and shall be available for inspection by the public.

(2) Such minutes shall include without limitation:

(a) date, time, and place of meeting;

(b) a list of the individual members of the public body, agency, or organization in attendance; and

(c) the substance of all matters proposed, discussed, or decided and, at the request of any member, a record, by individual members, of any votes taken."

Section 4. There is a new R.C.M. section numbered 82-3405 that reads as follows:

82-3405. Recording. Accredited press representatives may not be excluded from any open meeting under this act and may not be prohibited from taking photographs, televising, or recording such meetings. The presiding officer may assure that such activities do not interfere with the conduct of the meeting.

Section 5. There is a new R.C.M. section numbered 82-3406 that reads as follows:

82-3406. Voidability. Any decision made in violation of 82-3402 may be declared void by a district court having jurisdiction. A suit to void any such decision must be commenced within 30 days of the decision.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 13, 1977.

CHAPTER NO. 568

AN ACT TO PERMIT THE COURT TO PROVIDE FOR TREATMENT OF PERSONS WHO LACK FITNESS TO BE TRIED FOR A CRIMINAL OFFENSE IN AN INSTITUTION TO BE SELECTED BY THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTIONS 38-1202, 38-1208, 38-1209, 38-1215, 38-1216, AND 95-506, R.C.M. 1947.

HeinOnline -- 1977 vol. II 1887 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 38-1202, R.C.M. 1947, is amended to read as follows:

"**38-1202. Definitions.** As used in this *chapter*:

(1) "Board" means the mental disabilities board of visitors created by this act.

(2) "Community-based facilities" or "community-based services" include those services and facilities which are available for the evaluation, treatment and habilitation of the developmentally disabled in a community setting, including but not limited to, outpatient facilities, special education services, group homes, foster homes, day care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means the district court of the state of Montana.

(4) "Developmentally disabled" means suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and environment and to raise the level of his physical, mental and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(7) "Professional person" means:

(a) a medical doctor, or

(b) a person trained in the field of developmental disabilities and certified by the department of institutions or the department of social and rehabilitation services in accordance with standards of professional licensing boards, federal regulations, and the joint commissions on accreditation of hospitals.

(8) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment or habilitation.

(9) "Residential facility" or "facility" means any residential hospital or hospital and school which exists for the purpose of evaluating, treating and habilitating the developmentally disabled on an inpatient basis, including the Boulder River School and Hospital and the Eastmont Training Center. The term does not include a group home or foster home or a halfway house. A correctional facility or a facility for the treatment of the mentally ill shall not be a "residential facility" within the meaning of this act.

HeinOnline -- 1977 vol. II 1888 1977

(10) "Respondent" means a person alleged in a petition filed pursuant to this act to be developmentally disabled and in need of developmental disabilities services.

(11) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled. Whenever, in any proceeding under this act, the court believes that a conflict of interest may exist between a person who is developmentally disabled or alleged to be developmentally disabled and his parents or guardian, or that the parents or guardian are unable to protect the interests of such person, or whenever there is no parent or guardian, the court shall appoint a responsible person to protect the interests of the person who is developmentally disabled or alleged to be developmentally disabled. Only one person shall at any one time be the responsible person within the meaning of this act. In appointing a responsible person, the court shall consider the preference of the respondent or patient. The court may at any time, for good cause shown, change its designation of who is the responsible person.

(12) "Seriously developmentally disabled" means developmentally disabled due to developmental or physical disability or a combination of both rendering a person unable to function in a community-based setting *and which has resulted in self-inflicted injury or injury to others, or the imminent threat thereof; or which has deprived the person afflicted of the ability to protect his life or health.*"

Section 2. Section 38-1208, R.C.M. 1947, is amended to read as follows:

"**38-1208. Recommendation to residential facility.** (1) If as a result of the evaluation and treatment either agreed to by the parents, guardian, or the person himself pursuant to section 38-1204 or ordered by the court, the professional person in charge of the case concludes that the person evaluated is seriously developmentally disabled and recommends that treatment and habilitation be had in a residential facility on an extended basis, the professional person shall file his written recommendation and report with the court and request that the court order the admission. The report shall include the factual basis for the recommendation, and shall describe any tests or evaluation devices which have been employed in evaluating the patient. If no responsible person has yet been appointed, the court may appoint one at this time. If there is no parent or guardian the court shall appoint a responsible person. At the request of the respondent, his parents or guardian or the responsible person, the court shall appoint counsel for the respondent. If the parents or guardian are indigent and if they request it, the court shall appoint counsel for the parents or guardian. Notice of the recommendation shall be mailed or delivered to the respondent, his parents or guardian, the responsible person, next of kin, if known, and the attorney for the respondent, if any, and for the parents or guardian, if any.

(2) The respondent, his parents or guardian, the responsible person, or the attorney for any party may request that a hearing be had on the recommendation. If a hearing is requested, the court shall mail or deliver

HeinOnline -- 1977 vol. II 1889 1977

notice of the date, time and place of the hearing to each of the parties listed at the beginning of this subsection. The hearing shall be to the court without jury. The rules of civil procedure shall apply.

(3) If the court finds that the respondent is seriously developmentally disabled and that available community-based services are not adequate *to protect the life and physical safety of the person and others or to provide appropriate treatment and habilitation*, it shall order the respondent admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent is developmentally disabled, and in need of developmental disabilities services but that available community-based services are adequate *to protect the life and physical safety of the person and others and to provide appropriate treatment and habilitation*, it shall order the respondent to undertake a community-based course of treatment and habilitation. If the court finds that the respondent is not developmentally disabled or is not in need of developmental disability services, it shall dismiss the request.

(4) If none of the parties notified of the recommendation request a hearing, the court may issue an order authorizing the person to be admitted to the residential facility for an extended period of treatment and habilitation, or the court may initiate its own inquiry as to whether the order should be granted. The court may refuse to authorize admission of a person to a residential facility for an extended period of treatment and habilitation if such admission is not in the best interests of the person.

(5) If any person is admitted to a residential facility for an extended course of habilitation without a hearing, and if subsequent to such admission one of the parties who could have requested a hearing learns that an alternative course of treatment is available which is more suitable to the needs of the resident, the party may request the professional person in charge of the resident to release the resident to the alternative, if it is a community-based alternative, or transfer the resident to the alternative, if it is a residential alternative. Any such transfer or release shall comply with the requirements of section 38-1209. If the professional person in charge of the resident refuses to authorize the release or transfer, then the party may petition the court for a hearing to determine whether the present residential alternative should be continued. The hearing shall comply with the procedures set forth in subsection (2) of this section."

Section 3. Section 38-1209, R.C.M. 1947, is amended to read as follows:

"**38-1209. Admission to residential facility.** (1) No person shall be admitted to a residential facility for longer than thirty (30) days except on approval of the court. Whenever a person is admitted to a residential facility for longer than thirty (30) days, the court may appoint a person other than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian, the court shall appoint a responsible person.

(2) The court order approving the admission shall specify the maximum period of time for which the person is admitted to the residential facility. In no case shall this maximum period exceed one (1) year.

HeinOnline -- 1977 vol. II 1890 1977

(3) If at any time during the period for which a person is admitted to a residential facility for an extended period of habilitation and treatment, the professional person in charge of the resident decides that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident *and adequate protection of the life and physical safety of the resident and others*, or that it is in the best interests of the resident that he be transferred to another residential facility, then he may release the resident to such community-based alternative or transfer the resident to the other residential facility no less than fifteen (15) days after sending notice of the proposed release or transfer to the resident, his parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court which ordered the admission. *If the resident has been found unfit to proceed to trial notice shall be sent to the court which found the resident unfit to proceed to trial and to the county attorney and the attorney who represented the resident at the time the resident was found unfit to proceed to trial.* If any of the parties so notified objects to the release or transfer, they may petition the court for a hearing to determine whether the release or transfer should be allowed. The hearing shall comply with the procedures set forth in section 38-1208. The court may on its own initiative inquire concerning the propriety of the release or transfer. Nothing in this subsection shall prevent the transfer of a resident to a hospital or other medical facility for necessary medical treatment, or emergency transfer of a resident to a mental health facility, provided such emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within twenty-four (24) hours of an emergency medical or psychiatric transfer, notice shall be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

(4) If the professional person in charge of the resident determines that the admission to the residential facility should continue beyond the period specified in the court order, he shall, at least fifteen (15) days before the end of the period set out in the court order, send written notice of his recommendation and request for renewal of the order to the court which issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request shall be accompanied by a written report which shall describe the habilitation plan which has been undertaken for the resident and the future habilitation plan which is anticipated by the professional person.

(5) If any person so notified requests a hearing, the court shall set a time and place for the hearing and shall mail or deliver notice to all of the persons informed of the recommendation. The hearing shall be conducted in the manner set out in section 38-1208. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require residential treatment, it shall order an appropriate course of community-based

HeinOnline -- 1977 vol. II 1891 1977

habilitation, or, if all parties are willing for the resident to participate in a community-based program of habilitation, it shall dismiss the petition. If the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The court shall not order continuation of admission to a residential facility which does not have an individualized habilitation plan for the resident. In its order, the court shall make findings of fact on which its order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a residential facility."

Section 4. Section 38-1215, R.C.M. 1947, is amended to read as follows:

"**38-1215. Limitation on who takes treatment.** No person who has reached the age of majority shall be compelled against his will to undertake a course of treatment and habilitation solely because he is developmentally disabled, but only if such disability causes him to be unable to protect his life and health *or to protect the life or safety of others.*"

Section 5. Section 38-1216, R.C.M. 1947, is amended to read as follows:

"**38-1216. Emergency admission.** The parents, guardian, the person himself, or a professional person may admit a person believed to be developmentally disabled to a residential facility on an emergency basis when necessary to protect the person *or others* from death or serious bodily harm. However, if requested by the parents, guardian or the person admitted on an emergency basis, a petition as set out in section 38-1205 shall be filed on the next judicial day by the county attorney of the county where the person resides. If a petition is filed, the professional person assigned by the court to conduct the examination and inquiry shall report back to the court on the next judicial day following the filing of the petition. Once a petition is filed, continued detention in the residential facility shall be allowed only on order of the court when necessary to protect the respondent *or others* from death or serious bodily harm. In no case shall an emergency admission to a residential facility continue for longer than thirty (30) days without subsequent proceedings before the court."

Section 6. Section 95-506, R.C.M. 1947, is amended to read as follows:

"**95-506. Determination of fitness to proceed — effect of finding of unfitness — proceedings if fitness is regained.** (1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under section 95-505, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (3) of this section, and the court shall commit him to the custody of the *director of the department of institutions*, to be placed in an appro-

HeinOnline -- 1977 vol. II 1892 1977

priate institution of the department of institutions for so long as the unfitness endures. When the court, on its own motion or upon the application of the *director of the department of institutions*, or the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged, or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the defendant committed to an appropriate institution of the department of institutions.

(3) If the court determines that the defendant lacks fitness to proceed due to the fact that the person is developmentally disabled as defined by 38-1202, the proceeding against him shall be suspended, except as provided in subsection (4) of this section, and the court shall proceed to secure treatment as provided in Title 38, chapter 12, or Title 38, chapter 13.

(4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the prosecution which is susceptible to fair determination prior to trial and without the personal participation of the defendant.

(5) The expenses of sending the defendant to the custody of the *director of the department of institutions*, to be placed in an appropriate institution of the state department of institutions, of keeping him there, and of bringing him back, are in the first instance chargeable to the county in which the indictment was found, or the information filed; but the county may recover them from the estate of the defendant, if he has any, or from a town, city or county bound to provide for and maintain him elsewhere."

Approved May 13, 1977.

CHAPTER NO. 569

AN ACT IMPLEMENTING ARTICLE XIII, SECTION 4, OF THE 1972 MONTANA CONSTITUTION TO PROVIDE A CODE OF ETHICS PROHIBITING CONFLICT BETWEEN PUBLIC DUTY AND PRIVATE INTEREST FOR LEGISLATORS AND ALL STATE AND LOCAL OFFICERS AND EMPLOYEES EXCEPT MEMBERS OF THE JUDICIARY.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 59-1701 that reads as follows:

59-1701. Statement of purpose. The purpose of this act is to set forth a code of ethics prohibiting conflict between public duty and private interest as required by the constitution of Montana. This code recognizes distinctions between legislators, other officers and employees of state

government, and officers and employees of local government, and prescribes some standards of conduct common to all categories and some standards of conduct adapted to each category. The provisions of this act recognize that some actions are conflicts per se between public duty and private interest while other actions may or may not pose such conflicts depending upon the surrounding circumstances.

Section 2. There is a new R.C.M. section numbered 59-1702 that reads as follows:

59-1702. Definitions. As used in this act the following definitions apply:

(1) "Business" includes a corporation, partnership, sole proprietorship, trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

(2) "Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by himself or another.

(3) "Employee" means any temporary or permanent employee of the state or any subdivision thereof, or member of the judiciary, including a member of a board, commission, or committee except a legislator and an employee under contract to the state.

(4) "Financial interest" means an interest held by an individual, his spouse, or minor children which is:

(a) an ownership interest in a business;

(b) a creditor interest in an insolvent business;

(c) an employment or prospective employment for which negotiations have begun;

(d) an ownership interest in real or personal property;

(e) a loan or other debtor interest; or

(f) a directorship or officership in a business.

(5) "Official act" or "official action" means a vote, decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

(6) "Public officer" includes any state officer except a legislator or member of the judiciary or any elected officer of any subdivision of the state.

(7) "State agency" includes the state; the legislature and its committees; all executive departments, boards, commissions, committees, bureaus, and offices; the university system; and all independent commissions and other establishments of the state government; except the courts.

(8) "State officer" includes all elected officers and directors of the executive branch of state government as defined in 82A-103.

Section 3. There is a new R.C.M. section numbered 59-1703 that reads as follows:

HeinOnline -- 1977 vol. II 1894 1977

59-1703. Public trust. (1) The holding of public office or employment is a public trust, created by the confidence which the electorate reposes in the integrity of public officers, legislators, and employees. A public officer, legislator, or employee shall carry out his duties for the benefit of the people of the state.

(2) A public officer, legislator, or employee whose conduct departs from his fiduciary duty is liable to the people of the state as a trustee of property is liable to a beneficiary under 86-310 and shall suffer such other liabilities as a private fiduciary would suffer for abuse of his trust. The county attorney of the county where the trust is violated may bring appropriate judicial proceedings on behalf of the people. Any moneys collected in such actions shall be paid to the general fund of the aggrieved agency.

(3) The following sections set forth various rules of conduct, the transgression of any of which is, as such, a violation of fiduciary duty, and various ethical principles, the transgression of any of which is not, as such, a violation of fiduciary duty.

Section 4. There is a new R.C.M. section numbered 59-1704 that reads as follows:

59-1704. Rules of conduct for all public officers, legislators, and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty. A public officer, legislator, or employee may not:

(a) disclose or use confidential information acquired in the course of his official duties in order to further substantially his personal economic interests; or

(b) accept a gift of substantial value or a substantial economic benefit tantamount to a gift;

(i) which would tend improperly to influence a reasonable person in his position to depart from the faithful and impartial discharge of his public duties; or

(ii) which he knows or which a reasonable person in his position should know under the circumstances is primarily for the purpose of rewarding him for official action he has taken.

(2) An economic benefit tantamount to a gift includes, without limitation, a loan at a rate of interest substantially lower than the commercial rate then currently prevalent for similar loans and compensation received for private services rendered at a rate substantially exceeding the fair market value of such services. Campaign contributions reported as required by statute are not gifts or economic benefits tantamount to gifts.

Section 5. There is a new R.C.M. section numbered 59-1705 that reads as follows:

59-1705. Rules of conduct for legislators. Proof of commission of any act enumerated in this section is proof that the legislator committing the act has breached his fiduciary duty. A legislator may not:

HeinOnline -- 1977 vol. II 1895 1977

(1) accept a fee, contingent fee, or any other compensation, except his official compensation provided by statute, for promoting or opposing the passage of legislation;

(2) seek other employment for himself or solicit a contract for his services by the use of his office.

Section 6. There is a new R.C.M. section numbered 59-1706 that reads as follows:

59-1706. Rules of conduct for state officers and state employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) A state officer or a state employee may not:

(a) use state time, facilities, or equipment for his private business purposes;

(b) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties;

(c) assist any person for a fee or other compensation in obtaining a contract, claim, license, or other economic benefit from his agency;

(d) assist any person for a contingent fee in obtaining a contract, claim, license, or other economic benefit from any state agency; or

(e) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

(3) A department head or a member of a quasi-judicial or rule-making board may perform an official act notwithstanding subsection (2)(e) if his participation is necessary to the administration of a statute and if he complies with the voluntary disclosure procedures under 59-1710.

(4) Subsection (2)(d) does not apply to a member of a board, commission, council, or committee unless he is also a full-time state employee.

Section 7. There is a new R.C.M. section numbered 59-1707 that reads as follows:

59-1707. Rules of conduct for local government officers and employees. (1) Proof of commission of any act enumerated in this section is proof that the actor has breached his fiduciary duty.

(2) An officer or employee of local government may not:

(a) engage in a substantial financial transaction for his private business purposes with a person whom he inspects or supervises in the course of his official duties; or

(b) perform an official act directly and substantially affecting to its economic benefit a business or other undertaking in which he either has a substantial financial interest or is engaged as counsel, consultant, representative, or agent.

HeinOnline -- 1977 vol. II 1896 1977

(3) A member of the governing body of a local government may perform an official act notwithstanding this section when his participation is necessary to obtain a quorum or otherwise enable the body to act, if he complies with the voluntary disclosure procedures under 59-1710.

Section 8. There is a new R.C.M. section numbered 59-1708 that reads as follows:

59-1708. Ethical principles for legislators. (1) The principles in this section are intended only as guides to legislator conduct and do not constitute violations as such of the public trust of legislative office.

(2) When a legislator must take official action on a legislative matter as to which he has a conflict created by a personal or financial interest which would be directly and substantially affected by the legislative matter, he should consider disclosing or eliminating the interest creating the conflict or abstaining from the official action. In making his decision, he should further consider:

(a) whether the conflict impedes his independence of judgment;

(b) the effect of his participation on public confidence in the integrity of the legislature; and

(c) whether his participation is likely to have any significant effect on the disposition of the matter.

(3) A conflict situation does not arise from legislation affecting the entire membership of a class.

(4) If a legislator elects to disclose the interest creating the conflict, he shall do so as provided in the joint rules of the legislature.

Section 9. There is a new R.C.M. section numbered 59-1709 that reads as follows:

59-1709. Ethical principles for public officers and employees. (1) The principles in this section are intended as guides to conduct and do not constitute violations as such of the public trust of office or employment in state or local government.

(2) A public officer or employee should not acquire an interest in any business or undertaking which he has reason to believe may be directly and substantially affected to its economic benefit by official action to be taken by his agency.

(3) A public officer or employee should not, within the months following the voluntary termination of his office or employment, obtain employment in which he will take direct advantage, unavailable to others, of matters with which he was directly involved during his term or employment. These matters are rules, other than rules of general application which he actively helped to formulate and applications, claims, or contested cases in the consideration of which he was an active participant.

(4) A public officer or employee should not perform an official act directly and substantially affecting a business or other undertaking to its economic detriment when he has a substantial financial interest in a competing firm or undertaking.

HeinOnline -- 1977 vol. II 1897 1977

Section 10. There is a new R.C.M. section numbered 59-1710 that reads as follows:

59-1710. Voluntary disclosure. A public officer or employee may, prior to acting in a manner which may impinge on his fiduciary duty, disclose the nature of his private interest which creates the conflict. He shall make the disclosure in writing to the secretary of state, listing the amount of his financial interest, if any, the purpose and duration of his services rendered, if any, and the compensation received for the services or such other information as is necessary to describe his interest. If he then performs the official act involved, he shall state for the record the fact and summary nature of the interest disclosed at the time of performing the act.

Section 11. There is a new R.C.M. section numbered 59-1711 that reads as follows:

59-1711. Powers of the secretary of state. The secretary of state may:

(1) issue advisory opinions with such deletions as are necessary to protect the identity of the requesting party or the party about whom the opinion is written;

(2) keep and permit reasonable public access to voluntary disclosure statements;

(3) make rules for the conduct of his affairs under this chapter.

Approved May 13, 1977.

CHAPTER NO. 570

AN ACT PROHIBITING THE USE OF ASBESTOS-CONTAINING SPRAY MATERIALS IN CONSTRUCTION; PROVIDING PROCEDURES FOR THE DEMOLITION OF BUILDINGS OR STRUCTURES CONTAINING ASBESTOS INSULATION OR FIREPROOFING; PROVIDING PROCEDURE FOR USE OF OTHER FIBRATED PRODUCT OR COMPOUND; AND PROVIDING PENALTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 69-7401 that reads as follows:

69-7401. Purpose. The purpose of this act is to protect the citizens of Montana from the dangers precipitated by the use of spray materials containing mineral fibers. The legislature finds that if adequate safety precautions are not taken during the spray application of these materials, spraying operations may release a significant quantity of particulate matter into the ambient air. Likewise, the legislature finds the continued unregulated use of sprayed asbestos insulation and the destruction of structures containing asbestos insulation represent a significant threat to

HeinOnline -- 1977 vol. II 1898 1977

the health of workers placed in contact with these fibers and to the health of the community as a whole.

Section 2. There is a new R.C.M. section numbered 69-7402 that reads as follows:

69-7402. Definitions. As used in this act, the following definitions apply:

(1) "Department" means the department of administration.

(2) "Fibrated product" means a substance used in construction, for whatever purpose, which contains asbestos fibers, which tend to disperse into ambient air during application or upon destruction or removal.

(3) "Person" means an individual, firm, corporation, partnership, association, or other legal entity.

Section 3. There is a new R.C.M. section numbered 69-7403 that reads as follows:

69-7403. Standards to follow while demolition is underway. The building or structure to be demolished which contains asbestos insulation or fireproofing must follow the following safeguards:

(a) Whenever possible, the local fire department shall be notified of the demolition.

(b) Signs must be posted in conspicuous locations around the building or structure being demolished warning persons to take proper precautions against exposure to asbestos fibers before entering the area.

(c) Boilers, pipes, and steel members insulated or fireproofed with asbestos must be wetted before toppling of the wall begins. This mandatory procedure applies, where practicable, to all asbestos-lined surfaces.

(d) When demolition by toppling is performed, a reasonable enclosure for dust emission control must be constructed.

(e) Adequate wetting to suppress dust must be performed before and during the demolition or toppling.

(f) Asbestos-containing debris may not be dropped or thrown from any floor and must be transported by dust-tight chutes or buckets with the chutes or buckets sufficiently wetted to prevent dust.

(g) During transportation of the debris, it must be thoroughly wetted before loading and must be enclosed or covered during its transport to prevent dust dispersion.

(h) The asbestos-containing debris must be deposited at a sanitary landfill at which it is unlikely to be disturbed, and signs must be posted around the landfill warning that asbestos-containing debris is buried there.

Section 4. There is a new R.C.M. section numbered 69-7404 that reads as follows:

69-7404. Use of asbestos-containing spray products prohibited.

HeinOnline -- 1977 vol. II 1899 1977

The use of asbestos-containing spray products, for whatever purpose, in the construction of a building or structure is prohibited.

Section 5. There is a new R.C.M. section numbered 69-7405 that reads as follows:

69-7405. Use of fibrated product or compound — supervisory personnel required. Whenever a fibrated product or compound is applied to a surface utilizing a spray or pneumatic means of application, one person must be assigned supervisory authority for all aspects of the operation.

Section 6. There is a new R.C.M. section numbered 69-7406 that reads as follows:

69-7406. Rulemaking authority. The department is granted authority to promulgate rules necessary to accomplish the purposes of this act.

Section 7. There is a new R.C.M. section numbered 69-7407 that reads as follows:

69-7407. Violations — penalties. (1) A person who violates any provision of this act commits a misdemeanor.

(2) A person convicted of violating this act shall be fined no more than $1,000 or be imprisoned in the county jail for a term not to exceed 60 days, or both.

(3) Each separate occurrence in violation of this act is a separate offense.

Approved May 13, 1977.

CHAPTER NO. 571

AN ACT TO GENERALLY REVISE THE LAWS RELATING TO THE DETENTION AND SHELTER CARE OF YOUTH; AMENDING SECTIONS 10-1203, 10-1209, 10-1210, 10-1212, 10-1213, 10-1214, 10-1215, 10-1216, 10-1218, 10-1222, 10-1235, 10-1236, 10-1237, 10-1242, AND 10-1243, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 10-1203, R.C.M. 1947, is amended to read as follows:

"**10-1203. Definitions.** For the purposes of the Montana Youth Court Act, unless otherwise stated:

(1) "Adult" means an individual who is eighteen years of age or older.

(2) "Agency" means the department of institutions, the department of social and rehabilitation services, and any division or department of either.

HeinOnline -- 1977 vol. II 1900 1977

(3) "Commit" means to transfer to legal custody.

(4) "Court," when used without further qualification, means the youth court of the district court.

(5) "Foster home" means a private residence approved by the court for placement of a youth.

(6) "Guardianship" means the status created and defined by law between a youth and an adult with the reciprocal rights, duties and responsibilities.

(7) "Judge," when used without further qualification, means the judge of the youth court.

(8) "Legal custody" means the legal status created by order of a court of competent jurisdiction that gives a person the right and duty to: have physical custody of the youth; determine with whom the youth shall live and for what period; protect, train, and discipline the youth; and provide the youth with food, shelter, education, and ordinary medical care. An individual granted legal custody of a youth shall personally exercise his rights and duties as guardian unless otherwise authorized by the court entering the order.

(9) "Parent" means the natural or adoptive parent but does not include a person whose parental rights have been judicially terminated, nor does it include the putative father of an illegitimate youth unless his paternity is established by an adjudication or by other clear and convincing proof.

(10) "Youth" means an individual who is less than eighteen years of age without regard to sex or emancipation.

(11) "Youth court" means the court established pursuant to this act to hear all proceedings in which a youth is alleged to be a delinquent youth, a youth in need of supervision or a youth in need of care, and includes the youth court, the judge and probation officers.

(12) "Delinquent youth" means a youth:

(a) who has committed an offense which, if committed by an adult, would constitute a criminal offense;

(b) who, having been placed on probation as a delinquent youth or a youth in need of supervision, violates any condition of his probation.

(13) "Youth in need of supervision" means a youth who commits an offense prohibited by law which, if committed by an adult, would not constitute a criminal offense, including but not limited to a youth who:

(a) violates any Montana municipal or state law regarding use of alcoholic beverages by minors; or

(b) habitually disobeys the reasonable and lawful demands of his parents or guardian, or is ungovernable and beyond their control; or

(c) being subject to compulsory school attendance is habitually truant from school; or

HeinOnline -- 1977 vol. II 1901 1977

(d) has committed any of the acts of a delinquent youth but whom the youth court in its discretion chooses to regard as a youth in need of supervision.

(14) "Youth in need of care" means a youth as defined in section 10-1301.

(15) "Custodian" means a person other than a parent or guardian, to whom legal custody of the youth has been given, but does not include a person who has only physical custody.

(16) "Necessary parties" include the youth, his parents, guardian, custodian or spouse.

(17) "*State youth correctional* facility" means a residential facility for the rehabilitation of delinquent youth such as Pine Hills School in Miles City, Mountain View School in Helena, *and Swan River youth forest camp.*

(18) "Shelter care" means the temporary care of youth in physically unrestricting facilities.

(19) "Detention" means the temporary care of youth in physically restricting facilities."

Section 2. Section 10-1209, R.C.M. 1947, is amended to read as follows:

"**10-1209. Intake procedure.** (1) Whenever the court receives information from any agency or person based upon reasonable grounds that a youth is, or appears to be a delinquent youth or a youth in need of supervision; or being subject to a court order or consent order, has violated the terms thereof; the probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may require the presence of any person relevant to the inquiry, and may request subpoenas from the judge to accomplish this purpose. The probation officer may require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter shall be immediately referred to the state department of social and rehabilitation services.

(4) The probation officer in the conduct of the preliminary inquiry shall:

(a) advise the youth of the youth's rights under this act and the Constitutions of the State of Montana and the United States;

(b) determine whether the matter is within the jurisdiction of the court;

(c) determine, if the youth is in detention or *shelter care*, whether such detention or *shelter care* should be continued *based upon criteria set forth in 10-1212.*

Once relevant information is secured, the probation officer shall:

HeinOnline -- 1977 vol. II 1902 1977

(d) determine whether the interest of the public or the youth requires that further action be taken;

(e) terminate the inquiry upon the determination that no further action be taken;

(f) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling; refer the youth and his parents to another agency providing appropriate services; or take any other action or make any informal adjustment that does not involve probation or detention;

(b) provide for treatment or adjustment involving probation or other disposition authorized under section 10-1210; provided, however, that such treatment or adjustment is voluntarily accepted by the youth's parents, or guardian, and the youth; and provided further that said matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney;

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision.

(6) A petition charging a youth held in detention must be filed within 5 working days from the date the youth was first *detained* or the petition shall be dismissed and the youth released unless good cause is shown to further detain such youth.

(7) If no petition is filed under this section, the complainant and victim, if any, shall be informed by the probation officer of the action and the reasons therefor and shall be advised of the right to submit the matter to the county attorney for review. The county attorney upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition shall or shall not be filed."

Section 3. Section 10-1210, R.C.M. 1947, is amended to read as follows:

"**10-1210. Consent adjustment without petition.** (1) Before a petition is filed, the probation officer may enter into an informal adjustment, give counsel and advice to the youth and other interested parties, if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the child and the public.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

HeinOnline -- 1977 vol. II 1903 1977

(a) Every consent adjustment shall be reduced to writing, signed by the youth and his parents or the person having legal custody of the youth.

(b) Approval by the youth court judge shall be required where the complaint alleges commission of a felony or where the youth has been or will be in any way detained.

(3) An incriminating statement relating to any act or omission constituting delinquency or need of supervision made by the participant to the person giving counsel or advice in the discussions or conferences incident thereto shall not be used against the declarant in any proceeding under this act, nor shall the incriminating statement be admissible in any criminal proceeding against the declarant.

(4) The following dispositions may be imposed by informal adjustment:

(a) Probation;

(b) Placement of the youth in a licensed foster home or other home approved by the court;

(c) Placement of the youth in a private agency responsible for the care and rehabilitation of such a youth, including but not limited to, a district youth guidance home;

(d) Transfer of legal custody of the youth to the department of institutions, provided, however, that such commitment shall not authorize the department of institutions to place the youth in a *state youth correctional* facility and such commitment shall not exceed a period of 6 months without a subsequent order of the court, after notice and hearing."

Section 4. Section 10-1212, R.C.M. 1947, is amended to read as follows:

"**10-1212. Detention and shelter care of youth.** *(1)* A youth taken into custody may not be detained prior to the hearing on the petition except when:

(a) his detention is required to protect the person or *the* property of others or of the youth;

(b) he has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(c) there are not adequate assurances that the youth will appear for court when required; or

(d) an order for his detention has been made by the court.

(2) A youth taken into custody may not be sheltered prior to the hearing on the petition except when:

(a) the youth and his family needs shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

HeinOnline -- 1977 vol. II 1904 1977

(c) the youth needs to be deterred or prevented from immediate repetition of his troubling behavior;

(d) shelter care is necessary to assess the youth and his environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family."

Section 5. Section 10-1213, R.C.M. 1947, is amended to read as follows:

"**10-1213. Release or delivery from custody.** (1) Whenever a peace officer believes, on reasonable grounds, that a youth can be released to a person who has custody of the youth, then the peace officer may release the youth to that person upon receiving a written promise from the person to bring the youth before the probation officer at a time and place specified in the written promise; or a peace officer may release the youth under any other reasonable circumstances.

(2) Whenever the peace officer believes, on reasonable grounds, that the youth must be *detained*, the peace officer must notify the probation officer *immediately* and shall, as soon as practicable, provide the probation officer with a written report of his reasons for holding that youth in custody. If it is necessary to hold the youth pending appearance before the youth court, then the youth must be held in some place that has been approved by the youth court and *is* completely separated from adult offenders. *If the peace officer believes that the youth must be sheltered, the peace officer shall notify the probation officer immediately and shall provide a written report of his reasons for placing the youth in shelter care. If the youth is then held, the youth must be sheltered in a place approved by the youth court.*"

Section 6. Section 10-1214, R.C.M. 1947, is amended to read as follows:

"**10-1214. Place of shelter care or detention.** (1) A youth alleged to be a delinquent youth or youth in need of supervision may be *sheltered* only in:

(a) a licensed foster home or a home approved by the court *for the provision of shelter care of youth*;

(b) a facility operated by a licensed child welfare agency;

(c) *a licensed attention home or shelter facility which is operated by a nonprofit corporation or the youth court for the provision of shelter care of youth;*

(d) any other suitable place or facility, designated or operated by the court *for the supervision of youth in shelter care.*

(2) The youth may be detained in a jail or other facility for the detention of adults only if: the facilities in subsection *(1) are* not available *or*

HeinOnline -- 1977 vol. II 1905 1977

do not provide adequate security, the detention is in an area *physically and visually* separate and removed from those of adults; it appears to the satisfaction of the court that public safety and protection reasonably require detention; and the court so orders.

(3) The official in charge of a jail or other facility for the detention of adult offenders or persons charged with crime shall inform the court immediately if a person who is or appears to be under the age of eighteen (18) years is received at the facility. Such official shall bring the person before the court upon request or deliver him to a detention facility designated by the court.

(4) A youth alleged to be in need of care shall be placed only in the facilities stated in subsection (1) of this section and shall not be detained in a jail or other facility intended or used for the detention of adults charged with criminal offenses."

Section 7. Section 10-1215, R.C.M. 1947, is amended to read as follows:

"**10-1215. Petition — form and content.** A petition initiating proceedings under this act shall be signed by the county attorney and shall be entitled, "In the Matter of ....., a youth," and shall set forth with specificity:

(1) the facts necessary to invoke the jurisdiction of the court together with a statement alleging the youth to be a delinquent or in need of supervision;

(2) the charge of an offense which shall:

(a) state the name of the offense;

(b) cite in customary form the statute, rule, regulation or other provisions of law which the youth is alleged to have violated;

(c) state the facts constituting the offense in ordinary and concise language and in such manner as to enable a person of common understanding to know what is intended; and

(d) state the time and place of the offense as definitely as can be done;

(3) the name, birth date and residence address of the youth;

(4) the names and residence addresses of parents, guardian, and spouse, of the youth; and if none of the parents, guardian, or spouse, resides or can be found within the state, or if there is none, the adult relative residing nearest to the court;

(5) whether the youth is in *detention or shelter care*, and if so, the place of detention or *shelter* care and the time he was *detained or sheltered*;

(6) if any of the matters required to be set forth by this section are not known, a statement of those matters and the fact that they are not known; and

(7) a list of witnesses to be used in proving the commission of the offense or offenses charged in the petition, together with their residence

HeinOnline -- 1977 vol. II 1906 1977

addresses. The names and addresses of any witnesses discovered after the filing of the petition shall be furnished to the youth upon request."

Section 8. Section 10-1216, R.C.M. 1947, is amended to read as follows:

"**10-1216. Summons.** (1) After a petition has been filed, summons shall be served directly to the youth; to his parent or parents having actual custody of the youth, or to his guardian or custodian, as the case may be; and to such other persons as the court may direct.

(2) The summons shall require the parties to whom directed to appear personally before the court at the time fixed by the summons to answer the allegations of the petition. The summons shall advise the parties of their right to counsel under the Montana Youth Court Act and shall have attached to it a copy of the petition.

(3) The court may endorse upon the summons an order directing the person or persons having the physical custody or control of the youth to bring the youth to the hearing.

(4) If it appears from any sworn statement presented to the court that the youth needs to be placed in detention or *shelter* care, the judge may endorse on the summons an order directing the officer serving the summons to at once take the youth into custody and to take him to the place of detention or *shelter* care designated by the court, subject to the rights of the youth and parent or person having custody of the youth as set forth in the provisions of the Montana Youth Court Act relating to detention *and shelter care* criteria and post-detention proceedings.

(5) If any youth is in *shelter care* or detained under any provision of this act pending an adjudication, the court, upon petition of the youth, his parents or guardian or his counsel shall, as soon as practicable, conduct a hearing in order to determine whether the circumstances of the case require such *detention or shelter care* and the form the *detention or shelter care* should take. *All mentioned parties shall be notified of such petition process at the time of initial detention or shelter care.*"

Section 9. Section 10-1218, R.C.M. 1947, is amended to read as follows:

"**10-1218. Basic legal rights.** (1) When a youth alleged to be a delinquent youth or a youth in need of supervision is taken into custody, the following requirements must be met:

(a) the youth shall be immediately and effectively advised of his constitutional rights and his rights under this act;

(b) the youth may waive such rights under the following situations:

(i) when the youth is under the age of 12 years, the parents of the youth may make an effective waiver;

(ii) when the youth is over the age of 12 years, and the youth and his parent agree, they may make an effective waiver; and

(iii) when the youth is over the age of 12 years and the youth and his

HeinOnline -- 1977 vol. II 1907 1977

parents do not agree, the youth may make an effective waiver only with advice of counsel.

(c) In a proceeding alleging a youth to be a delinquent youth:

(i) An extra-judicial statement that would be constitutionally inadmissible in a criminal matter shall not be received in evidence;

(ii) Evidence illegally seized or obtained shall not be received in evidence to establish the allegations of a petition against a youth; and

(iii) An extra-judicial admission or confession made by the youth out of court is insufficient to support a finding that the youth committed the acts alleged in the petition unless it is corroborated by other evidence.

(2) Title 95, R.C.M. 1947, shall apply to all law enforcement investigations relating to a complaint alleging a delinquent youth or youth in need of supervision, except that:

(a) No youth shall be fingerprinted or photographed for criminal identification purposes except by order of the youth court judge.

(b) No fingerprint records or photographs shall be filed with the federal bureau of investigation, state of Montana identification bureau, or any other than the originating agency, except for sending the fingerprints or photographs to any law enforcement agency for comparison purposes in the original investigation.

(c) At such time as the proceedings in the matter including appeals, are complete, the fingerprint records and photographs shall be destroyed; except that such fingerprint records and photographs may be retained by the originating agency for a specific period when ordered by the court for good cause shown.

(3) In all proceedings on a petition alleging a delinquent youth or youth in need of supervision as set forth in subsection (1) of this section, the youth, parents and guardian of the youth shall be advised by the court or, in the absence of the court, by its representative that the youth may be represented by counsel at all stages of the proceedings. If counsel is not retained, or if it appears that counsel will not be retained, counsel shall be appointed for the youth, unless the right to appointed counsel is waived by the youth and the parents or guardian. Neither the youth nor his parent or guardian may waive counsel if commitment to a *state correctional* facility or to the department of institutions for a period of more than six (6) months may result from adjudication.

(4) The court, at any stage of a proceeding on a petition under this act, may appoint a guardian ad litem for a youth if the youth has no parent or guardian appearing in his behalf, or if their interests conflict with those of the youth. A party to the proceeding or an employee or representative of a party shall not be appointed as guardian ad litem.

(5) In a proceeding on a petition, a party is entitled to: the opportunity to introduce evidence and otherwise be heard on the party's own behalf; confront and cross-examine witnesses testifying against the party; and admit or deny the allegations against the party in the petition.

HeinOnline -- 1977 vol. II 1908 1977

(6) Persons afforded rights under this act shall be advised of those rights and any other rights existing under law at the time of their first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in the Youth Court Act or other law.

(7) All post trial motions and other remedies available to an adult in a criminal proceeding under the Montana Code of Criminal Procedure shall be available to a youth proceeded against under this act."

Section 10. Section 10-1222, R.C.M. 1947, is amended to read as follows:

"**10-1222. Disposition of delinquent youth and youth in need of supervision.** (1) If a youth is found to be delinquent or in need of supervision the court may enter its judgment making the following disposition:

(a) place the youth on probation;

(b) place in a licensed foster home or a home approved by the court;

(c) place the youth in a private agency responsible for the care and rehabilitation of such a youth, including, but not limited to, a district youth guidance home;

(d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody shall not authorize the department of institutions to place the youth in a *state youth correctional* facility and such custody shall not continue for a period of more than six (6) months without a subsequent court order after notice and hearing;

(e) such further care and treatment or evaluation that the court deems beneficial to the youth, consistent with subsection (d) of this section.

(2) At any time after the youth has been taken into custody the court may, with the consent of the youth in the manner provided in section 10-1218(1), R.C.M. 1947, for consent by a youth to waiver of his constitutional rights, or after the youth has been adjudicated delinquent or in need of supervision:

(a) order the youth to be evaluated for a period not to exceed forty-five (45) days of evaluation at a reception and evaluation center for youths; or

(b) in the case of a delinquent youth sixteen (16) years or older who the court deems a suitable person for placement at a youth forest camp, notify the director of the department of institutions of the finding. The director of the department of institutions shall then designate to the court the facility to which the youth shall be delivered for evaluation. The court may then commit the youth to the department of institutions for a period not to exceed 45 days for the purpose of evaluation as to the youth's suitability for placement, and order the youth delivered for evaluation to the youth facility designated by the director. If after the evaluation, the department of institutions reports to the court that such child is suitable for placement in a youth forest camp, and if there is space available at a camp, the court may then commit such child directly to the youth forest

HeinOnline -- 1977 vol. II 1909 1977

camp under the terms of commitment of this act. If the department of institutions reports and states the reasons to the court why the youth is not suitable for placement, the youth shall be returned to the court for such further disposition as the court may deem advisable under the provisions of this act. The costs of transporting the youth to the designated youth facility for evaluation and cost of returning the youth to the court shall be borne by the county of residence of the youth.

(3) No youth shall be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes except as provided by subsection (2)(b) above.

(4) Any order of the court may be modified at any time.

(5) Whenever the court vests legal custody in an agency, institution or department, it must transmit with the dispositional judgment copies of a medical report, and such other clinical, predisposition or other reports and information pertinent to the care and treatment of the youth.

(6) The order of commitment to the department of institutions shall read as follows:

ORDER OF COMMITMENT

State of Montana, County of ....., ss:

In the district court for the ..... Judicial District.

On the .... day of ....., 19...., ..., a minor of this county, ... years of age, was brought before me charged with ..... Upon due proof I find that .... is a suitable person to be committed to the department of institutions.

It is ordered that ..... be committed to the department of institutions until .....

The names, addresses and occupations of the parents are:

Name	Address	Occupation
.....	.....	.....
.....	.....	.....

The names and addresses of their nearest relatives are:

.....

.....

Witness my hand this ..... day of ..... A.D. 19...

.....
Judge"

Section 11. Section 10-1235, R.C.M. 1947, is amended to read as follows:

"**10-1235. Order of adjudication — non-criminal.** No commitment of any youth to any *state youth correctional facility* under this act shall be deemed commitment to a penal institution. No adjudication upon the status of any youth in the jurisdiction of the court shall operate to impose any of the civil disability imposed on a person by reason of conviction of a criminal offense, nor shall such adjudication be deemed a criminal

HeinOnline -- 1977 vol. II 1910 1977

conviction, nor shall any youth be charged with or convicted of any crime in any court except as provided in this act. Neither the disposition of a youth under this act, nor evidence given in youth court proceedings under this act, shall be admissible in evidence except as otherwise provided in this act."

Section 12. Section 10-1236, R.C.M. 1947, is amended to read as follows:

"**10-1236. Shelter care and foster homes.** (1) The youth court may establish procedures for finding, maintaining and administering licensed *shelter care and* foster homes or other homes approved by the court for youth within the provisions of this act.

(2) The licensed *shelter care and* foster homes established under this section shall be funded at a rate consistent with other *shelter care and* foster homes established for other purposes under law. *Shelter care as defined by this act may be funded through state appropriation to the youth courts and the departments of institutions and social and rehabilitation services.*

(3) All foster homes licensed by the social and rehabilitation services, established shall be financed by the department of social and rehabilitation services as set forth in 71-210(b)."

Section 13. Section 10-1237, R.C.M. 1947, is amended to read as follows:

"**10-1237. Shelter care and detention facilities.** *(1)* In all counties the county commissioners may provide by purchase, lease, or otherwise, a place to be known as the youth detention *facility*, which shall not be used for the confinement of adult persons charged with criminal offenses, where delinquent youths, and youth in need of supervision may be detained until final disposition, which place shall be maintained by the county as in other like cases. The judge having jurisdiction may appoint such personnel as required, who shall have charge of said *facility* and of the youths detained therein.

The compensation of such personnel shall be fixed by the court, and such compensation and the maintaining of such *facility* shall be paid out of the county treasury *which may be supplemented by state appropriation and federal funds.*

(2) Youth courts and nonprofit corporations may provide by purchase, lease, or otherwise, a place to be known as a shelter care facility. Such facility shall be physically unrestricting and may be used to provide shelter care for youth alleged or adjudicated delinquent, in need of supervision, or in need of care. Such facility shall be separate and apart from any facility housing adults charged with criminal offenses. State appropriations and federal funds may be received by the youth court or private nonprofit corporations for establishment, maintenance, or operation of such facility. Such facility shall be furnished in a comfortable manner and be as nearly as possible like a family home."

Section 14. Section 10-1242, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1911 1977

"**10-1242. Establishment of district youth guidance home program.** The legislative assembly, in recognition of the wide and varied needs of delinquent youths and youths in need of supervision of this state and of the desirability of meeting these needs on a community level to the fullest extent possible, and in order to reduce the need for custodial care in existing state *youth correctional facilities*, establishes by this act a district youth guidance home program to provide facilities and services for the rehabilitation of delinquent youths and youths in need of supervision and establishes a program to provide such facilities and services through local nonprofit corporations and the department of institutions."

Section 15. Section 10-1243, R.C.M. 1947, is amended to read as follows:

"**10-1243. Definitions.** For purposes of this act:

(1) Delinquent youth. A youth as defined in section 10-1203(12).

(2) A youth in need of supervision. A youth as defined in section 10-1203(13).

(3) District youth guidance home. A district youth guidance home is a family-oriented residence established in a judicial district of the state of Montana as an alternative to existing state *youth correctional facilities*, the function of which is to provide a home and guidance through adult supervision for delinquent youths and youths in need of supervision."

Approved May 13, 1977.

CHAPTER NO. 572

AN ACT TO ESTABLISH SMALL CLAIMS PROCEDURES FOR JUSTICES' COURTS IN THE STATE OF MONTANA.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 93-345 that reads as follows:

93-345. Purpose. It is the purpose of this act to provide a speedy remedy for small claims and to promote a forum in which such claims may be heard and disposed of without the necessity of a formal trial.

Section 2. There is a new R.C.M. section numbered 93-346 that reads as follows:

93-346. Creation of small claims court. There is established within the jurisdiction of each justice's court in this state a small claims division to be known as the "small claims court".

Section 3. There is a new R.C.M. section numbered 93-347 that reads as follows:

93-347. Jurisdiction. (1) The small claims court has jurisdiction over

HeinOnline -- 1977 vol. II 1912 1977

all actions for the recovery of money or specific personal property when the amount claimed does not exceed $750, exclusive of costs, and the defendant can be served within the county where the action is commenced.

(2) A district court judge may require any action filed in district court to be removed to the small claims court if the amount in controversy does not exceed $500. The small claims court shall hear any action so removed from the district court.

Section 4. There is a new R.C.M. section numbered 93-348 that reads as follows:

93-348. Venue. Proper venue for actions commenced in the small claims court is the same as that provided by law for civil actions commenced in justice's court.

Section 5. There is a new R.C.M. section numbered 93-349 that reads as follows:

93-349. Commencement of actions — pleadings — informal proceedings. A small claims action is commenced whenever any person appears before a justice of the peace and executes a sworn small claims complaint in substantially the same form as set forth in 93-350. No form of pleading other than the complaint and the order of the court/notice to defendant is allowed, and the hearing and disposition of small claims actions shall be informal.

Section 6. There is a new R.C.M. section numbered 93-350 that reads as follows:

93-350. Form of sworn complaint and order of the court/notice to defendant. The sworn complaint and order of the court shall be made on a blank substantially in the following form:

IN THE SMALL CLAIMS DIVISION OF THE JUSTICE'S
COURT OF ..... COUNTY, MONTANA
BEFORE ..... JUSTICE OF THE PEACE

.....
.....
Plaintiff,

vs. Complaint
..... Case No. .....
.....
Defendant(s)

.....

Comes now the plaintiff, being first duly sworn, upon oath, and complains and alleges that defendant is indebted to plaintiff in the sum of $....., for.....
.....
.....
which sum is now due, owing and unpaid despite demands for the payment thereof, together with plaintiff's costs herein expended.

Dated this ..... day of ....., 19.....

.....
Plaintiff

.....
Plaintiff's address

Subscribed and sworn to before me this ..... day of ....., 19.....

.....
Justice of the peace
By:.....
Clerk, small claims division

ORDER OF COURT/
NOTICE TO DEFENDANT
THE STATE OF MONTANA TO THE ABOVE-NAMED DEFENDANT(s):

You are hereby directed to appear and answer the within and foregoing complaint at:

.....
.....
on..... at ....
Reset for ..... at ....
Reset for ..... at ....
Reset for ..... at ....

and to have with you, then and there, all books, papers, and witnesses needed by you to establish your defense to the claim; and you are further notified that in case you do not appear, judgment will be taken against you by default, for the relief demanded in the complaint, and for costs of this action including costs of service of the complaint and order of the court/notice to defendant.

To the Sheriff, Constable, or Server of process of said county, greetings:

Make legal service and due return thereof on the defendant at .....

Dated this .... day of ....., 19.....

.....
Justice of the peace
By:.....
Clerk of small claims division

Section 7. There is a new R.C.M. section numbered 93-351 that reads as follows:

93-351. Service on defendant. The original of the order and notice shall be shown to the defendant and a copy of it along with a copy of the sworn complaint shall be served upon the defendant by the sheriff, constable, or other process server in the same manner provided by law for service of process in civil actions in justice's court. The provisions of law relating to sheriff's fees are applicable to this section.

Section 8. There is a new R.C.M. section numbered 93-352 that reads as follows:

93-352. Hearing date — how set. The date for the appearance of the defendant to be set forth in the order shall be determined by the justice of the peace or by his clerk in accordance with rules adopted by the justice of the peace and may not be more than 20 or less than 10 days from the

HeinOnline -- 1977 vol. II 1914 1977

date of the order. Service of the order and a copy of the sworn complaint shall be made upon the defendant not less than 5 days prior to the date set for his appearance by the order. If the order is not timely served, the plaintiff may have a new appearance date set by the justice of the peace or his clerk and a new order issued and delivered to the sheriff, constable, or other process server. If necessary, repeated orders may be issued at any time within 1 year after the commencement of the action.

Section 9. There is a new R.C.M. section numbered 93-353 that reads as follows:

93-353. Return of service. The sheriff, constable, or other process server shall, after affecting service, return the original order to the justice of the peace or his clerk.

Section 10. There is a new R.C.M. section numbered 93-354 that reads as follows:

93-354. Parties — representation. (1) Parties in the small claims court may be individuals, partnerships, corporations, unions, associations, or any other kind of organization or entity.

(2) A party may not be represented by an attorney unless all parties are represented by an attorney in a small claims court.

(3) An individual may represent himself in a small claims court. A partnership may be represented by a partner or one of its employees. A union may be represented by a union member or union employee. A corporation may be represented by one of its employees. An association may be represented by one of its members or by an employee of the association. Any other kind of organization or entity may be represented by one of its members or employees.

(4) Only a party, natural or otherwise, who has been a party to the transaction with the defendant for which the claim is brought may file and prosecute a claim in the small claims court.

(5) No party may file an assigned claim in the small claims court.

(6) No party may file more than three claims in any calendar year.

(7) Notwithstanding any other provision of this section, a personal representative of a decedent's estate, a guardian, or a conservator may be a party in the small claims court.

Section 11. There is a new R.C.M. section numbered 93-355 that reads as follows:

93-355. Witnesses — evidence — subpoena power. The plaintiff and the defendant may offer evidence in their behalf by witnesses appearing at such hearing in the same manner as in other cases arising in justice's court or by written evidence and the judge may direct the production of evidence as he considers appropriate. The small claims court has the subpoena power granted to justices' courts in all civil cases.

Section 12. There is a new R.C.M. section numbered 93-356 that reads as follows:

HeinOnline -- 1977 vol. II 1915 1977

93-356. Record. All civil actions tried in a small claims court shall be recorded either electronically or stenographically.

Section 13. There is a new R.C.M. section numbered 93-357 that reads as follows:

93-357. Appeals — no trial de novo. (1) If either party is dissatisfied with the judgment of the small claims court, he may appeal to the district court of the county where the judgment was rendered. An appeal shall be commenced by giving written notice to the small claims court and serving a copy of the notice of appeal on the adverse party within 10 days after entry of judgment. Within 30 days of the notice, the entire record of the small claims court proceedings shall be transmitted to the district court or the appeal shall be dismissed. It is the duty of the appealing party to perfect the appeal.

(2) There shall not be a trial de novo in the district court. The appeal shall be limited to questions of law.

Section 14. There is a new R.C.M. section numbered 93-358 that reads as follows:

93-358. Record on appeal. When notice of appeal is filed, the justice shall forward the electronic recording or transcript of the stenographic record of the proceedings to the district court, together with the original papers filed certified by him to be accurate and complete. When the record is transferred to the clerk of the district court, the justice shall notify the parties in writing.

Section 15. There is a new R.C.M. section numbered 93-359 that reads as follows:

93-359. Use of transcripts or tapes by district court. The district court may hear the recording of the proceedings of the justice court, but in its discretion, it may have parts or all of the recordings transcribed at the cost of the district court. If the proceedings are stenographically taken, the notes will be transcribed in full or in designated parts as stipulated by the parties. The cost of such transcription shall be computed as prescribed by law.

Section 16. There is a new R.C.M. section numbered 93-360 that reads as follows:

93-360. Location of court — office hours. The small claims division of justice court shall be located at the same place as the justice's court and shall be open during the same hours as the justice's court.

Section 17. There is a new R.C.M. section numbered 93-361 that reads as follows:

93-361. Assistance by justice — record. (1) The justice shall assist any claimant in preparing his complaint or instruct his clerk to provide such assistance.

(2) The justice shall enter in the docket kept by him for small claims cases the following:

HeinOnline -- 1977 vol. II 1916 1977

(a) the title of each action;

(b) the amount claimed;

(c) the date the order of court/notice to defendant was signed and the date of the trial as stated in the order;

(d) the date the parties appeared or the date on which default was entered;

(e) each adjournment stating on whose application and to what time;

(f) the judgment of the court;

(g) a statement of any money paid to the justice, when, and by whom;

(h) the date of the issuance of any abstract of the judgment; and

(i) the date of the receipt of the notice of appeal, if any is given, and of the appeal bond, if any is filed.

Section 18. There is a new R.C.M. section numbered 93-362 that reads as follows:

93-362. Entry of judgment. Upon the conclusion of the case tried to the court, the justice shall make his findings and enter judgment.

Section 19. There is a new R.C.M. section numbered 93-363 that reads as follows:

93-363. Execution. Proceedings to enforce or collect a judgment are governed by the laws relating to execution upon justice's court judgments.

Section 20. There is a new R.C.M. section numbered 93-364 that reads as follows:

93-364. Fees — costs. (1) The clerk of the justice's court shall collect a fee of $3.50:

(a) from the plaintiff upon the filing of the sworn complaint; and

(b) from the defendant upon his appearance and contesting of the complaint.

(2) The laws relating to paupers' affidavits apply to actions before the small claims court.

(3) The prevailing party in an action before the small claims court is entitled to his costs.

Section 21. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 13, 1977.

HeinOnline -- 1977 vol. II 1917 1977

CHAPTER NO. 573

AN ACT TO AMEND SECTION 7, CHAPTER 310, LAWS OF 1977, TO CORRECT AN ERROR IN ENGROSSING.

WHEREAS, House Bill 300 as amended on February 23, 1977, by the House Committee on Public Health, Welfare, and Safety, was incorrectly engrossed and the error carried forward into the enrolled bill.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 7, Chapter 310, Laws of 1977, is amended to read as follows:

"Section 7. There is a new R.C.M. section numbered 66-3708.1 that reads as follows:

66-3708.1. Licensure by demonstration of proficiency. (1) The board shall issue a license to an applicant if:

(a) he has been employed as a radiologic technologist for at least 2 of the 3 years immediately preceding October 9, 1976, and can demonstrate proficiency by practical examination;

(b) he is a student engaged in a course of x-ray technology on October 9, 1976, subsequently completes the course, and can demonstrate proficiency to the satisfaction of the board; *or*

(c) he has successfully completed a 24-month course in x-ray technology within 2 years immediately preceding October 9, 1976, and can demonstrate proficiency to the satisfaction of the board.

(2) Applications for licensure under subsections (1)(a) and (1)(c) of this section must be submitted to the board no later than October 9, 1977."

Approved May 13, 1977.

CHAPTER NO. 574

AN ACT RELATING TO THE TAXATION OF INCOME; PROVIDING INCENTIVES FOR THE INSTALLATION OR ACQUISITION OF SOLAR OR OTHER RECOGNIZED NONFOSSIL FORMS OF ENERGY GENERATION BY TAXPAYERS BY PROVIDING INCOME TAX CREDIT FOR THE COSTS OF THE SYSTEMS; AMENDING SECTION 84-4906, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-7414 that reads as follows:

84-7414. Energy system tax incentive for individuals. (1) A resident individual taxpayer who completes installation of an energy system using a recognized nonfossil form of energy generation, as defined in

HeinOnline -- 1977 vol. II 1918 1977

84-7402, in such taxpayer's principal dwelling prior to December 31, 1982, or who acquires title to a dwelling prior to December 31, 1982, which dwelling is to be used as the taxpayer's principal dwelling and is equipped with an energy system for which the credit allowed by this section has never been claimed, is entitled to claim a tax credit in an amount equal to 10% of the first $1,000 and 5% of the next $3,000 of the cost of such system, including installation costs, less grants received or, if the federal government provides for a tax credit substantially similar in kind (not in amount), then a tax credit in an amount equal to 5% of the first $1,000 and 2 ½% of the next $3,000 of the cost of such system, including installation costs, less grants received against the income tax liability imposed against such taxpayer pursuant to Title 84, chapter 49, R.C.M. 1947.

(2) The tax credit is to be deducted from the taxpayer's income tax liability for the taxable year in which the energy system was acquired by the taxpayer. If the amount of the tax credit exceeds the taxpayer's income tax liability for the taxable year, the amount which exceeds the tax liability may be carried over for deduction from the taxpayer's income tax liability in the next succeeding taxable year or years until the total amount of the tax credit has been deducted from tax liability. Notwithstanding the foregoing provision, no tax credit may be carried over for deduction after the fourth taxable year succeeding the taxable year in which the energy system was acquired.

Section 2. Section 84-4906, R.C.M. 1947, is amended to read as follows:

"**84-4906. Deductions allowed in computing net income.** In computing net income, there *are* allowed as deductions:

(a) *the* items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, subject to the *following* exceptions *which are* not deductible*:*

(i) items provided for in 84-4909;

(ii) state income tax paid;

(b) *federal* income tax paid within the taxable year."

Section 3. There is a new R.C.M. section numbered 84-7415 that reads as follows:

84-7415. Department of revenue duties. The department of revenue shall prescribe rules necessary to carry out the purposes of this act.

Section 4. There is a new section that reads as follows:

Time of application. The provisions of this act apply to all taxable years commencing after December 31, 1976.

Approved May 13, 1977.

CHAPTER NO. 575

AN ACT CREATING A SOLID WASTE MANAGEMENT PROGRAM IN

THE STATE OF MONTANA; AUTHORIZING THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES TO CREATE A LOCAL GOVERNMENT GRANT FUND FOR THE CREATION OF A SOLID WASTE MANAGEMENT PROGRAM; SPECIFYING THE POWERS OF A LOCAL GOVERNMENT TO SECURE GRANTS AND LOANS FOR THE CREATION OF A RESOURCE RECOVERY PROGRAM; AND SPECIFYING THE DUTIES OF THE DEPARTMENT IN ADMINISTERING PROVISIONS OF THE ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 69-4011 that reads as follows:

69-4011. Short title. This act may be cited as the "Solid Waste Management Act".

Section 2. There is a new R.C.M. section numbered 69-4012 that reads as follows:

69-4012. Purpose and public policy. The purpose of 69-4011 through 69-4020 is to encourage the good management of solid waste and the conservation of natural resources through the promotion or development of systems to collect, separate, reclaim, recycle, and dispose of solid waste for energy production purposes where economically feasible and to provide a coordinated state solid waste and resource recovery plan. To implement this act, the following are declared to be public policies of this state:

(1) that maximum recycling from solid waste is necessary to protect the public health, welfare, and quality of the natural environment;

(2) that solid waste management systems shall be developed, financed, planned, designed, constructed, and operated for the benefit of the people of this state;

(3) that private industry is to be utilized to the maximum extent possible in planning, designing, managing, constructing, operating, manufacturing, and marketing functions related to solid waste management systems;

(4) that local governments shall retain primary responsibility for adequate solid waste management with the state preserving those functions necessary to assure effective solid waste management systems throughout the state;

(5) that encouragement and support be given to individuals and municipalities to separate solid waste at its source in order to maximize the value of such wastes for reuse;

(6) that the state shall provide technical advisory assistance to local governments and other affected persons in the planning, developing, financing, and implementation of solid waste management systems; and

(7) that actions and activities performed or carried out by persons and their contractors in accordance with this act shall be in conformity with the state solid waste plan.

HeinOnline -- 1977 vol. II 1920 1977

Section 3. There is a new R.C.M. section numbered 69-4013 that reads as follows:

69-4013. Definitions. Unless the context clearly requires otherwise in 69-4011 through 69-4020, the following definitions apply:

(1) "Resource recovery facility" means any facility at which solid waste is processed for the purpose of extracting, converting to energy, or otherwise separating and preparing solid waste for reuse.

(2) "Solid waste management system" means any system which controls the storage, treatment, recycling, recovery, or disposal of solid waste.

(3) "Front-end planning funds" means the state money granted to local governments for contract negotiations between local governments, predesign engineering and cost estimates, administrative costs, preliminary contract negotiations with energy users and waste suppliers, financial feasibility analysis by a financial consultant, legal consultations, opinions, and review of contracts.

(4) "Front-end organizational funds" means the state money to be loaned to local governments for initial operating capital, site evaluation and negotiation, final design engineering and cost estimates, construction contract documents, final contract negotiations with energy users, material markets and waste suppliers, contract negotiations with private operational managers, and financial and legal consultations.

(5) "State solid waste plan" means the statewide plan formulated by the department as authorized by this act.

(6) "Department" means the department of health and environmental sciences provided for in Title 82A, chapter 6.

(7) "Solid waste" means all putrescible and nonputrescible wastes, including but not limited to garbage, rubbish, refuse, hazardous wastes, ashes, sludge from sewage treatment plants, water supply treatment plants or air pollution control facilities; septic tank and cesspool pumpings; construction and demolition wastes; dead animals, including offal; discarded home and industrial appliances; wood wastes and inert materials; but does not include municipal sewage, industrial wastewater effluents, or mining wastes as regulated under the mining and reclamation laws administered by the department of state lands.

(8) "Local government" means a county, incorporated city or town, or refuse disposal district organized under the laws of this state.

(9) "Person" means any individual, firm, partnership, company, association, corporation, city, town, local governmental entity, or any other state, federal, or private entity whether organized for profit or not.

(10) "Board" means the board of health and environmental sciences provided for in Title 82A, chapter 6.

Section 4. There is a new R.C.M. section numbered 69-4014 that reads as follows:

69-4014. Duties of department. (1) The department shall:

HeinOnline -- 1977 vol. II 1921 1977

(a) prepare a state solid waste management and resource recovery plan for submission to the board;

(b) prepare rules necessary for the implementation of this act for submission to the board, including but not limited to rules governing the submission of plans for a solid waste management system, rules governing procedures to be followed in applying for and making loans, and rules governing agreements between a local government and the department for grants or loans under the act;

(c) provide financial assistance to local governments for front-end planning activities for a proposed solid waste management system which is compatible with the state plan whenever such financial assistance is available;

(d) provide technical assistance to persons within the state for planning, designing, constructing, financing, and operating a solid waste management system in order to insure that the system conforms to the state plan;

(e) provide front-end organizational loans for the implementation of an approved solid waste management system whenever funds for such loans are available;

(f) enforce and administer the provisions of this act;

(g) administer loans made by the state under the provisions of this act; and

(h) approve plans for a proposed solid waste management system submitted by a local government.

(2) The department may:

(a) accept loans and grants from the federal government and other sources to carry out the provisions of this act; and

(b) make loans to a local government for the planning, design, and implementation of a solid waste management system.

Section 5. There is a new R.C.M. section numbered 69-4015 that reads as follows:

69-4015. Powers and duties of the board. The board shall:

(1) adopt a state solid waste management and resource recovery plan after complying with the procedures outlined in section 6; and

(2) adopt rules necessary for the implementation of this act, including but not limited to rules governing the submission of plans for a solid waste management system, rules governing the procedures to be followed in applying for and making loans, and rules governing agreements between the local government and the department for grants and loans under the act.

Section 6. There is a new R.C.M. section numbered 69-4016 that reads as follows:

HeinOnline -- 1977 vol. II 1922 1977

69-4016. The state solid waste management plan. (1) A proposed solid waste management plan shall be prepared by the department in conjunction with local governments in the state of Montana and any other interested person. After a draft of a proposed solid waste management plan has been prepared, the department shall circulate a copy of the proposed plan to the board of county commissioners in each county in the state of Montana, the governing body of every incorporated city or town in the state of Montana, any person responsible for the operation of a solid waste management system under the provisions of Title 69, chapter 40, the governor, the environmental quality council, and any other interested person for at least 90 days prior to submission of a final proposed solid waste management plan to the board. During the 90-day period for receipt of comments on the draft plan, the department shall hold at least three public hearings around the state on the draft plan.

(2) A final proposed plan shall be prepared based on the comments and objections received at the public hearings and from the persons who have submitted comments on the draft solid waste management plan. The final plan submitted to the board shall include a discussion of all comments and objections received and the reasons why recommendations for changes or amendments to the proposed plan were accepted or rejected. The board shall consider the final proposed solid waste management plan after giving notice and holding at least one public hearing pursuant to the rulemaking procedures outlined in the Montana Administrative Procedure Act.

Section 7. There is a new R.C.M. section numbered 69-4017 that reads as follows:

69-4017. Powers and duties of local government. A local government may:

(1) plan, develop, and implement a solid waste management system consistent with the state's solid waste plan and propose modifications to the state's solid waste plan;

(2) Upon adoption of the state plan by the board of health and environmental sciences, pass an ordinance or resolution to exempt the local jurisdiction from complying with the state plan and subsequent rules implementing the state plan; the ordinance or resolution must include a means to provide solid waste disposal to the citizens of the jurisdiction as required in 69-4002 through 69-4010;

(3) employ appropriate personnel to carry out the provisions of this act;

(4) purchase, rent, or execute leasing agreements for equipment and material necessary for the implementation of a solid waste management system;

(5) cooperate with and enter into agreements with any persons in order to implement an effective solid waste management system;

(6) receive gifts, grants, or donations or acquire by gift, deed, or purchase land necessary for the implementation of any provision of this act;

HeinOnline -- 1977 vol. II 1923 1977

(7) enforce the rules of the department or a local board of health pertaining to solid waste management through the appropriate county attorney;

(8) apply for and utilize state, federal, or other available money for developing or operating a solid waste management system;

(9) borrow from any lending agency funds available for assistance in planning a solid waste management system;

(10) finance a solid waste management system through the assessment of a tax as authorized by state law;

(11) sell on an installment sales contract or lease to a person all or a portion of a solid waste management system which the local government plans, designs, or constructs for such consideration and upon such terms as are established by the local governments and consistent with the loan requirements as set forth in this act and rules;

(12) procure insurance against any loss in connection with property, assets, or activities;

(13) mortgage or otherwise encumber all or a portion of a solid waste management system when the local government finds the action is necessary to implement the purposes of this act, as long as the action is consistent with the loan requirements set forth in this act and rules;

(14) hold or dispose of real property and, subject to agreements with lessors and lessees, develop or alter the property by making improvements or betterments for the purpose of enhancing the value and usefulness of the property;

(15) finance, design, construct, own, and operate a solid waste management system or contract for any or all of the aforementioned powers;

(16) control the disposition of solid waste generated within the jurisdiction of a local government;

(17) enter into long-term contracts with local governments and private entities for:

(a) financing, designing, constructing, and operating a solid waste management system;

(b) marketing all raw or processed material recovered from solid waste;

(c) marketing energy products or by-products resulting from processing or utilization of solid waste;

(18) finance an areawide solid waste management system through the use of any of the sources of revenue available to the implementation entity for public works projects, by the use of revenue bonds issued by the city or county, or by fees levied by a refuse disposal district, whichever is appropriate;

(19) enter into interlocal agreements in order to achieve and implement the powers enumerated in this act.

HeinOnline -- 1977 vol. II 1924 1977

Section 8. There is a new R.C.M. section numbered 69-4018 that reads as follows:

69-4018. Solid waste management loans. (1) The department may, in the name of the state of Montana, enter into agreements with a local government for loans, subject to any existing contractual obligations of the local government. A loan agreement shall include but not be limited to the following:

(a) the amount of the loan, not to exceed the estimated reasonable amount of the total implementation cost, excluding equipment, construction, or land acquisition as determined by the department;

(b) an agreement by the department to pay part of the amount of the loan to the local government on a timetable as may be agreed upon by the parties;

(c) an agreement by the local government to proceed with the project in accordance with plans approved by the department;

(d) an agreement by the local government to commence operation of the project on its completion and not to discontinue operations or dispose of the project without the approval of the department;

(e) an agreement by the local government to operate and maintain a solid waste management system in accordance with applicable provisions of the solid waste management act and rules of the department;

(f) an agreement by the local government to pledge any available sources of revenue to the repayment of loans according to the schedule established by the department. Any revenues from the sale of energy or recycled materials recovered from the solid waste management system and any money received under federal grants for local solid waste management may be used to make such payments. State loan funds for local solid waste management systems may be used only for front-end organizational activities.

(g) an agreement by the local government to establish and maintain adequate financial records for the project, including an annual audit of the financial records and transactions covering each fiscal year by a certified public accountant. A copy of each audit shall be submitted to the department of administration and the department within 30 days after its completion. Failure of a local government to file a copy of the audit as required by this section shall be grounds for rescinding the loan agreement.

(2) In allocating loan funds to local governments, the department shall establish priority based on a consideration of the plan that:

(a) most fully utilizes private enterprise for planning, design, management, construction, and operation of the facilities required to implement a solid waste management system;

(b) includes the largest population;

(c) is the most financially viable; and

HeinOnline -- 1977 vol. II 1925 1977

(d) addresses the most pressing environmental and public health concerns.

(3) The department may enter into further agreements with a local government and acquire further guarantees or securities as are necessary to implement the provisions of this act.

(4) A loan agreement entered into pursuant to this act is subject to approval by the department and shall be accounted for on forms prepared by the department.

(5) The department shall establish a schedule of payments to be made by a local government under a loan agreement. Payment shall be made in an amount sufficient to pay the principal and interest cost of the loan obtained from the department. In the event the revenues of a project are insufficient to pay the costs, a local government may levy a pro rata fee against the users of the solid waste management district. Such pro rata fee shall be based on a per ton, per pound assessment or volume assessment.

(7) If a local government fails to comply with the payment schedule established by the department, the state may, after giving 30 days written notice, withhold an equal share of any state taxes which are otherwise apportioned to the local government.

Section 9. There is a new R.C.M. section numbered 69-4019 that reads as follows:

69-4019. Act supplemental. This act is in addition and supplemental to any other law providing for the financing of a solid waste management system and does not amend or repeal any other law.

Section 10. There is a new R.C.M. section numbered 69-4020 that reads as follows:

69-4020. Availability of state loans. Loan money as provided for under this act is only available if the local government is unable to secure adequate financing from other lending institutions or is unable to provide the adequate and necessary bonding for the implementation of a proposed solid waste management system.

Section 11. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Approved May 13, 1977.

CHAPTER NO. 576

AN ACT TRANSFERRING THE ENERGY CONSERVATION AND ALTERNATIVE ENERGY TAX INCENTIVES FROM THE PROPERTY TAX TO THE INCOME AND CORPORATION LICENSE TAXES, AS DEDUCTIONS; AMENDING SECTIONS 84-202, 84-301,

HeinOnline -- 1977 vol. II 1926 1977

84-1502, 84-4906, 84-7401, AND 84-7403, R.C.M. 1947, AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 84-7403, R.C.M. 1947, is amended to read as follows:

"**84-7403. Tax treatment of certain energy-related investments.** (1) *In addition to all other deductions from adjusted gross individual income allowed in computing taxable income under Title 84, chapter 49, or from gross corporate income allowed in computing net income under Title 84, chapter 15, a taxpayer may deduct a portion of his expenditure for a capital investment in a building for an energy conservation purpose, in accordance with the following schedule:*

If the installation or investment is made in a residential building:	*If the installation or investment is made in a building not used as a residence:*
100% of first $1,000 expended	*100% of first $2,000 expended*
50% of next $1,000 expended	*50% of next $2,000 expended*
20% of next $1,000 expended	*20% of next $2,000 expended*
10% of next $1,000 expended	*10% of next $2,000 expended*

This tax treatment is subject to approval of the department of an application as provided in 84-7404 and may not be claimed for so much of the expenditures and capital investments as are financed by a state, federal, or private grant for energy conservation."

Section 2. Section 84-202, R.C.M. 1947, is amended to read as follows:

"**84-202. Exemptions from taxation.** (1) (a) The property of the United States, the state, counties, cities, towns, school districts, municipal corporations, public libraries, buildings with land they occupy and furnishings therein owned by a church and used for actual religious worship and for residences of the clergy, together with adjacent land reasonably necessary for convenient use of such buildings owned by a church, such other property as is used exclusively for agricultural and horticultural societies, for educational purposes, hospitals and places of burial not used or held for private or corporate profit, and institutions of purely public charity, evidence of debt secured by mortgages of record upon real or personal property in the state of Montana, and public art galleries and public observatories not used or held for private or corporate profit, are exempt from taxation, but no more land than is necessary for such purpose is exempt.

(b) As used in this subsection, the term "institutions of purely public charity" shall include organizations owning and operating facilities for the care of the retired or aged or chronically ill which are not operated for gain or profit; and the terms "public art galleries and public observatories" shall mean only such art galleries and observatories whether of public or private ownership, as are open to the public, without charge or fee at all reasonable hours, and are used for the purpose of education only.

HeinOnline -- 1977 vol. II 1927 1977

(2) When a clubhouse or building erected by or belonging to any society or organization of honorably discharged United States soldiers, sailors or marines who served in army or navy of United States, is used exclusively for educational, fraternal, benevolent or purely public charitable purposes, rather than for gain or profit, together with the library and furniture necessarily used in any such building, such property is exempt from taxation, and all property, real or personal, in the possession of legal guardians of incompetent veterans of the World War or minor dependents of such veterans, where such property is funds or derived from funds received from the United States as pension, compensation, insurance, adjusted compensation, or gratuity, shall be exempt from all taxation as property of the United States while held by the guardian, but not after title passes to the veteran or minor in his or her own right on account of removal of legal disability.

(3) All household goods and furniture, including clocks, musical instruments, sewing machines, wearing apparel of members of the family actually used by the owner for personal and domestic purposes, or for furnishing or equipping the family residence are exempt from taxation.

(4) Freeport merchandise shall be exempt from taxation. Freeport merchandise means those stocks of merchandise manufactured or produced outside this state which are in transit through this state and consigned to a warehouse or other storage facility, public or private, within this state, for storage in transit prior to shipment to a final destination outside the state, and which have acquired a taxable situs within the state.

Stocks of merchandise do not lose their status as freeport merchandise because while in the storage facility they are assembled, bound, joined, processed, disassembled, divided, cut, broken in bulk, relabeled or repackaged.

Any person, corporation, firm, partnership, association, or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner or form as may be required by the department.

(5) [The following agricultural products are exempt from taxation:]

(a) All unprocessed, perishable fruits and vegetables in farm storage and owned by the producer are exempt from taxation.

(b) All nonperishable unprocessed agricultural products except livestock, held in possession of the original producer for less than seven (7) months following harvest.

(c) Livestock, defined as cattle, sheep, horses, or mules, which have not attained the age of nine (9) months as of the last day of any month.

(6) Moneys and credits are exempt from taxation."

Section 3. Section 84-301, R.C.M. 1947, is amended to read as follows:

"84-301. Classification of property for taxation. For the purpose of taxation the taxable property in the state shall be classified as follows:

HeinOnline -- 1977 vol. II 1928 1977

Class One. The annual net proceeds of all mines and mining claims, except coal mines, after deducting only the expenses specified and allowed by section 84-5403; also where the right to enter upon land, to explore or prospect, or dig for oil, gas, coal or mineral is reserved in land or received by mesne conveyance (exclusive of leasehold interests), devise or succession by any person or corporation, the surface title to which has passed to or remains in another, the state department of revenue shall determine the value of the right to enter upon said tract of land for the purpose of digging, exploring, or prospecting for gas, oil, coal or minerals, and the same shall be placed in this classification for the purpose of taxation.

Class Two. All agricultural and other tools, implements and machinery, gas and other engines and boilers, threshing machines and outfits used therewith, automobiles, motor trucks and other power-driven cars, vehicles of all kinds except mobile homes, boats and all watercraft, harness, saddlery and robes and except as provided in Class Five (a) of this section, all poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by all persons, firms, corporations, and other organizations which are engaged in the business of furnishing telephone communications, exclusively to rural areas, or to rural areas and cities and towns provided that any such city or town has a population of eight hundred (800) persons or less; and provided further, that the average circuit miles for each station on the system is more than one and one-quarter (1 ¼) miles.

Class Three. Livestock, poultry, and unprocessed products of both; furniture and fixtures used in commercial activities; the annual gross proceeds of underground coal mines; and all office or hotel furniture and fixtures, except improvements included in Class Nine.

Class Four. (a) All land, town and city lots, with improvements, except improvements included in Class Nine, and all trailers affixed to land owned, leased, or under contract or purchase by the trailer owner, manufacturing and mining machinery, fixtures and supplies, except as otherwise provided by the constitution of Montana, and except as such property may be included in Class Five, Class Seven or Class Eight.

(b) Mobile homes without regard to the ownership of the land upon which they are situated, except those held by a distributor or dealer of mobile homes as part of his stock in trade, and except as such property may be included in Class Eight.

Class Five. (a) All poles, lines, transformers, transformer stations, meters, tools, improvements, machinery and other property used and owned by co-operative rural electrical and co-operative rural telephone associations organized under the laws of Montana except those within the incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers and/or telephone users are served by a co-operative organization, and as to the property enumerated in this sub-section (a) within incorporated limits of a city or town in which less than ninety-five per cent (95%) of the electric consumers or users will be served by a co-operative organization, such property shall be put in Class Two.

HeinOnline -- 1977 vol. II 1929 1977

(b) All unprocessed agricultural products either on the farm or in storage, irrespective of whether said products are owned by the elevator, warehouse or flour mill owner or company storing the same, or any other person whomsoever, except all perishable fruits and vegetables in farm storage and owned by the producer, and excepting livestock and poultry and the unprocessed products of both.

(c) The dwelling house, and the lot on which it is erected, owned and occupied by any resident of the state, who has been honorably discharged from active service in any branch of the armed forces, who is rated one hundred per cent (100%) disabled due to a service-connected disability by the United States veterans administration or its successors.

In the event of the veteran's death, the dwelling house, and the lot on which it is erected, so long as the surviving spouse remains unmarried and the owner and occupant of the property, shall remain within this classification.

Class Six. Property formerly included in this class is now classified by section 84-308, R.C.M. 1947.

Class Seven. (a) All new industrial property. New industrial property shall mean any new industrial plant, including land, buildings, machinery and fixtures which, in the determination of the state department of revenue, is used by a new industry during the first three (3) years of operation not having been assessed prior to July 1, 1961, within the state of Montana. New industry shall mean any person, corporation, firm, partnership, association, or other group which establishes a new plant or plants in this state for the operation of a new industrial endeavor, as distinguished from a mere expansion, reorganization, or merger of an existing industry or industries. Provided, however, that new industrial property shall be limited to industries that manufacture, mill, mine, produce, process or fabricate materials, or do similar work in which capital and labor are employed and in which materials unserviceable in their natural state are extracted, processed or made fit for use or are substantially altered or treated so as to create commercial products or materials; industries that engage in the mechanical or chemical transformation of materials or substances into new products in the manner defined as manufacturing in the 1972 Standard Industrial Classification Manual, prepared by the United States office of management and budget; and in no event shall the term new industrial property be included to mean property used by retail or wholesale merchants, commercial services of any type, agriculture, trades or professions. New industrial property does not include a plant which will create an adverse impact on existing state, county, or municipal services. The department shall promulgate regulations for the determination of what constitutes an adverse impact taking into consideration the number of people to be employed and the size of the community in which the location is contemplated. Once the department has made an initial determination that the industrial facility qualifies as new industrial property, the department shall then upon proper notice hold a hearing to determine if the new industrial classification should be retained by the property. The local taxing authority may appear at the hearing, and it also may waive its objection to retention of this classification if

HeinOnline -- 1977 vol. II 1930 1977

the industry agrees to the prepayment of taxes sufficient to satisfy tax requirements created by the location and construction of the facility during construction period.

In the event of a prepayment of taxes, the maximum amount or prepayment shall be the amount without the application of the Class 7 (a) to such property.

If a major new industrial facility qualifies under Class 7 (a) the reduction of its yearly payment of property taxes for reimbursement of its prepaid taxes as provided for in section 84-41-105, R.C.M. 1947, shall not begin until the Class 7 qualification expires. And provided further, that new industrial property shall not be included to mean property which is used or employed in any industrial plant which has been in operation in this state for three (3) years or longer. Any person, corporation, firm, partnership, association or other group seeking to qualify its property for inclusion in this class shall make application to the state department of revenue in such manner and form as may be required by said department.

(b) Business inventories. Business inventories shall include goods intended for sale or lease in the ordinary course of business, and shall include raw materials and work in progress with respect to such goods, but shall not include goods actually leased or rented on the lien date, or mobile homes held by a dealer or distributor as a part of his stock in trade.

(c) Air pollution control equipment as defined in section 69-3923.

Class Eight. Any improvement on real property, trailers affixed to land or mobile home belonging to any person who qualifies under any one or more of the hereinafter set forth categories, with appurtenant land not exceeding five (5) acres, which together have a market value of not more than twenty-seven thousand five hundred dollars ($27,500), which dwelling is owned or under a contract for deed, and which is actually occupied for at least ten (10) months per year as the primary residential dwelling of:

(1) a widow sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(2) a widower sixty-two (62) years of age or older, whether with or without minor dependent children, who qualifies under the income limitations of (4), or

(3) a widow or widower with minor or dependent children regardless of age, who qualifies under the income limitations of (4), or

(4) a recipient or recipients of retirement or disability benefits whose income from all sources is not more than six thousand dollars ($6,000) for a single person and six thousand eight hundred dollars ($6,800) for a married couple total per annum whether said dwelling is occupied by a single person or a married couple. Provided, further, that one who applies for classification of property under this class must make an affidavit to the state department of revenue on a form as may be provided by the state department of revenue supplied without cost to the applicant,

HeinOnline -- 1977 vol. II 1931 1977

as to his income, if applicable, as to his retirement benefits, if applicable, or, as to his marital status, if applicable, and to the fact that he or she actually occupies or maintains as his or her primary residential dwelling, such land and improvements with right of the county welfare board to investigate the applicant, on the completion of the form, as to answers given on the form. Provided, further, the assessed value of said property shall not be increased during the life of the recipient of retirement benefits or widow or widower covered under this class, unless the owner-resident makes a substantial improvement in the dwelling. For the purposes of the affidavit required for classification of property under this class, it shall be sufficient if the applicant signs a statement swearing to or affirming the correctness of the information supplied, whether or not the statement is signed before a person authorized to administer oaths, and mails the application and statement to the department of revenue. This signed statement shall be treated as a statement under oath or equivalent affirmation for purposes of section 94-7-203, R.C.M. 1947, relating to the criminal offense of false swearing.

Class Nine. The incremental increase in the value of real estate attributable to repairing, maintaining or improving existing improvements.

Class Ten. The annual gross proceeds of coal mines using the strip mining method.

Class Eleven. Centrally assessed utility allocations after deductions of locally assessed properties and except as provided in Class Two for rural telephones and Class Five (a) for cooperatives, and all other property not included in the ten (10) preceding classes."

Section 4. Section 84-1502, R.C.M. 1947, is amended to read as follows:

"**84-1502. Deductions allowed in computing income.** In computing the net income the following deductions shall be allowed from the gross income received by such corporation within the year from all sources:

1. All the ordinary and necessary expenses paid or incurred during the taxable year in the maintenance and operation of its business and properties, including reasonable allowance for salaries for personal services actually rendered, subject to the limitation hereinafter contained, rentals or other payments required to be made as a condition to the continued use or possession of property to which the corporation has not taken or is not taking title, or in which it has no equity. No deduction shall be allowed for salaries paid upon which the recipient thereof has not paid Montana state income tax; provided, however, that where domestic corporations are taxed on income derived from without the state, salaries of officers paid in connection with securing such income shall be deductible.

2. (A) All losses actually sustained and charged off within the year and not compensated by insurance or otherwise, including a reasonable allowance for the wear and tear and obsolescence of property used in the trade or business, such allowance to be determined according to the provisions of section 167 of the internal revenue code in effect with respect

HeinOnline -- 1977 vol. II 1932 1977

to the taxable year. All elections for depreciation shall be the same as the elections made for federal income tax purposes. No deduction shall be allowed for any amount paid out for any buildings, permanent improvements or betterments made to increase the value of any property or estate and no deduction shall be made for any amount of expense of restoring property or making good the exhaustion thereof for which an allowance is or has been made.

(B) (a) There shall be allowed as a deduction for the taxable period a net operating loss deduction determined according to the provisions of this subsection. The net operating loss deduction is the aggregate of net operating loss carryovers to such taxable period plus the net operating loss carrybacks to such taxable period. The term "net operating loss" means the excess of the deductions allowed by this section, 84-1502, over the gross income, with the modifications specified in paragraph (b) of this subsection. If for any taxable period beginning after December 31, 1970, a net operating loss is sustained, such loss shall be a net operating loss carryback to each of the three (3) taxable periods preceding the taxable period of such loss and shall be a net operating loss carryover to each of the five (5) taxable periods following the taxable period of such loss. The portion of such loss which shall be carried to each of the other taxable years shall be the excess, if any, of the amount of such loss over the sum of the net income for each of the prior taxable periods to which such loss was carried. For purposes of the preceding sentence, the net income for such prior taxable period shall be computed with the modifications specified in paragraph (b) (ii) of this subsection and by determining the amount of the net operating loss deduction without regard to the net operating loss for the loss period or any taxable period thereafter, and the net income so computed shall not be considered to be less than zero.

(b) The modifications referred to in paragraph (a) of this subsection shall be as follows:

(i) No net operating loss deduction shall be allowed.

(ii) The deduction for depletion shall not exceed the amount which would be allowable if computed under the cost method.

(c) A net operating loss deduction shall be allowed only with regard to losses attributable to the business carried on within the state of Montana.

(d) In the case of a merger of corporations, the surviving corporation shall not be allowed a net operating loss deduction for net operating losses sustained by the merged corporations prior to the date of merger.

In the case of a consolidation of corporations, the new corporate entity shall not be allowed a deduction for net operating losses sustained by the consolidated corporations prior to the date of consolidation.

(e) Notwithstanding the provisions of section 84-1508.1(c), R.C.M. 1947, interest shall not be paid with respect to a refund of tax resulting from a net operating loss carryback or carryover.

(f) The net operating loss deduction shall not be allowed with respect to taxable periods which ended on or before December 31, 1970, but shall

HeinOnline -- 1977 vol. II 1933 1977

be allowed only with respect to taxable periods beginning on or after January 1, 1971.

3. In the case of mines, other natural deposits, oil and gas wells, and timber, a reasonable allowance for depletion and for depreciation of improvements, such reasonable allowance to be determined according to the provisions of the internal revenue code in effect for the taxable year. All elections made under the internal revenue code with respect to capitalizing or expensing exploration and development costs and intangible drilling expenses for corporation license tax purposes shall be the same as the elections made for federal income tax purposes.

4. The amount of interest paid within the year on its indebtedness incurred in the operation of the business from which its income is derived; but no interest shall be allowed as a deduction if paid on an indebtedness created for the purchase, maintenance or improvement of property or for the conduct of business unless the income from such property or business would be taxable under this act.

5. Interest income from obligations of the state of Montana, or any political subdivision or municipality of the state of Montana.

6. Taxes paid within the year except the following:

(a) Taxes imposed by this act.

(b) Taxes assessed against local benefits of a kind tending to increase the value of the property assessed.

(c) Taxes on or according to or measured by net income or profits imposed by authority of the government of the United States.

(d) Taxes imposed by any other state or country upon or measured by net income or profits.

(7) That portion of an energy-related investment allowed as a deduction under 84-7403.

Taxes deductible under this act shall be construed to include taxes imposed by any county, school district or municipality of this state."

Section 5. Section 84-4906, R.C.M. 1947, is amended to read as follows:

"**84-4906. Deductions allowed in computing net income.** In computing net income, there shall be allowed as deductions:

(a) The items referred to in sections 161 and 211 of the Internal Revenue Code of 1954, or as sections 161 and 211 shall be labeled or amended, except that state income tax paid shall not be deductible and also subject to the exceptions provided in section 84-4909, relating to items not deductible.

(b) Federal income tax paid within the taxable year.

(c) That portion of an energy-related investment allowed as a deduction under 84-7403."

HeinOnline -- 1977 vol. II 1934 1977

Section 6. **Legislative intent.** It is the intent of the legislature that no deduction under this act be allowed for capital investment for an energy conservation practice in the new construction of a building if that capital investment would have been made under established standards of new construction. The department of revenue shall adopt rules to implement this legislative intent. Such rules shall be based on the best currently available methods of analysis, including those of the national bureau of standards, the department of housing and urban development, and other federal agencies and professional societies and materials developed by the department of revenue. Provisions shall be made for an annual updating of rules and standards as required.

Section 7. Section 84-7401, R.C.M. 1947, is amended to read as follows:

"**84-7401. Statement of purpose.** The purpose of this act is to encourage the use of alternative energy sources and the conservation of energy through incentive programs. Such incentives are to be made available to the energy user on a basis which requires him to take the initiative in obtaining a particular incentive. This act allows but does not require a public utility to extend credit for energy conservation investments."

Section 8. **Coordination with other legislation.** If House Bill 70 is enacted, then in lieu of the amendments to 84-301 enacted by this act, classes fifteen and eighteen in House Bill 70 shall be further amended by deleting references to capital investments in recognized nonfossil forms of energy generation and in building for an energy conservation purpose.

Section 9. **Extension of existing classifications.** Any classification of property under the provisions of 84-7403, R.C.M. 1947, that existed prior to the effective date of this act, approved by the department of revenue before April 19, 1977, shall continue in effect until December 31, 1982. On January 1, 1983, the taxable percentage of such property shall be determined under chapter 3, Title 84, R.C.M. 1947, or that chapter as it may be recodified or amended.

Section 10. **Effective date.** This act applies to all taxable years beginning after December 31, 1976.

Approved May 13, 1977.

CHAPTER NO. 577

AN ACT TO ESTABLISH NECESSARY ENERGY SUPPLY ALERT AND ENERGY EMERGENCY POWERS FOR THE GOVERNOR; ESTABLISHING AN ENERGY POLICY COMMITTEE; DEFINING CONDITIONS UNDER WHICH SUCH POWERS ARE TO BE EXERCISED; PROVIDING PENALTIES; PROVIDING A PERIOD OF EFFECTIVENESS; AND AMENDING SECTION 79-2501, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Legislative findings and intent.** (1) The legislature finds

HeinOnline -- 1977 vol. II 1935 1977

that energy in various forms is increasingly subject to possible shortages and supply disruptions, to the point that there may be foreseen an emergency situation, and that without the ability to gather information, formulate plans, and institute appropriate emergency measures to reduce or allocate the usage of energy through a program of mandatory usage curtailment or allocation, a severe impact on the health, safety, and general welfare of our state's citizens may occur. The prevention or mitigation of the effects of such energy shortages or disruptions is necessary for preservation of the public health and welfare of the citizens of this state.

(2) It is the intent of this act to:

(a) establish necessary planning, information gathering, energy emergency powers for the governor and define the conditions under which such powers are to be exercised;

(b) provide penalties for violations of this act.

Section 2. **Definitions.** As used in this act, the following definitions apply:

(1) "Energy facility" means a facility which produces, extracts, converts, transports, or stores energy.

(2) "Energy" means petroleum or other liquid fuels, natural or synthetic fuel gas, or electricity.

(3) "Person" means an individual, partnership, joint venture, private or public corporation, cooperative, association, firm, public utility, political subdivision, municipal corporation, government agency, joint operating agency, or any other entity, public or private, however organized.

(4) "Committee" means the energy policy committee established in section 3.

(5) "Distributor" means any person, private corporation, partnership, producer, individual proprietorship, public utility, joint operating agency or cooperative which engages in or is authorized to engage in the activity of generating, producing, transmitting, or distributing energy in this state.

(6) "Energy emergency" means an existing or imminent domestic, regional or national shortage of energy which will result in curtailment of essential services or production of essential goods, or the disruption of significant sectors of the economy unless action is taken to conserve or limit the use of the energy form involved, and the allocation of available energy supplies among users.

(7) "Energy supply alert" means a condition of energy supply on a national, regional, state or local basis which foreseeably will affect significantly the availability of essential energy supplies within the ensuing 90-day period unless action is taken under section 9 to reduce energy usage by state agencies and political subdivisions.

Section 3. **Energy policy committee.** (1) There is established a legislative energy policy committee which consists of four members. The members shall consist of the president of the senate and the floor leader

HeinOnline -- 1977 vol. II 1936 1977

of the opposite party in the senate and the speaker and minority leader of the house of representatives. Each leadership member shall designate, within 15 days following the close of the 1977 session, an alternate to serve for him when he is unable to attend meetings of the committee.

Section 4. **Supply of vital public services during an energy supply alert and energy emergency.** The governor shall, with the advice of the committee, in developing provisions for the allocation, conservation, and consumption of energy, give due consideration to supplying vital public services such as essential governmental operations, health and safety functions, emergency services, public mass transportation systems, food production and processing facilities, and energy supply facilities during conditions of an energy supply alert or energy emergency. In developing any energy allocation programs, provisions shall be made for the equitable distribution of energy among the geographic areas of the state which are experiencing an energy shortage.

Section 5. **Information obtainable by governor.** (1) The governor may obtain information from energy resource producers, suppliers, public agencies, and consumers and from political subdivisions in this state necessary for him, with advice of the committee, to determine the need for energy supply alert and emergency declarations. Such information may include but is not limited to:

(a) sales volumes by customer classifications;

(b) forecasts of energy resource requirements for the particular type of energy involved for a period not to exceed 2 years; and

(c) inventory of energy resources and reserves available for use in meeting a shortage in a particular energy source.

(2) In obtaining information under subsection (1) of this section during a state of energy emergency the governor may subpoena witnesses, material, and relevant books, papers, accounts, records, and memoranda; administer oaths; and cause the depositions of persons residing within or without Montana to be taken in the manner prescribed for depositions in civil actions in district courts, to obtain information relevant to energy resources that are the subject of the proclaimed emergency of associated disaster.

(3) In obtaining information under this section, the governor shall:

(a) seek to avoid eliciting information already furnished by a person or political subdivision in this state to a federal, state, or local regulatory authority that is available for his study; and

(b) cause reporting procedures, including forms, to conform to existing requirements of federal, state, and local regulatory authorities.

(4) Nothing in this act shall require the disclosure by a distributor of confidential information, trade secrets, or other facts of a proprietary nature.

(5) The governor shall forward to the committee such information collected under this section as the committee may request and shall advise the committee of the progress of the information gathering process.

HeinOnline -- 1977 vol. II 1937 1977

Section 6. **Advice of distributors and consumers.** The governor shall actively solicit the advice of consumers, through the legislative consumer committee established in 70-703, and of distributors throughout the information gathering, planning, and implementation process described in this act.

Section 7. **Submission and approval of curtailment plans.** (1) The governor may at any time require a distributor of an energy resource to prepare for his approval a plan for the curtailment of the distribution of that resource in the event of a state of energy emergency. Plans shall be submitted in such form and within such limits as the governor shall specify, and shall recognize the obligations and duties which may be placed upon distributors subject to this act by other jurisdictions, both state and federal.

(2) Approval of plans for curtailment shall be based on the following factors:

(a) the consistency of the plan with the public health, safety, and welfare;

(b) the technical feasibility of implementation of the plan;

(c) the effectiveness with which the plan minimizes the impact of any curtailment;

(d) the needs of commercial, agricultural, retail, professional, and service establishments whose normal function is to supply goods or services, or both, of an essential nature, including but not limited to food, lodging, fuel, and medical care facilities;

(e) the regional agreements or contracts of the distributors; and

(f) the advice of the committee.

Section 8. **Governor's considerations.** In determining whether to declare an energy supply alert or energy emergency, the governor shall consider:

(1) availability of regional and national energy resources;

(2) local, state, regional, and national energy needs and shortages;

(3) availability of short-term alternative supplies on a local, state, regional, and national basis;

(4) the economic effect of such declaration and the implementation of any curtailment or conservation plans;

(5) the advice of the committee; and

(6) any other relevant factors.

Section 9. **Energy supply alert.** (1) The governor may upon finding that an energy alert condition exists, declare the same for a period of not longer than 90 days, setting forth the reasons therefor. Such declaration may be renewed for 90-day periods thereafter upon a finding that the energy alert condition will continue for such further period.

HeinOnline -- 1977 vol. II 1938 1977

(2) Whenever the governor has declared an energy supply alert, he may by executive order direct actions:

(a) reducing energy resource usage by state agencies and political subdivisions;

(b) promoting conservation, prevention of waste and salvage of energy resources and the materials, services, and facilities derived therefrom or dependent thereon, by state agencies and political subdivisions.

Section 10. **Emergency energy — powers of governor.** In addition to his existing powers and duties, the governor shall have the following duties and special energy emergency powers subject to the definitions and limitations in this act:

(1) The governor with the advice of the committee may, upon finding that a situation exists which threatens to seriously disrupt or diminish energy supplies to the extent that life, health, or property may be jeopardized, declare a condition or state of energy emergency, at which time all of the general and specific emergency powers further enumerated in this section shall become effective.

(2) The condition of energy emergency terminates after 14 consecutive days unless extended by a declaration of the legislature by joint resolution of a continuing condition of energy emergency of a duration to be established by the legislature.

(3) The conditions of an energy emergency alternatively cease to exist upon a declaration to that effect by either of the following:

(a) the governor; or

(b) the legislature, by joint resolution if in regular or special session.

(4) In a declared state of energy emergency, the governor may, with the advice of the committee:

(a) implement such programs, controls, standards, priorities, and quotas for the production, allocation, conservation, and consumption of energy, including plans for the curtailment of energy; provided that in so doing, the governor shall impose controls, quotas, or curtailments according to the nature of the end use to be made of the energy consistent with existing transmission and distribution systems serving the geographic area affected by the energy emergency;

(b) suspend and modify existing pollution control standards and requirements or any other standards or requirements affecting or affected by the use of energy, including those relating to air or water quality control; and

(c) establish and implement regional programs and agreements for the purposes of coordinating the energy programs and actions of the state with those of the federal government and of other states, localities, and other persons.

(5) Nothing in this act means that any program, control, standard, priority quota, or other policy created under the authority of the emer-

HeinOnline -- 1977 vol. II 1939 1977

gency powers authorized by this act has any continuing legal effect after the cessation of a declared state of energy emergency.

(6) Because of the emergency nature of this act, all actions authorized or required hereunder or taken pursuant to any order issued by the governor are exempted from all requirements and provisions of the Montana Environmental Policy Act of 1971, including but not limited to the requirement for environmental impact statements.

(7) Except as provided in this section, nothing in this act exempts a person from compliance with the provisions of any other law, rule, or directive unless specifically ordered by the governor, or unless impossibility of compliance is a direct result of an order of the governor.

Section 11. **Obligations of state and local executives.** To protect the public welfare during conditions of energy alerts or emergencies, the chief executive of each political subdivision of the state, including local governments with self-government power, and each state agency shall carry out in his jurisdiction such energy supply alert or energy emergency measures as may be ordered by the governor.

Section 12. **Coordination with federal provisions.** In order to attain uniformity, as far as is practicable throughout the country in measures taken to aid in energy crisis management, all action taken under this act and all orders and rules made pursuant to it shall be taken or made with due consideration for and consistent when practicable with the orders, rules, actions, recommendations, and requests of federal authorities.

Section 13. **Compliance.** Notwithstanding any provision of law or contract to the contrary, all persons who are specifically ordered by the governor with the advice of committee to comply with an order issued or action taken pursuant to this act shall comply.

Section 14. **Orders to distributors.** The governor may order any distributor to take such action on his behalf as may be required to implement orders issued pursuant to section 10 and no distributor or person is liable for actions taken in accordance with such order.

Section 15. **Liability.** No distributor or person is liable for damages to persons or property resulting from action taken in accordance with orders or regulations issued pursuant to this act or actions taken pursuant to orders, rules, actions, recommendations, and requests of federal authorities.

Section 16. **Rules and executive orders.** Notwithstanding the exemption from the provisions of the Montana Administrative Procedure Act granted to the governor in Title 82, chapter 42, R.C.M. 1947, the governor may adopt rules necessary to implement this act and cause their adoption and publication to be completed in the same manner as the adoption and publication of agency rules. In addition, executive orders of the governor implementing provisions of this act shall be published in the Montana Administrative Register upon request of the governor.

Section 17. **Civil defense laws supplemented.** The powers vested in the governor under this act are in addition to and not in lieu of emergency

HeinOnline -- 1977 vol. II 1940 1977

powers vested in him under Title 77, chapter 23, or any other law of Montana.

Section 18. **Penalties.** A person convicted of violating this act is guilty of a misdemeanor. Each day of violation, after notice of violation, shall constitute a separate offense.

Section 19. Section 79-2501, R.C.M. 1947, is amended to read as follows:

"79-2501. Governor may authorize expenditure in case of emergency or disaster. The governor may authorize the incurring of liabilities and expenses to be paid as other claims against the state from the general fund, in the amount necessary, when an emergency or disaster justifies the expenditure and is declared by the governor, to meet contingencies and emergencies arising from hostile attacks, riots or insurrections, epidemics of disease, plagues of insects, fires, floods, *energy emergencies* or other acts of God resulting in damage or disaster to the works, building or property of the state or any political subdivision thereof, or which menace the health, welfare, safety, lives or property of any considerable number of persons in any county or community of the state, upon demonstration by the political jurisdiction that such political jurisdiction has exhausted all available emergency levies, that the emergency is beyond the financial capability of the political jurisdiction to respond, and for which no appropriation is available in sufficient amount to meet the emergency or disaster, or that federal funds available for such emergency or disaster require either matching state funds or specific expenditures prior to eligibility for assistance under federal laws."

Section 20. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 21. **Period of effectiveness.** This act is effective on passage and approval and shall remain in effect until March 1, 1979.

Approved May 13, 1977.

CHAPTER NO. 578

AN ACT TO PROVIDE FOR AN INCREASE IN THE STATE'S CONTRIBUTION TO THE MONTANA GAME WARDENS' RETIREMENT SYSTEM; TO REVISE THE PROCEDURE FOR PAYING THE EXPENSES OF ADMINISTERING SUCH SYSTEM; AND TO INCREASE THE DURATION OF BENEFITS PAID TO A BENEFICIARY FOLLOWING A MEMBER'S EMPLOYMENT-RELATED DEATH; AMENDING SECTIONS 68-1410 AND 68-1417, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 68-1410, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1941 1977

"**68-1410. State's contribution.** *(1) Each month the state treasurer shall pay to the account,* out of the *department of* fish and game moneys in the earmarked revenue fund, a sum equal to 7% of the total of *all members' salaries and, out of the moneys collected as fines and forfeited bonds under the provisions of 26-121, a sum equal to 4% of the total of all members' salaries.*

(2) The board may assess and the department of administration shall collect a fee from the department of fish and game for the purpose of defraying the expenses of administering this act. The fee may not exceed .3% of the total of all members' salaries."

Section 2. Section 68-1417, R.C.M. 1947, is amended to read as follows:

"**68-1417. Payments upon employment-related death.** If the board *finds* that a contributor died as a direct and proximate result of injury received in the course of his employment, a retirement allowance shall be paid to his beneficiary, *consisting* of:

(1) a member's annuity which *is* the actuarial equivalent of the contributor's accumulated deductions; and

(2) a state annuity which, when added to the member's annuity, will provide a total annuity equal to 50% of the final salary of the contributor, less the amount which is paid to *the* beneficiary under the *Workers'* Compensation Act of the state of Montana during the period such compensation is paid or payable."

Approved May 13, 1977.

CHAPTER NO. 579

AN ACT REDEFINING CHIROPRACTIC AND PROVIDING THAT NO MEMBER OF THE BOARD MAY BE APPOINTED FOR MORE THAN TWO CONSECUTIVE TERMS; AMENDING SECTIONS 66-507 AND 82A-1602.7, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 66-507, R.C.M. 1947, is amended to read as follows:

"**66-507. Definition of chiropractic.** *(1)* Chiropractic is the *system of specific adjustment or manipulation of the articulations and tissues of the body, particularly of the spinal column, for the correction of nerve interference and includes the use of recognized diagnostic and treatment methods as taught in chiropractic colleges, but does not include surgery or the prescription or use of drugs.*

(2) Licensed chiropractors may diagnose, palpate, and treat the human body by the application of manipulative, manual, mechanical, and dietetic methods, including chiropractic physiotherapy, the use of supportive appliances, analytical instruments, and diagnostic x-ray in accordance with

HeinOnline -- 1977 vol. II 1942 1977

guidelines promulgated or approved by state or federal health regulatory agencies."

Section 2. Section 82A-1602.7, R.C.M. 1947, is amended to read as follows:

"82A-1602.7. Board of chiropractors — appointment — qualifications — term. (1) There is a board of chiropractors.

(2) The board consists of three (3) members appointed by the governor. The members shall be practicing chiropractors of integrity and ability who shall be residents of this state, and who have practiced chiropractic continuously in this state for at least one (1) year. No two (2) members shall be graduates of the same school or college of chiropractic.

(3) Each member shall serve for a term of three (3) years. *No member may be appointed for more than two consecutive terms.* A member may be removed from office by the governor on sufficient proof of the member's inability or misconduct."

Approved May 13, 1977.

CHAPTER NO. 580

AN ACT TO PERMIT DISTRICT JUDGES TO SENTENCE PERSONS CONVICTED OF FELONIES TO IMPRISONMENT WITH NO POSSIBILITY OF PAROLE OR PARTICIPATION IN THE PRISONER FURLOUGH PROGRAM; AMENDING SECTIONS 95-2206, 95-2220, AND 95-3214, R.C.M. 1947.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 95-2206, R.C.M. 1947, is amended to read as follows:

"95-2206. Sentence. *(1)* Whenever any person has been found guilty of a crime or offense upon a verdict or a plea of guilty the court may:

(a) defer imposition of sentence for a period not to exceed 1 year for any misdemeanor *or* for a period not to exceed 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not to exceed 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

HeinOnline -- 1977 vol. II 1943 1977

(vi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

(i) jail base release;

(ii) jail time not to exceed 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(vi) any combination of the above.

If any restrictions or conditions are violated, any elapsed time, except jail time, shall not be a credit against the sentence, unless the court shall otherwise order.

(c) impose a fine as provided by law for the offense;

(d) commit the defendant to a correctional institution with or without fine by law for the offense;

(e) impose any combination of subsections *(1)(b), (1)(c), and (1)(d).*

(2) The district court may also impose any of the following restrictions or conditions on the above sentence which it deems necessary to obtain the objective of rehabilitation and the protection of society:

(a) prohibit the defendant the right to hold public office;

(b) prohibit the defendant the right to own or carry a dangerous weapon;

(c) prohibit freedom of association;

(d) prohibit freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation or the protection of society.

(3) Whenever the district court imposes a sentence of imprisonment in the state prison for a term exceeding 1 year, the court may also impose the restriction that the defendant be ineligible for parole and participation in the prisoner furlough program while serving his term. If such a restriction is to be imposed, the court shall state the reasons for it in writing. If the court finds that the restriction is necessary for the protection of society, it shall impose the restriction as part of the sentence and the judgment shall contain a statement of the reasons for the restriction.

(4) The judge in the justice court shall not have the authority to restrict an individual's rights as enumerated in *subsections (2) and (3).*

(5) Any judge who has suspended the execution of a sentence or

HeinOnline -- 1977 vol. II 1944 1977

deferred the imposition of a sentence of imprisonment under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence or deferred imposition of sentence to revoke such suspension or impose sentence and order such person committed or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law or retain such jurisdiction with this court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing."

Section 2. Section 95-2220, R.C.M. 1947, is amended to read as follows:

"**95-2220. Application for participation in furlough program.** Any prisoner confined in the state prison *except a prisoner serving a sentence imposed under 95-2206(3)* may make application to participate in the furlough program at least by the time the inmate has served one-half of the time required to be considered for parole."

Section 3. Section 95-3214, R.C.M. 1947, is amended to read as follows:

"**95-3214. Parole authority and procedure.** (1) The board shall release on parole, by appropriate order, any person confined in the Montana state prison, except persons under sentence of death *and persons serving sentences imposed under 95-2206(3),* when in its opinion there is reasonable probability that the prisoner can be released without detriment to himself or to the community, provided:

(a) *that* no convict serving a time sentence *may* be paroled until he has served at least one-quarter of his full term, less good time allowances off, as provided in 80-1905; except that no convict designated a persistent felony offender under 95-2206.5 may be paroled until he has served at least one-third of his full term, less good time allowances off, as provided in 80-1905. A first offender serving a time sentence may be paroled after he has served, upon his term of sentence, 12 ½ years. A persistent felony offender as defined in 95-2206.5 may be paroled after he has served, upon his term of sentence, 17 ½ years.

(b) *no* convict serving a life sentence *may* be paroled until he has served 30 years, less the good time allowances off, as provided in 80-1905.

(2) Within 2 months after his admission and at such intervals thereafter as it determines, the board shall consider all pertinent information regarding each prisoner, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment, and attitude in prison, and the reports of and physical and mental examinations which have been made.

(3) Before ordering the parole of any prisoner, the board shall interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency or a reduction of sentence or pardon. A prisoner shall be placed on parole only when the board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the insti-

HeinOnline -- 1977 vol. II 1945 1977

tution from which he was released but shall be subject to the orders of the board.

(4) The board may adopt other rules it considers proper or necessary with respect to the eligibility of prisoners for parole and the conduct of parole hearings or conditions to be imposed upon parolees. When an order for parole is issued, it shall recite the conditions thereof."

Approved May 13, 1977.

CHAPTER NO. 581

AN ACT TO PROVIDE FOR A PILOT PROJECT OF EXPANDED DAY-CARE ASSISTANCE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Expanded day-care assistance.** (1) In addition to the payments authorized under 10-812 and Title XX of the Social Security Act the department of social and rehabilitation services shall in the biennium ending June 30, 1979 pay to a licensed day-care facility located in region V of the human service planning areas, for each child eligible to receive public financial support, a portion of the total cost of day care as determined under subsection (2) of this section.

(2) The level of expanded day-care assistance provided under this act shall decrease as family income increases according to the following criteria:

(a) A family whose family income is 150% of the AFDC level is eligible for 100% of day-care costs.

(b) A family whose family income is equal to or above 58% of the state's median income for families of like size is not eligible to receive expanded day-care assistance.

(c) A family whose family income is between the levels established under (a) and (b) above is eligible to receive expanded day-care assistance established on a 12-step progressive scale establishing income brackets and support levels as nearly equal as possible. This additional day-care assistance will provide for the gradual assumption of the total cost of day care by the parents of eligible children based upon the 12 income brackets and support levels established.

(d) The department of social and rehabilitation services shall establish an expanded day-care assistance schedule for use in region V of the human service planning areas in accordance with the procedures of the Montana Administrative Procedure Act.

Section 2. **Cost — savings documented — report.** (1) The department of social and rehabilitation services shall develop a system to document and record any savings to the state as a result of expanded day-care assistance which enables a person receiving welfare assistance to gain and maintain employment.

HeinOnline -- 1977 vol. II 1946 1977

(2) The department of social and rehabilitation services shall report to the 46th legislature the documented cost savings to the state for the biennium that is attributed to the pilot project of expanded day-care assistance established by this act.

Section 3. **Appropriation.** There is appropriated the sum of $190,500 for the biennium ending June 30, 1979, from the general fund to the department of social and rehabilitation services to provide expanded day-care assistance by paying day-care costs to licensed day-care facilities for each child eligible to receive public financial support at the level established in accordance with section 1 and 10-812.

Section 4. **Termination.** This pilot project shall terminate June 30, 1979 or upon expenditure of funds appropriated by this act, whichever occurs first.

Approved May 13, 1977.

CHAPTER NO. 582

AN ACT TO REVISE AND CLARIFY THE MONTANA ECONOMIC LAND DEVELOPMENT ACT, REPEALING SECTIONS 84-7502 THROUGH 84-7526, R.C.M. 1947; ENACTING NEW SECTIONS IN LIEU THEREOF; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. There is a new R.C.M. section numbered 84-7502.1 that reads as follows:

84-7502.1. Policy. The legislature finds that as a state we currently face problems in development that not only cause concern for our future but also could cause cutbacks in our state's growth and proper development. Since many of these concerns are based on land use decisions, the state should develop a land use policy which will direct Montana's land use expansion through the enactment of a program establishing:

(1) local decision-making authority and control as primary factors in the determination of land use patterns;

(2) tax incentive programs for land and structures based on proper land use; providing tax benefits for proper land use and tax penalties for improper land use;

(3) a land use policy that does not impede economic progress, but which aids in the development of a program which will meet the social and economic challenges brought about through economic development;

(4) land use procedures, supplementary to zoning through a local control structure providing for continuous action, which do not conflict with Title 11, chapter 27, or Title 16, chapters 41 and 47, (or those chapters as they may be amended or recodified);

HeinOnline -- 1977 vol. II 1947 1977

(5) in general, a system of proper land use developed by a determination of the impact on an area, beneficial or otherwise, and providing tax incentives and penalties based thereon to curb improper development patterns.

Section 2. There is a new R.C.M. section numbered 84-7503.1 that reads as follows:

84-7503.1. Purpose. Montanans are faced by a nation actively searching for timber, coal, minerals, and recreational opportunities. This act is designed to establish Montana's developmental goals in a unique way: by placing our future land development within a system controlled by taxation as well as land regulation. Specific goals are:

(1) to encourage an inward pattern of urban growth which will promote greater population density on developed land within the urban areas and correspondingly provide a greater percentage of open space through control of sprawl development;

(2) to guide industrial and commercial development in Montana;

(3) to develop a program which is controlled and directed on a local level, with the actual land use direction and classification left wherever possible to the local land owner, working within existing standards, classifications, and land use practices; and

(4) in general, to provide a directional land use policy for Montana that is based on the principles of desirable growth through the development of local control rather than regulation by preemption.

Section 3. There is a new R.C.M. section numbered 84-7504.1 that reads as follows:

84-7504.1. Definitions. As used in this act, the following definitions apply:

(1) "Density" means the number of dwelling units per gross acre.

(2) "Dwelling unit" means any building or portion thereof providing complete, independent, and permanent living facilities for one family.

(3) "Single family dwelling" means a detached or semiattached dwelling unit.

(4) "Multifamily dwelling" means a structure consisting of more than one dwelling unit.

(5) "Neighborhood commercial area" means a cluster of convenience retail and personal service establishments that secure their principal trade by supplying the daily needs of the population residing within a geographical district defined by local government. The location and quantity of land within the neighborhood commercial area shall be a business island not more than 4 acres in size and with no business frontage extending more than 600 feet along any street.

(6) "Planned unit development" (PUD) means a land development project consisting of residential clusters, industrial parks, shopping centers, or office building parks, or any combination thereof which comprises

HeinOnline -- 1977 vol. II 1948 1977

a planned mixture of land uses built in a prearranged relationship to each other and having open space and community facilities in a common ownership or use.

(7) "Regional commercial area" means land adjacent to a neighborhood commercial area that accommodates business and trade facilities that are major in nature and generally require sites in excess of 4 acres and that serve the needs of a community or region. The quantity of land within a regional commercial area may not exceed 40 acres and may not contain more than one-half mile of frontage on any given street or highway.

(8) "Corporate limits", in the case of a consolidated city-county government, means the boundaries of a class 1 or class 2 city as they existed prior to consolidation.

(9) "Governing body" means the governing authority of any city or town, or any joint city-county governing authority organized pursuant to law.

(10) "State administering agency" means the department of community affairs.

(11) "Remodeling" means expansion or reconstruction of a structure, building, or other man-made object which increases its taxable value by at least 2 ½%, as determined by the department of revenue or its agents.

(12) "Construction period" means a period of time beginning with the issuance of a building permit and concluding when the construction is ready for its designed use or when the county assessor determines the structure to be substantially completed. In those cases where building permits are not issued, the beginning of the period is that time determined by the governing body as the start of construction. In no case may the construction period exceed 18 months.

(13) "Zoning" means the regulation by a governing body of the use of land or structures thereon, or both, within a designated portion of the jurisdictional area of the governing body, as authorized under Title 11, chapter 27, or that chapter as it may be amended or recodified.

(14) "Central business district" means that portion of land, within the corporate limits of a city, defined and delineated by the local governing body as forming the center of the city's financial, commercial, and professional activities.

(15) "Core area" means that portion of land, within the corporate limits of a class 1 or class 2 city, that includes the central business district and extends a minimum of one-half block beyond in all directions and a maximum of three blocks, including all streets and alleys adjacent to or within the area. The core area shall be as designated by the governing body.

(16) "Civic band" means that portion of land which extends from the core area to the corporate limits.

(17) "Value" means taxable value.

(18) "Land". For the purposes of this act, there are two main categories of land: vacant and unimproved and developed. Each of these two cate-

HeinOnline -- 1977 vol. II 1949 1977

gories can be defined in terms of the principal use (or nonuse) made of the land:

(a) developed land—land used principally for residential, industrial, or commercial purposes. The types of land use under this category are:

(i) residential land—land used for varying concentrations of dwellings designed to meet contemporary building and living standards;

(ii) industrial land—land used for manufacturing, converting, processing, assembling, dismantling, refining, or producing, a material or product; and

(iii) commercial land—land used for business purposes principally in the provision of services or the wholesale or retail selling of goods.

(19) "Vacant unimproved land" means privately owned land in areas zoned residential or commercial that have not been developed for any use defined in the preceding subsection.

Section 4. There is a new R.C.M. section numbered 84-7505.1 that reads as follows:

84-7505.1. Operation. (1) Cities shall implement the following procedure in adopting or developing provisions of this act:

(a) class 1 or 2 cities already planned and zoned shall adopt the provisions of this act which will become effective on January 1, 1978, or thereafter, if an initiative for adoption is signed by at least 15% of the registered voters of that city and a majority of those voting on the question, in a special election or in the next general election, vote for its implementation.

Section 5. There is a new R.C.M. section numbered 84-7508.1 that reads as follows:

84-7508.1. Land classified as residential — assessment provisions. The governing body shall identify those lands within its jurisdiction whose highest and best purpose is determined to be residential. Plans for residential land shall further be incorporated according to the most desirable types of residential buildings for the land categories. These categories can be but are not limited to single family (low density), single family (high density), duplex, multifamily (low density), and multifamily (high density). All new construction of residential buildings shall receive tax benefits or penalties based on their compliance with the land use categories established by the governing body. Benefits and penalties for new construction shall apply to the land and the improvements thereon and will be in accordance with the following:

(1) If vacant unimproved land is not marketable because of local conditions, the governing body shall grant zoning variances to conform with established neighborhood patterns that will increase the marketability of such land. The governing body in accordance with 84-7517.1 may extend the 5-year period as to existing residential subdivisions in which the vacant lots are being developed by new residential construction within a reasonable time under existing economic conditions.

HeinOnline -- 1977 vol. II 1950 1977

(2) Residential construction on land, served by municipal water, sewer, and street systems, that is within the civic band designated for that use shall be taxed at 90% of taxable value for 10 years. In the 11th and all subsequent years, the property shall be taxed at its full taxable value.

(3) New residential construction on land designated for other than residential use within the civic band shall be taxed at 125% of taxable value for 10 years. Beginning with the 11th year, the percentage shall be reduced annually by equal increments over a 10-year period until the taxable value is reached in the 20th year. In subsequent years, the property shall be taxed at 100% of taxable value.

Section 6. There is a new R.C.M. section numbered 84-7509.1 that reads as follows:

84-7509.1. Land classified as commercial — assessment provisions. The governing body shall identify those lands within its jurisdiction whose highest and best purpose is determined to be commercial. Owners of commercial buildings under construction shall receive tax benefits or penalties based on their compliance with the land use categories established by the governing body. Benefits and penalties for new construction shall apply to the land and the improvements thereon and will be in accordance with the following:

(1) Existing vacant unimproved land within the core area and classified as commercial shall be taxed at current taxable values for 5 years after passage of this act. If at that time the land is still vacant, 5% shall be added annually to the taxable value to a maximum of 50%. Thereafter, the land shall be taxed at 150% of taxable value until it is converted to commercial use.

(2) New commercial construction or expansion of an existing commercial enterprise within the core area on land classified as commercial may not be taxed during its construction period. In the first year after construction is completed, the property shall be taxed at 10% of its taxable value. Each year thereafter the percentage shall be increased by 10% until the taxable value is attained in the 10th year. In subsequent years, the property shall be taxed at 100% of taxable value.

(3) New commercial construction or expansion of an existing commercial enterprise within the civic band and in an area designated by the governing body as a neighborhood commercial area may not be taxed during the construction period. In the first year after construction, the property shall be taxed at 20% of its taxable value. Each year thereafter the percentage shall be increased by 20% until the taxable value is attained in the fifth year. In subsequent years, the property shall be taxed at 100% of its taxable value. New commercial construction not included in a neighborhood commercial or regional commercial area shall be taxed during the construction period. For 10 years after construction, it shall be taxed at 125% of taxable value. Beginning in the 11th year after construction, the percentage shall be decreased at a rate of 5% a year for 5 years.

(4) New commercial construction or expansion of an existing commer-

HeinOnline -- 1977 vol. II 1951 1977

cial enterprise within the civic band and in an area designed by the governing body as a regional commercial area may not be taxed during the construction period. In the first year after construction, the property shall be taxed at 33 ⅓% of its taxable value. Each year thereafter, the percentage will be increased by 33 ⅓% until the full taxable value is reached in the third year. In subsequent years, the property shall be taxed at 100% of its taxable value.

(5) New commercial construction or expansion of an existing commercial enterprise is not eligible for the tax benefits or penalties described in subsections (2) through (4) if it is developed solely or in part on land purchased or cleared through tax increment financing as provided in 11-3921.

Section 7. There is a new R.C.M. section numbered 84-7510.1 that reads as follows:

84-7510.1. Land classified as industrial — assessment provisions. (1) The governing body shall identify those lands within its jurisdiction whose highest and best purpose is determined to be industrial. Owners of existing industrial buildings and grounds under construction or undergoing expansion that increases the taxable value of the property 10% shall receive tax benefits or penalties based on their compliance with the land use categories established by the governing body. Improvements classified as "new industrial property" under Class Seven in 84-301 or under 84-301.19 may not qualify for benefits under this section. Industrial land and buildings shall be classified as Class A, B, C, or D for purposes of new construction or expansion of existing facilities. Tax benefits and penalties for new construction or expansion shall apply to the land and the improvements thereon in accordance with these classifications, determined by the governing body based on compliance with the following environmental criteria:

(2) Construction of or expansion of industrial buildings and grounds:

(a) would not place unreasonable burden on existing public services, such as highways, schools, and police and fire protection;

(b) would have sufficient water available for foreseeable needs;

(c) would meet existing air and water pollution requirements or that through reclamation the natural environment could be returned substantially to its original condition;

(d) would have adequate sewage and solid waste disposal facilities.

(3) Classes A, B, C, and D shall be determined and taxed as follows:

Class A—complies with criteria (2)(a) through (2)(d).

Class B—complies with criteria (2)(c) through (2)(d).

Class C—complies with criteria (2)(b) and (2)(d).

Class D—other than class A, B, or C.

LAND CLASSIFICATION	INDUSTRIAL CLASSIFICATION			
	CLASS A	CLASS B	CLASS C	CLASS D
Residential	+50%	+100%	+150%	+200%

HeinOnline -- 1977 vol. II 1952 1977

Commercial	- 25%	- 15%	-0-	+50%
Industrial	- 50%	- 30%	- 10%	+25%

The percentages above reflect the amount in addition (+) to the taxable value or less than (-) the taxable value. These percentages of taxable value shall be continuously applied to the land and the buildings for 10 consecutive years following their construction. The construction period may not be taxed for new industrial construction or expansion of an existing industry, except as provided in 84-7509.1(3) and (5). Beginning with the 11th year following construction, the percentage of taxable value shall be adjusted in equal increments until taxable value is attained in the 20th year. Thereafter, the property shall be taxed at 100% of taxable value.

Section 8. There is a new R.C.M. section numbered 84-7511.1 that reads as follows:

84-7511.1. Centralized multifamily (high density) residential developments. New or expanded multifamily (high density) residential developments within the central business district or an area designated by the governing body or that is within the core area or within 1,000 feet of a designated neighborhood commercial area may not be taxed during the construction period. After construction is completed, the property shall be taxed at 50% of its taxable value for a period of 10 years. Each year thereafter, the percentage of taxable value shall be increased by 10% until the taxable value is attained in the 15th year. In subsequent years, the property shall be taxed at 100% of its taxable value.

Section 9. There is a new R.C.M. section numbered 84-7512.1 that reads as follows:

84-7512.1. Planned unit development — special incentives. Planned unit developments approved by the governing body shall receive tax incentives as follows:

(1) Construction of industrial, commercial or residential facilities which conform to the PUD may not be taxed during the construction period.

(2) If the PUD is within the civic band, the property shall be taxed at 75% of its taxable value for 10 years following construction. Beginning with the 11th year following construction, the percentage of taxable value shall be adjusted in equal increments until taxable value is attained in the 20th year. Thereafter, the property shall be taxed at 100% of its taxable value.

(3) The provisions of this section are unique and apart from other provisions in this act and shall apply whenever the conditions of a PUD are met.

Section 10. There is a new R.C.M. section numbered 84-7513.1 that reads as follows:

84-7513.1. Remodeling of homes, buildings or structures — assessment provisions. (1) Remodeling of existing buildings or struc-

HeinOnline -- 1977 vol. II 1953 1977

tures shall receive tax benefits in lieu of those provided under Class Nine, 84-301, or 84-301.14, during the construction period and for the following 5 years in accordance with the following schedule. These percentages shall be applied to any increase in taxable value caused by the remodeling:

Construction period	0%
First year following construction	20%
Second year following construction	40%
Third year following construction	60%
Fourth year following construction	80%
Fifth year following construction	100%
Following years	100%

(2) If an existing home, building, or structure is not remodeled as defined in this chapter within the 10 years following passage of this act, a 5% increase shall be added to its taxable value each year that the owner fails to remodel to a maximum of 50%. After a home, building, or structure has been remodeled, the provisions of this section shall be considered to be started again with the beginning of a new 10-year period.

(3) The governing body shall waive the provisions of this section unless it can be demonstrated that lack of regular maintenance over a period of time has failed to maintain the value of the property and that depreciation has taken place to lower the value of the property more than 2 ½%.

Section 11. There is a new R.C.M. section numbered 84-7514.1 that reads as follows:

84-7514.1. Special conditions. (1) Any land subclassified under this act may be, at the owner's option, reclassified at any time to a new subclassification within the same classification if allowed under the specifications of that subclassification as set forth in this act.

(2) Any increase in taxes necessary to pay for any loss of revenue caused by this act shall be raised by an increased mill levy rather than by an increase in the valuation of specific property.

(3) Any property owned by one or more persons or companies may be so classified as to meet one or more of the standards of this act.

(4) Hospitals, churches, rest homes, nursing homes, governmental buildings, schools, colleges, or any charitable institution exempt from taxation under 84-202 may be constructed in any of the classified land areas without penalty.

(5) Any aggrieved taxpayer may appeal any decision involving tax benefits or penalties rendered by the governing body under this act to the state tax appeals board.

(6) Any provisions of this act that could affect land which was unzoned at the time of passage may be applied at the discretion of the governing body if planning in jurisdiction has commenced. Should the plan not be accepted, the provisions of this act shall be waived. However, no tax savings or penalties on any property affected will be returned or charged to the respective landowner by its governing body.

HeinOnline -- 1977 vol. II 1954 1977

Section 12. There is a new R.C.M. section numbered 84-7515.1 that reads as follows:

84-7515.1. Rules and regulations. The state administering agency shall adopt such rules and regulations pursuant to the Montana Administrative Procedure Act as are necessary for the administration of this act.

Section 13. There is a new R.C.M. section numbered 84-7516.1 that reads as follows:

84-7516.1. Exemptions from act. No provision of this act that imposes a tax penalty shall apply to the primary private residence owned and occupied by a person or persons over 62 years of age.

Section 14. There is a new R.C.M. section numbered 84-7517.1 that reads as follows:

84-7517.1. Changes in boundaries. (1) After final adoption of plan, any property owner may petition for a change in the boundary of any land use classification. Within 10 days of receipt of the petition, the governing body shall forward a copy of the petition to the affected planning organization and the appropriate state agencies. After 60 days but within 120 days or receipt of a petition, the governing body shall advertise a public hearing to be held and serve notice on the persons and agencies that have an interest in the subject of the petition, at least 10 days prior to the hearing date.

(2) No petition shall be approved unless the petitioner submits to the governing body proof that the area is needed for a use other than that for which the land is classified and unless at least two of the following criteria apply:

(a) the land is not usable or adaptable for the use for which it is classified, or the new use of the land would be more beneficial to the area;

(b) conditions and trends of development have so changed since the adoption of the existing classification that the proposed classification is reasonable and desirable and the land is capable of sustaining the use proposed; and

(c) the proposed change shall offer the community or individual affected relief from impact caused by an outside or uncontrollable influence facing the community because of new and substantial development.

(3) Should the governing body approve the change in classification, it shall modify the existing land use plan to reflect such changes and shall change any taxable valuations as may be necessary.

(4) The governing body shall act on the petition within 120 days of its receipt.

Section 15. There is a new R.C.M. section numbered 84-7518.1 that reads as follows:

84-7518.1. Nonconforming uses. The lawful use of land or buildings, existing on the date of establishment of any classification or subclassification provided for under this act, may be continued without

HeinOnline -- 1977 vol. II 1955 1977

a tax change although the use does not conform to this act until such time as it is remodeled or changed to a different use.

Section 16. There is a new R.C.M. section numbered 84-7519.1 that reads as follows:

84-7519.1. Reappraisal by department and implementation of tax benefits and penalties. (1) The taxable value of property shall always include any increases or decreases determined by the department of revenue pursuant to a reappraisal plan adopted under its authority. Any increases or decreases in value specifically provided for under the terms of this act shall be made after consideration of all such reappraisals.

(2) The department of revenue and its agents shall enter any increase or decrease in taxable value required by this act on the county assessment rolls.

Section 17. There is a new R.C.M. section numbered 84-7520.1 that reads as follows:

84-7520.1. Preparation of rules. In preparing rules to implement this act, the state administering agency shall advise all affected local government bodies of proposed rules, consider suggestions from them, and work in conjunction with them.

Section 18. **Effective date.** This act is effective January 1, 1978.

Section 19. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 20. **Repealer.** Sections 84-7502 through 84-7526, R.C.M. 1947, are repealed.

Approved May 13, 1977.

CHAPTER NO. 583

AN ACT TO EXPAND THE EXISTING WEATHERIZATION PROGRAM ADMINISTERED BY THE DEPARTMENT OF COMMUNITY AFFAIRS.

WHEREAS, Montana has nearly 30,000 low-income households that are eligible for energy conservation renovations through the federal weatherization program; and

WHEREAS, the federal government provides three-to-one matching funds through the community services administration and the social security program for local and state weatherization actions; and

WHEREAS, to date over 2,000 Montana homes have been upgraded through the weatherization program coordinated by the department of community affairs; and

HeinOnline -- 1977 vol. II 1956 1977

WHEREAS, all matching funds for Montana's weatherization projects have come from local government appropriations; and

WHEREAS, evaluations of weatherized homes demonstrate energy savings ranging from 15% to over 30% of previous energy consumption levels; and

WHEREAS, the significance of conservation potentials and the predicament of low-income people trying to meet rapidly rising heating costs warrant the state assuming a major funding role to increase the level of federal matching funds for weatherization in Montana.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $300,000 from the interest earnings generated by the coal tax trust fund established under section 84-1319(1) to the department of community affairs for the biennium ending June 30, 1979, for the purpose of expanding the state's weatherization program.

Section 2. There is a new R.C.M. section numbered 35-601 that reads as follows:

35-601. Weatherization moneys consolidated. All federal funds and grants available and becoming eligible to Montana under the provisions of the community services administration's emergency energy conservation program, the federal energy administration's low-income weatherization assistance program, and any other federal funds intended to increase the energy efficiency of dwellings occupied by persons of low and fixed incomes, except for Title XX of the Social Security Act are to be coordinated and are appropriated to the department of community affairs.

Section 3. There is a new R.C.M. section numbered 35-602 that reads as follows:

35-602. Allocation formula. (1) The department of community affairs may use not more than 5% of the total weatherization funds for administration of the weatherization program.

(2) The combined state and federal weatherization moneys shall be allocated to local weatherization programs according to the following formula:

(a) 50% of the remaining money shall be disbursed for the purpose of weatherization as follows: each of the governor's substate planning districts shall receive that fraction of money disbursed under this subsection as the number of eligible households of the local area bears to the total number of eligible households in the state;

(b) 50% of the remaining money shall be disbursed as follows: each of the Governor's substate planning districts shall receive that fraction of money disbursed under this subsection as the local effort as measured by financial assistance and in-kind services per eligible household bears to the cumulative state total of local government effort per eligible household.

HeinOnline -- 1977 vol. II 1957 1977

Section 4. There is a new R.C.M. section numbered 35-603 that reads as follows:

35-603. Annual allocation. State and federal weatherization funds shall be allocated to local weatherization programs on an annual basis.

Approved May 13, 1977.

CHAPTER NO. 584

AN ACT TO REQUIRE MANDATORY MINIMUM PRISON SENTENCES FOR CERTAIN VIOLENT AND DRUG-RELATED CRIMES AND FOR ANY CRIME COMMITTED WITH A DANGEROUS WEAPON WITHOUT THE OPTION OF DEFERRED IMPOSITION OR SUSPENSION OF EXECUTION OF THE SENTENCE; TO PROVIDE FOR LIMITED EXCEPTIONS TO MANDATORY SENTENCES AND RESTRICTIONS ON DEFERRED IMPOSITION AND SUSPENDED EXECUTION OF SENTENCE; AND TO REQUIRE A HEARING TO DETERMINE THE APPLICABILITY OF THE EXCEPTIONS; AMENDING SECTIONS 54-132, 54-133, 54-133.1, 94-5-102, 94-5-103, 94-5-202, 94-5-302, 94-5-303, 94-5-401, 94-5-503, 95-1507, AND 95-2206, R.C.M. 1947; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 54-132, R.C.M. 1947, is amended to read as follows:

"**54-132. Criminal sale of dangerous drugs.** *(1)* A person commits the offense of a criminal sale of dangerous drugs if he sells, barters, exchanges, gives away, or offers to sell, barter, exchange, or give away, manufactures, prepares, cultivates, compounds, or processes any dangerous drug as defined in this act.

(2) A person convicted of criminal sale of an opiate, as defined in 54-301(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than life, except as provided in 95-2206.18.

(3) A person convicted of criminal sale of dangerous drugs *not otherwise provided for in subsection (2)* shall be imprisoned in the state prison for a term *of* not less than 1 year *or* more than life.

(4) Practitioners and agents under their supervision acting in the course of a professional practice are exempt from this section."

Section 2. Section 54-133, R.C.M. 1947, is amended to read as follows:

"**54-133. Criminal possession of dangerous drugs.** *(1)* A person commits the offense of criminal possession of dangerous drugs if he possesses any dangerous drug as defined in this act.

(2) Any person convicted of a criminal possession of marihuana or its derivatives in an amount the aggregate weight of which does not exceed 60 grams of marihuana or 1 gram of hashish shall, for the first offense,

HeinOnline -- 1977 vol. II 1958 1977

be guilty of a misdemeanor and is punishable by a fine not to exceed $1,000 or by imprisonment in the county jail not to exceed 1 year or by both such fine and imprisonment. A person convicted of a second or subsequent offense under this subsection is punishable by a fine not to exceed $1,000 or by imprisonment in the county jail not to exceed 1 year or in the state prison not to exceed 3 years or by both such fine and imprisonment.

(3) A person convicted of criminal possession of an opiate, as defined in 54-301(18), shall be imprisoned in the state prison for a term of not less than 2 years or more than 5 years, except as provided in 95-2206.18.

(4) A person convicted of criminal possession of dangerous drugs not otherwise provided for in subsection *(2) or (3)* shall be imprisoned by imprisonment in the state prison not to exceed 5 years.

(5) A person of the age of 21 years or under convicted of a first violation under this section shall be presumed to be entitled to a deferred imposition of sentence. Jurisdiction under this section shall be exclusively in the district court."

Section 3. Section 54-133.1, R.C.M. 1947, is amended to read as follows:

"**54-133.1. Criminal possession with intent to sell.** (1) A person commits the offense of criminal possession with intent to sell if he possesses with intent to sell any dangerous drug as defined in 54-301. No person commits the offense of criminal possession with intent to sell marijuana unless he possesses one kilogram or more.

(2) A person convicted of criminal possession of an opiate, as defined in 54-301(18), with intent to sell shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years, except as provided in 95-2206.18.

(3) A person convicted of criminal possession with intent to sell *not otherwise provided for in subsection (2)* shall be imprisoned in the state prison for a term of not more than 20 years.

(4) Practitioners and agents under their supervision acting in the course of a professional practice as defined by 54-301 are exempt from this section."

Section 4. Section 94-5-102, R.C.M. 1947, is amended to read as follows:

"**94-5-102. Deliberate homicide.** (1) Except as provided in 94-5-103(1)(a), criminal homicide constitutes deliberate homicide if:

(a) it is committed purposely or knowingly; or

(b) it is committed while the offender is engaged in or is an accomplice in the commission of or an attempt to commit or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use or threat of physical force or violence against any individual.

HeinOnline -- 1977 vol. II 1959 1977

(2) A person convicted of the offense of deliberate homicide shall be punished by death as provided in 94-5-105 or by imprisonment in the state prison for *a* term *of not less than 2 years or more than* 100 years, *except as provided in 95-2206.18.*"

Section 5. Section 94-5-103, R.C.M. 1947, is amended to read as follows:

"**94-5-103. Mitigated deliberate homicide.** (1) Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate homicide is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.

(2) A person convicted of mitigated deliberate homicide shall be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 40 years, *except as provided in 95-2206.18.*"

Section 6. Section 94-5-202, R.C.M. 1947, is amended to read as follows:

"**94-5-202. Aggravated assault.** (1) A person commits the offense of aggravated assault if he purposely or knowingly causes:

(a) serious bodily injury to another;

(b) bodily injury to another with a weapon;

(c) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(d) bodily injury to a peace officer.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 20 years, *except as provided in 95-2206.18.*"

Section 7. Section 94-5-302, R.C.M. 1947, is amended to read as follows:

"**94-5-302. Kidnapping.** (1) A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.

(2) A person convicted of the offense of kidnapping shall be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 10 years, *except as provided in 95-2206.18.*"

Section 8. Section 94-5-303, R.C.M. 1947, is amended to read as follows:

"**94-5-303. Aggravated kidnapping.** (1) A person commits the offense of aggravated kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or hold-

HeinOnline -- 1977 vol. II 1960 1977

ing him in a place of isolation or by using or threatening to use physical force, with any of the following purposes:

(a) to hold for ransom or reward or as a shield or hostage;

(b) to facilitate commission of any felony or flight thereafter;

(c) to inflict bodily injury on or to terrorize the victim or another;

(d) to interfere with the performance of any governmental or political function; or

(e) to hold another in a condition of involuntary servitude.

(2) *Except as provided in 95-2206.18, a* person convicted of the offense of aggravated kidnapping shall be punished by death as provided in 94-5-304 or be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 100 years unless he has voluntarily released the victim, alive, in a safe place, and not suffering from serious bodily injury, in which event he shall be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 10 years."

Section 9. Section 94-5-401, R.C.M. 1947, is amended to read as follows:

"94-5-401. Robbery. (1) A person commits the offense of robbery if, in the course of committing a theft, he:

(a) inflicts bodily injury upon another;

(b) threatens to inflict bodily injury upon any person or purposely or knowingly puts any person in fear of immediate bodily injury; or

(c) commits or threatens immediately to commit any felony other than theft.

(2) A person convicted of the offense of robbery shall be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 40 years, *except as provided in 95-2206.18.*

(3) "In the course of committing a theft" as used in this section includes acts which occur in an attempt to commit or in the commission of theft or in flight after the attempt or commission."

Section 10. Section 94-5-503, R.C.M. 1947, is amended to read as follows:

"94-5-503. Sexual intercourse without consent. (1) A person who knowingly has sexual intercourse without consent with a person not his spouse commits the offense of sexual intercourse without consent.

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for *a* term *of not less than 2 years or more than* 20 years, *except as provided in 95-2206.18.*

(3) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he shall be imprisoned in the state prison for any term *of not less than 2 years or more than* 40 years, *except as provided in 95-2206.18.*

HeinOnline -- 1977 vol. II 1961 1977

(4) An act "in the course of committing sexual intercourse without consent" shall include an attempt to commit the offense or flight after the attempt or commission.

(5) *(a)* No evidence concerning the sexual conduct of the victim is admissible in prosecutions under this section, except:

(i) evidence of the victim's past sexual conduct with the offender;

(ii) evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution under this section.

(b) If the defendant proposes, for any purpose, to offer evidence described in *subsection 5(a)(i) or 5(a)(ii)*, the trial judge shall order a hearing out of the presence of the jury to determine whether the proposed evidence is admissible under this subsection.

(6) If the issue of failure to make a timely complaint or immediate outcry is raised, the jury shall be informed that such fact, standing alone, may not bar conviction."

Section 11. Section 95-1507, R.C.M. 1947, is amended to read as follows:

"95-1507. Sentence of imprisonment for persistent felony offender. (1) A persistent felony offender is an offender who has been previously convicted of a felony and the present offense is a second felony committed on a different occasion than the first.

(2) A persistent felony offender shall be imprisoned in the state prison for a term of not less than 5 years *or* more than 100 years providing:

(a) the previous felony conviction was for an offense committed in this state or any other jurisdiction for which a sentence to a term of imprisonment in excess of 1 year could have been imposed;

(b) less than 5 years have elapsed between the commission of the present offense and either*:*

(i) the previous felony conviction*;* or

(ii) the *offender's release* on parole or otherwise from a prison or other commitment imposed as a result of the previously felony conviction; and

(c) the offender was more than 21 years old at the time of the commission of the new offense.

(3) A previous felony conviction shall not be considered for the purpose of sentencing under this section if the offender has been pardoned on the grounds of innocence or if the conviction had been set aside in any post-conviction hearing.

(4) Except as provided in 95-2206.18, the imposition or execution of the first 5 years of a sentence imposed under subsection (2) may not be deferred or suspended."

Section 12. Section 95-2206, R.C.M. 1947, is amended to read as follows:

HeinOnline -- 1977 vol. II 1962 1977

"**95-2206. Sentence.** *(1)* Whenever any person has been found guilty of a crime or offense upon a verdict or a plea of guilty, the court may:

(a) defer imposition of sentence for a period not to exceed 1 year for any misdemeanor, for a period not to exceed 3 years for any felony. The sentencing judge may impose upon the defendant any reasonable restrictions or conditions during the period of the deferred imposition. Such reasonable restrictions or conditions may include:

(i) jail base release;

(ii) jail time not to exceed 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(vi) any combination of the above.

(b) suspend execution of sentence up to the maximum sentence allowed for the particular offense. The sentencing judge may impose on the defendant any reasonable restrictions during the period of suspended sentence. Such reasonable restrictions may include:

(i) jail base release;

(ii) jail time not to exceed 90 days;

(iii) conditions for probation;

(iv) restitution;

(v) any other reasonable conditions deemed necessary for rehabilitation or for the protection of society;

(vi) any combination of the above.

If any restrictions or conditions are violated, any elapsed time, except jail time, shall not be a credit against the sentence, unless the court shall otherwise order.

(c) impose a fine as provided by law for the offense;

(d) commit the defendant to a correctional institution with or without fine by law for the offense;

(e) impose any combination of subsections *(1)(b), (1)(c),* or *(1)(d)* above.

(2) The district court may also impose any of the following restrictions or conditions on the above sentence which it deems necessary to obtain the objective of rehabilitation and the protection of society:

(a) prohibit the defendant the right to hold public office;

(b) prohibit the defendant the right to own or carry a dangerous weapon;

HeinOnline -- 1977 vol. II 1963 1977

(c) prohibit freedom of association;

(d) prohibit freedom of movement;

(e) any other limitation reasonably related to the objectives of rehabilitation or the protection of society.

(3) The judge in the justice court shall not have the authority to restrict an individual's rights as enumerated in subsection *(2).*

(4) Except as provided in 95-2206.18, the imposition or execution of the first 2 years of a sentence of imprisonment imposed under the following sections may not be deferred or suspended: 54-132(2), 54-133(3), 54-133.1(2), 94-5-102(2), 94-5-103(2), 94-5-202(2), 94-5-302(2), 94-5-303(2), 94-5-401(2), and 94-5-503(2) and (3).

(5) Any judge who has suspended the execution of a sentence or deferred the imposition of a sentence of imprisonment under this section or his successor is authorized thereafter, in his discretion, during the period of such suspended sentence or deferred imposition of sentence to revoke such suspension or impose sentence and order such person committed or may, in his discretion, order the prisoner placed under the jurisdiction of the state board of pardons as provided by law or retain such jurisdiction with this court. Prior to the revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing."

Section 13. There is a new R.C.M. section numbered 95-2206.17 that reads as follows:

95-2206.17. Additional sentence for offenses committed with a dangerous weapon. (1) A person who has been found guilty of any offense and who, while engaged in the commission of the offense, knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 69-1931(1), or other dangerous weapon shall, in addition to the punishment provided for the commission of such offense, be sentenced to a term of imprisonment in the state prison of not less than 2 years or more than 10 years, except as provided in 95-2206.18.

(2) A person convicted of a second or subsequent offense under this section shall, in addition to the punishment provided for the commission of the present offense, be sentenced to a term of imprisonment in the state prison of not less than 4 years or more than 20 years, except as provided in 95-2206.18. For the purposes of this subsection, the following persons shall be considered to have been convicted of a previous offense under this section:

(a) a person who has previously been convicted of an offense, committed on a different occasion than the present offense, under 18 U.S.C. 924(c); and

(b) a person who has previously been convicted of an offense in this or another state, committed on a different occasion than the present offense, during the commission of which he knowingly displayed, brandished, or otherwise used a firearm, destructive device, as defined in 69-1931(1), or other dangerous weapon.

HeinOnline -- 1977 vol. II 1964 1977

(3) The imposition or execution of the minimum sentences prescribed by this section may not be deferred or suspended, except as provided in 95-2206.18.

Section 14. There is a new R.C.M. section numbered 95-2206.18 that reads as follows:

95-2206.18. Exceptions to mandatory minimum sentences and restrictions on deferred imposition and suspended execution of sentence. All mandatory minimum sentences prescribed by the laws of this state and the restrictions on deferred imposition and suspended execution of sentence prescribed by 95-1507(4), 95-2206(4), and subsection (3) of 95-2206.17 do not apply if:

(1) the defendant was less than 18 years of age at the time of the commission of the offense for which he is to be sentenced;

(2) the defendant's mental capacity, at the time of the commission of the offense for which he is to be sentenced, was significantly impaired, although not so impaired as to constitute a defense to the prosecution;

(3) the defendant, at the time of the commission of the offense for which he is to be sentenced, was acting under unusual and substantial duress, although not such duress as would constitute a defense to the prosecution;

(4) the defendant was an accomplice, the conduct constituting the offense was principally the conduct of another, and the defendant's participation was relatively minor; or

(5) where applicable, no serious bodily injury was inflicted on the victim.

Section 15. There is a new R.C.M. section numbered 95-2206.19 that reads as follows:

95-2206.19. Hearing to determine application of exceptions. (1) When the application of an exception provided for in 95-2206.18 is an issue, the court shall grant the defendant a hearing prior to the imposition of sentence to determine the applicability of the exception.

(2) The hearing shall be held before the court sitting without a jury. The defendant and the prosecution are entitled to assistance of counsel, compulsory process, and cross-examination of witnesses who appear at the hearing.

(3) If it appears by a preponderance of the information, including information submitted during the trial, during the sentencing hearing, and in so much of the presentence report as the court relies on, that none of the exceptions at issue apply, the court shall impose the appropriate mandatory sentence. The court shall state the reasons for its decision in writing and shall include an identification of the facts relied upon in making its determination. The statement shall be included in the judgment.

Section 16. **Effective date.** This act is effective on January 1, 1978.

Approved May 13, 1977.

HeinOnline -- 1977 vol. II 1965 1977

HeinOnline -- 1977 vol. II 1966 1977

APPROPRIATIONS

ENACTED BY THE

Forty-fifth Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1977

1967

HeinOnline -- 1977 vol. II 1967 1977

HeinOnline -- 1977 vol. II 1968 1977

APPROPRIATIONS

HOUSE BILL NO. 1

AN ACT APPROPRIATING MONEY FOR THE OPERATION OF THE FORTY-FIFTH LEGISLATURE AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. The following amounts are appropriated from the general fund for the operation of the forty-fifth legislature.

HOUSE OF REPRESENTATIVES:	
Salary, benefits and per diem of members	$ 722,900
Personal services — attaches	260,927
Travel of members	20,946
All other expenses	110,562
Total House of Representatives	$1,115,335
SENATE	
Salary, benefits and per diem of members	$ 361,490
Personal services - attaches	204,896
Travel of members	9,544
All other expenses	73,031
Total Senate	$ 648,961
LEGISLATIVE COUNCIL	
Printing and distribution of session laws and journals	$ 150,000
Personal services	235,880
Operating expenses	186,803
Equipment	4,650
Total Legislative Council	$ 577,333
Total Legislature	$2,341,629

Section 2. This act is effective on its passage and approval.

Approved January 7, 1977.

HOUSE BILL NO. 55

AN ACT TO REAPPROPRIATE $15,000 FROM THE COAL BOARD TO THE LEGISLATIVE COUNCIL FOR THE EXPENSES OF THE COAL TAX OVERSIGHT COMMITTEE; AND PROVIDING AN EFFECTIVE DATE.

HeinOnline -- 1977 vol. II 1969 1977

Be it enacted by the Legislature of the State of Montana:

Section 1. There is appropriated the sum of $15,000 for the biennium ending June 30, 1977, from earmarked revenue fund, local impact and education trust fund account, from moneys previously appropriated to the coal board, to the legislative council for services furnished under section 15, Chapter 502, Session Laws of 1975.

Section 2. This act is effective upon passage and approval.

Approved April 19, 1977.

HOUSE BILL NO. 64

AN ACT TO APPROPRIATE MONEYS TO THE LEGISLATIVE COUNCIL FOR THE PURCHASE OF THE RIGHTS TO ALL R.C.M. 1947 MATERIALS COPYRIGHTED BY THE ALLEN SMITH COMPANY AND FOR RECODIFICATION EXPENSES FOR THE BIENNIUM ENDING JUNE 30, 1977; PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Copyright appropriation.** There is appropriated from the general fund to the legislative council $25,000 to purchase from the Allen Smith Company of Indianapolis, Indiana, all rights of every kind to the annotations and all other materials prepared by that company for the Revised Codes of Montana, 1947. The appropriation is in accordance with an agreement between the legislative council and the Allen Smith Company signed and dated June 4, 1976, by the chairman and executive director of the council and signed, dated, and sealed May 17, 1976, by the president of the Allen Smith Company.

Section 2. **Supplemental recodification appropriation.** There is appropriated from the general fund to the legislative council for the biennium ending June 30, 1977, for the recodification program, $247,633.

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved February 25, 1977.

HOUSE BILL NO. 143

AN ACT TO APPROPRIATE MONEYS TO VARIOUS STATE AGENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 1977; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of this act, unless otherwise stated:

HeinOnline -- 1977 vol. II 1970 1977

(1) "Agency" includes all state offices, departments, divisions, boards, commissions, councils, committees, institutions, and other entities or instrumentalities of state government.

(2) "Program" means a segment that includes a combination of planned efforts to provide a service.

Section 2. **Time limit.** The appropriations contained in this act are intended to provide only necessary and ordinary expenditures for the year for which the appropriations are made. Except for amounts subject to accrual at the end of each fiscal year, the unexpended balance of any appropriation shall revert to the fund from which it was appropriated.

Section 3. **Inclusions.** The appropriations in this act are intended to provide for all expenditures for:

(1) personal services;

(2) all other ordinary and necessary expenditures for the operation of the agency and the program to which the appropriation applies;

(3) repairs and maintenance, other than major alterations of existing buildings; and

(4) the purchase or replacement of capital items other than expenditures for the construction, improvement, or furnishing of buildings or purchase of buildings or land unless specifically authorized.

Section 4. **Governor's power to reduce appropriations.** The governor may reduce any appropriation in this act by not more than 15% except appropriations for salaries of elected officials during their term of office.

Section 5. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 6. **Other appropriated funds.** Unless otherwise indicated herein, the appropriations made under the column heading, "other appropriated funds", are from funds within the earmarked revenue fund, the federal and private revenue fund, and the revolving fund that accrue under provisions of law to the expending agency.

Section 7. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 8. The following moneys are appropriated for the fiscal year ending June 30, 1977:

	Fiscal 1977 General Fund	Fiscal 1977 Other Appropriated Funds
ENVIRONMENTAL QUALITY COUNCIL	10,507	

HeinOnline -- 1977 vol. II 1971 1977

JUDICIAL BRANCH		
Supreme Court Operations	44,401	
Law Library	25,916	
Total Judicial Branch	70,317	
GOVERNOR'S OFFICE		
Office of Budget and Program Planning	7,734	
SECRETARY OF STATE	40,809	
DEPARTMENT OF JUSTICE		
Workers' Compensation Prosecution	346,942	
Workers' Compensation Defense Costs	116,700	
Total Department of Justice	463,642	

All unexpended funds as of June 30, 1977 are hereby reappropriated for the 1979 biennium. A report shall be made quarterly to the legislative audit committee on the progress and expenditures of the workers' compensation prosecution. The budget director may request, and the attorney general shall furnish, any information necessary to insure proper accountability of all expenditures by the attorney general of moneys appropriated above.

COUNTY ATTORNEYS	130,680	
DEPARTMENT OF REVENUE	800,000	
DEPARTMENT OF ADMINISTRATION		
Transportation of Prisoners	30,000	
State Treasurer	6,000	
Merit System Bureau		9,000
Workers' Compensation Judge		57,828
Statewide Budget and Accounting System	300,000	
Total Department of Administration	336,000	66,828

The appropriation made for the workers' compensation judge from other appropriated funds is from funds generated under provisions of 92-116.1, Workers' Compensation Act.

The appropriation for the statewide budget and accounting system shall be used to update and improve the statewide accounting system and may be spent only upon approval by the budget director of each expenditure item. Moneys not spent by June 30, 1977, are reappropriated for the biennium ending June 30, 1979.

DEPARTMENT OF COMMUNITY AFFAIRS		
Old West Regional Commission Program		40,188
Indian Affairs Coordination Program		3,000
Special Project Program	46,017	
Research and Information Program	17,500	

HeinOnline -- 1977 vol. II 1972 1977

Aeronautics Program	103,650	11,250
Total Department of Community Affairs	167,167	54,438
DEPARTMENT OF LABOR AND INDUSTRY		
Workers' Compensation Division	7,030	
DEPARTMENT OF FISH AND GAME		
Grizzly Bear Study		49,022
Predator Control		40,000
Poplar River Project		11,700
Remodel Basement and Landscaping		35,000
Total Department of Fish and Game		135,722
DEPARTMENT OF LIVESTOCK		
Veterinarian Upgrades		45,182
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Liability Insurance	55,600	
Oil and Gas Commission		29,550
Forestry Program		137,678
DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING		
Board of Chiropractors		860
Board of Dentists		7,060
Board of Nursing		23,164
Board of Pharmacists		8,132
Board of Professional Engineers and Surveyors		1,826
Board of Psychologists		312
Board of Warm Air Heating, Ventilating and Air Conditioning		4,983
Board of Nursing home Administrators		4,000
Board of Sanitarians		1,000
Board of Plumbers		31,847
Total Department of Professional and Occupational Licensing		83,184
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES		
Economic Assistance Program	300,000	
Social Services Program		19,756
Eligibility Determination Program		2,330
Developmental Disabilities Program		65,067
Total Department of SRS	300,000	87,153
DEPARTMENT OF INSTITUTIONS CENTRAL OFFICE		
Drug Services		38,365

HeinOnline -- 1977 vol. II 1973 1977

Lighthouse Drug Program	20,000	
Alcohol Services Program	67,543	
Total Central Office	87,543	38,365
BOULDER RIVER SCHOOL AND HOSPITAL	360,742	
CHILDREN'S CENTER	13,729	
MONTANA STATE PRISON	541,000	850,000
WARM SPRINGS STATE HOSPITAL		
Adolescent Care Center		100,000
HISTORICAL SOCIETY	14,144	
STATE LIBRARY COMMISSION		187,200

The funds appppropriated above constitute the entire amount to be passed through as grants to local libraries in fiscal 1977. Notwithstanding any other provision of law, operational expenditures of the state library exclusive of grants to local libraries shall not exceed $525,756 in fiscal 1977 of which the general fund expenditure shall not exceed $317,000.

MONTANA STATE UNIVERSITY	446,000
UNIVERSITY OF MONTANA	444,500
EASTERN MONTANA COLLEGE	135,500
NORTHERN MONTANA COLLEGE	60,800
WESTERN MONTANA COLLEGE	37,000
MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY	53,000
COMMISSIONER OF HIGHER EDUCATION	32,500
AGRICULTURAL EXPERIMENT STATION	122,500
COOPERATIVE EXTENSION SERVICE	51,000
BUREAU OF MINES	17,200
REGENTS' DISCRETIONARY	49,051
AUDIT REVOLVING ACCOUNT	8,412
STUDENT ASSISTANCE	2,008

The funds appropriated above to units of the university system are from the current fund unrestricted operating account to authorize expenditures of funds carried over from the biennium ending June 30, 1975, into the biennium ending June 30, 1977. These appropriations do not include revenues generated under provisions of 84-3804.

MONTANA STATE UNIVERSITY	1,655,438
UNIVERSITY OF MONTANA	422,200
EASTERN MONTANA COLLEGE	73,468
NORTHERN MONTANA COLLEGE	65,475
MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY	223,230
Total Indirect Costs	2,439,811

The funds appropriated above of $2,439,811 are federal funds received as a reimbursement for the cost of administering federal funds in the biennium ending June 30, 1977, and may be expended during the biennium ending June 30, 1977.

HeinOnline -- 1977 vol. II 1974 1977

MONTANA STATE UNIVERSITY	266,222	184,397

The above appropriation to Montana state university is to satisfy the court judgment concerning employee pay compensation.

COMMISSIONER OF HIGHER EDUCATION		
(1) Accounting System Improvements	400,000	
(2) Data Processing Capabilities	270,875	
Total Commissioner of Higher Education	670,875	

The appropriation in item (1) shall be used to fully integrate university accounting with the statewide budget and accounting system and may be spent only upon approval of the budget director of each expenditure item. It is the intent of the legislature that a uniform accounting manual be developed and that accounting procedures be made uniform among the university units.

The appropriation in item (2) shall be used to deveelop additional data processing capabilities at western Montana college and at northern Montana college and may be spent only upon approval by the budget director.

Moneys not spent from items (1) and (2) by June 30, 1977, are reappropriated for the biennium ending June 30, 1979.

GRAND TOTAL	4,343,741	5,898,979

Approved April 18, 1977.

HOUSE BILL NO. 144

AN ACT TO APPROPRIATE MONEY FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1979; PROVIDING FOR OTHER MATTERS RELATING TO THE APPROPRIATIONS; AND PROVIDING AN EFFECTIVE DATE FOR HOUSE BILL 143; AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Definitions.** For the purposes of this act, unless otherwise stated the following definitions apply:

(1) "Agency" includes each state office, department, division, board, commission, council, committee, institution, unit of the university system, or other entity or instrumentality of the executive branch, office of the legislative branch, or office of the judicial branch of state government.

(2) "Capital project" means acquisition of land or improvements, planning, capital construction, renovation, furnishing, or major repair projects authorized in this act.

(3) "Approved budget amendment" means approval by the budget

HeinOnline -- 1977 vol. II 1975 1977

director of a request submitted through the construction and maintenance division of the department of administration to transfer excess funds appropriated to a capital project within an agency to increase the appropriations of another capital project within that agency or to obtain financing to expand a project from funds which were not available for consideration by the legislature but which have become available.

(4) "BPICA" means account number 06142 in the bond proceeds and insurance clearance fund; "FPRA" means federal and private revenue account; and "ERA" means earmarked revenue account.

Section 2. **Expansion required to be authorized.** No existing capital project may be expanded beyond the scope of the project as approved by the 45th legislature unless the capital project expansion is authorized by an approved budget amendment or certificate of need assessment is applied to any medical or long term care facility.

Section 3. **Additional funding.** If a capital project is jointly financed by an appropriation or appropriations from state sources as well as by appropriations from other sources, the funds provided by appropriation from state sources shall be decreased by the amount that the funds received from other sources exceed the amount appropriated by the legislature in the 1977 biennial budget if the decrease does not jeopardize the receipt of the funds to be received from other sources.

Section 4. **Federal funds for administration.** All federal funds received as a reimbursement for the cost of administering the federal funds when the cost was financed from the general fund shall revert to the general fund.

Section 5. **Reappropriation.** Notwithstanding any other provision of law, the remaining balances on capital projects previously appropriated are hereby reappropriated until June 30, 1979, for the purposes for which originally appropriated.

Section 6. **Severability.** If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 7. **General fund appropriation.** There is appropriated from the general fund to account number 06142 in the bond proceeds and insurance clearance fund $6,140,000 to be used with other available funds to support the projects provided below.

Section 8. **Construction and maintenance appropriation.** The following money is appropriated from indicated accounts to the director, department of administration:

	BPICA	Other Appropriated Funds
DEPARTMENT OF INSTITUTIONS		
Reroof Administration Building — Pine Hills		$ 42,000

HeinOnline -- 1977 vol. II 1976 1977

New Boys' Lodge — Pine Hills	775,000	
Two New Housing Units — Prison	3,800,000	
Visual Fire Protection, Lewistown	4,800	
Elevate Sewer Pumps — Mountain View	17,850	
Raze Buildings — Warm Springs	235,000	
Grounds Improvements — Warm Springs, Galen, Boulder	150,000	
Replace Water Lines — Warm Springs	43,330	
New Roof and Water Improvement — Veterans' Home	76,500	
Fire Safety — Galen	150,000	
Boulder Sewer Project Supplement	20,000	
Rebuild Band Room, Prison Prison Fire Loss, BPICA		$ 176,909

The rebuilding of the band room shall be paid from insurance proceeds.

Glendive Nursing Home — Furniture	54,000	
UNIVERSITIES		
University System Maintenance	1,486,000	
Install Sewer Line — Montana College of Mineral Science and Technology	75,000	
Construct Physical Plant — Eastern Montana College	510,000	
Science Building — University of Montana	4,000,000	
Auto Diesel Lab — Northern Montana College	279,935	
University System Planning Funds — Current Unrestricted		190,000
Oil and Gas Commission Building — Eastern Montana College	73,200	

The following two projects are authorized in order to solicit non-state funding and to begin construction contingent upon receipt of such funding.

Library Completion, University of Montana, Long-Range Construction Grant FPRA	2,600,000
Law School Library Expansion Long-Range Construction Grant FPRA	1,300,000

DEPARTMENT OF MILITARY AFFAIRS		
Rebuild Roofs on Armories and Shops	69,500	

HeinOnline -- 1977 vol. II 1977 1977

National Guard FPRA		28,500
Water and Sewer Improvements —		
Sidney Armory	4,290	
New Armory, Culbertson	139,000	
National Guard FPRA		367,000
Rebuild Roof — Helena Armory	45,000	
Army Aviation Support Facility		
Addition — Helena	33,573	
National Guard FPRA		589,000
Improvements to Armory Vaults	3,750	
National Guard FPRA		11,250
Install Intrusion Detection		
System to Protect Armories	5,000	
National Guard FPRA		19,000
Improve Electrical System —		
Helena Armory	3,000	
OSHA Improvements to Armories	1,225	
National Guard FPRA		4,500
Construct Flammable		
Storage Buildings	6,300	
Renovate Drill Floor —		
Bozeman Armory	8,000	
Water System — Billings Armory	37,000	
Fire Escapes — Helena and		
Bozeman Armories	18,000	
DEPARTMENT OF ADMINISTRATION		
Mitchell Building Completion		
and Fire Escapes	750,000	
Data Processing Revolving Account		100,000
Plan Renovation and		
Addition to Cogswell	120,000	
Capitol Complex Land Acquisition		
and Grounds Improvements	100,000	
Capitol Complex FPRA		50,000
State Records Center	75,000	
Energy Conservation	200,000	
Waterproof Exterior, State		
Capitol	35,000	
State Capitol, Remodel		
Second Floor	85,000	
Architecture and Engineering		
Revolving Account	206,352	
Remodel Highway Building	100,000	
Russell and Paxson Mural		
Preservation, Capitol		
Capitol Building FPRA		15,000
DEPARTMENT OF HIGHWAYS		
Miscellaneous Repairs and Safety		
Improvements — Highway ERA		150,000
Construct Highway Maintenance		
Facilities — Highway ERA		317,500

HeinOnline -- 1977 vol. II 1978 1977

The maintenance facilities appropriation is contingent upon passage of House Bill 769.

SUPERINTENDENT OF PUBLIC INSTRUCTION		
Construct Vo-Tech Center —		
Billings	1,062,500	
Long-Range Construction		
Grant FPRA		750,000

This appropriation is contingent upon local matching funds becoming available within the 1979 biennium.

DEPARTMENT OF COMMUNITY AFFAIRS		
Terminal Addition — West Yellowstone Addition		
Aeronautics Commission ERA		178,500

The appropriation of ERA may be spent only after all approved loans for the airport development aid projects have been fully funded.

Aeronautics Commission FPRA		178,500
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION		
Construct Office and Warehouse,		
Oil and Gas Commission, ERA		350,000
DEPARTMENT OF JUSTICE		
Renovate Registrar's Office —		
Deer Lodge	148,000	
DEPARTMENT OF FISH AND GAME		
Pictograph Caves State Monument	10,000	
State Parks FPRA		10,000
Bannack State Monument	40,000	
State Parks FPRA		40,000
Cooney Reservoir Recreation		
Area	100,000	
State Parks FPRA		100,000
Sluice Boxes State Monument	14,000	
State Parks FPRA		14,000
Natural Bridge State Monument	65,000	
State Parks FPRA		65,000
Chinamen's Gulch Recreation Area	55,000	
State Parks FPRA		55,000
Beartooth Recreation Area	43,000	
State Parks FPRA		43,000
Browne's Lake Road Construction —		
Fish and Game ERA		50,000
Giant Springs State Park — State		
Parks FPRA		140,000
Tongue River Reservoir Recreation Area —		
State Parks FPRA		200,000
Develop Nelson Creek Recreation Area —		
State Parks FPRA		100,000
Placid Lake Recreation Area —		
State Parks FPRA		220,000

HeinOnline -- 1977 vol. II 1979 1977

Regional Fish and Game Headquarters	
Maintenance — Fish and Game ERA	50,000
Warm Springs Machine Shed Supplement —	
Fish and Game ERA	2,638
Fish and Game FPRA	3,938
Rock Creek Recreation Area — Fish	
and Game ERA	3,750
Fish and Game FPRA	3,750
Site Improvement — Helena Office —	
Fish and Game ERA	105,250
Dewey's Bay Development — State	
Parks FPRA	200,000
Acquire and Develop Ponderosa State	
Monument — State Parks FPRA	190,000
Salmon Lake State Park — State	
Parks FPRA	200,000
Fishing Access	
Fish and Game ERA	110,000
Fish and Game Recreation FPRA	110,000

Section 9. **Land acquisition appropriation.** The following money is appropriated from the indicated accounts for the purposes of land acquisition to the director, department of fish and game:

Fishing Access Acquisition — Fish	
and Game ERA	790,000
Fish and Game Recreation FPRA	790,000
Coal Tax Park Acquisition — Coal Tax —	
Acquisition of Sites Areas ERA	1,200,000
State Parks FPRA	1,200,000
Game Range Habitat Acquisition — Fish	
and Game ERA	600,000
Fish and Game FPRA	600,000

The director of the department of fish and game may not conclude the purchase of any fishing access, game range, or park land from the above funds until the individual purchases have been reviewed by the legislative finance committee.

Section 10. **Intent concerning laundry projects.** It is the intent of the 45th legislature that all laundry capital projects at Boulder River School and Hospital funded by the 44th legislature commence immediately.

Section 11. **Effective date of House Bill 143.** The effective date of House Bill 143, Laws of 1977, is April 18, 1977.

Section 12. **Revenue sharing appropriation.** There is appropriated from the FPRA revenue sharing capital construction account no. 04601 to account no. 06142 in the bond proceeds and insurance clearance fund $523,123.

Section 13. **Effective date.** Sections 1 through section 11 of this act are effective upon passage and approval.

HeinOnline -- 1977 vol. II 1980 1977

Section 14. **Reversion.** In the amount the appropriations from section 13 are less than the amount transferred from the education trust fund account in House Bill 823 a reversion shall be made to the education trust fund account.

Approved May 13, 1977.

HOUSE BILL NO. 145

AN ACT APPROPRIATING MONEYS TO VARIOUS STATE AGENCIES FOR THE BIENNIUM ENDING JUNE 30, 1979.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Title.** This act may be cited as the "General Appropriations Act of 1977".

Section 2. **Definitions.** For the purposes of this act, unless otherwise stated:

(1) "Agency" means each state office, department, division, board, commission, council, committee, institution, university unit, or other entity or instrumentality of the executive branch, office of the judicial branch, or office of the legislative branch of state government.

(2) "Approving authority" means the governor, or his designated representative, for executive branch agencies; the chief justice of the supreme court for judicial branch agencies; appropriate legislative committees for legislative branch agencies, or the board of regents for the university system.

(3) "University system unit" means the board of regents, office of the commissioner of higher education, the university of Montana at Missoula, Montana state university at Bozeman, Montana college of mineral science and technology at Butte, eastern Montana college at Billings, northern Montana college at Havre, western Montana college at Dillon, the agricultural station with central offices at Bozeman, the cooperative extension service with central offices at Bozeman, or the bureau of mines and geology with central offices at Butte.

Section 3. **Budget amendments.** An agency may request and the approving authority may approve a budget amendment to obtain financing for a new or expanded program from funds which were not available for consideration by the legislature but which have become available from a source other than the state's general fund and other than receipts to the state from the United States government made available under the provision of P.L. 94-488, the federal Revenue Sharing Extension Act or any extension or modification of that act. Each budget amendment shall be submitted to the budget director and the office of legislative fiscal analyst.

Section 4. **Amendment procedures.** In approving a budget amendment, the approving authority shall:

HeinOnline -- 1977 vol. II 1981 1977

(1) certify specific additional services to be provided as a result of a higher expenditure level;

(2) certify that no other alternative is available to provide the additional services;

(3) certify that the additional proposed services have not been considered and rejected by the legislature;

(4) certify that no commitment, implied or otherwise, is made for increased future general fund support;

(5) specify criteria for evaluating the effectiveness of the additional services provided;

(6) include in the next executive budget request a section listing each budget amendment approved since the adjournment of the previous regular session relating these amendments to any expanded or new programs requested in the executive budget and evaluating each amendment according to the criteria specified in the amendment.

Section 5. **Budget requests.** Sufficient funds are appropriated in this act to enable each agency to submit its budget request to the budget director and the legislative fiscal analyst pursuant to the time schedule established in 79-1013. If any agency fails to submit its final, complete budget request by the deadlines established in 79-1013, the expenditure authority herein granted shall be reduced or rescinded by the budget director unless the agency director certifies that an emergency situation has precluded a timely budget presentation and the budget director approves an extension not to exceed 30 days.

Section 6. **Expenditure limit.** Expenditures shall not exceed appropriations except as otherwise provided in this act.

Section 7. **Other appropriated funds.** Unless otherwise indicated herein, the appropriations made under the column heading, "Other Appropriated Funds", are from funds within the earmarked revenue fund, the federal and private revenue fund, and the revolving fund that accrue under provisions of law to the expending agency.

Section 8. **Operating budgets.** Expenditures shall be made only in accordance with operating budgets approved by the approving authority. The respective appropriations are contingent upon approval of the operating budget by July 1 of each fiscal year. Each operating budget shall include expenditures for each agency program detailed at least by personal services, operating expenses, equipment, benefits and claims, transfers, and local assistance.

Section 9. **Access to records.** No funds appropriated by this act may be expended for any contract, written or oral, for services with a non-state entity, for services to be provided by the non-state entity to members of the public on behalf of the state, unless such contract contains a provision allowing access to those records of the non-state entity as may be necessary for legislative post-audit and analysis purposes in determining compliance with the terms of the contract. Each such contract shall auto-

HeinOnline -- 1977 vol. II 1982 1977

matically terminate, and each contract shall so provide, upon refusal of the non-state entity to allow access to records necessary to carry out the legislative post-audit and analysis functions set forth in Title 43, chapter 11, and Title 79, chapter 23, R.C.M. 1947.

Section 10. **Reduction of appropriation.** In the event of a shortfall in revenue the Governor may reduce any appropriation by not more than 15 percent except appropriations for:

1. payment of interest and retirement of state debt;
2. the legislative branch;
3. the judicial branch;
4. public schools; or
5. salaries of elected officials during their term of office.

Section 11. **Severability.** If any section, subsection, sentence, clause, or phrase of this act is for any reason held unconstitutional, such decision shall not affect the validity of the remaining portions of this act.

Section 12. **Reversion.** Notwithstanding other provisions of law, the unexpended balance of each appropriation shall revert to the fund from which it was appropriated at the end of each fiscal year unless the approving authority certifies that an emergency requires the expenditure of the otherwise reverted funds and explains the nature of the emergency. Goods or services received but not paid for during a fiscal year shall be accrued from that year's appropriation authority and paid from that year's appropriated funds.

Section 13. **Other funds to offset general fund.** In the event a state agency receives additional funds which were not available for consideration by the legislature, the funds provided by appropriation from the general fund shall be decreased by the amount that the funds received from other sources exceeds the amount from other sources appropriated by the 45th legislature, unless a budget amendment has been approved by the approving authority.

Section 14. **Statutory provisions.** Except as otherwise provided in this act, the expenditures of appropriations are hereby subject to the following general and specific provisions:

(1) All expenditures of funds appropriated by this act for purpose of travel, transportation, and vacation and sick leave are subject to the provisions of law expressed in Title 59, R.C.M. 1947.

(2) All expenditures of funds appropriated by this act for the purchase of property, materials, and supplies are subject to the provisions of law expressed in Title 82, chapter 19, R.C.M. 1947.

(3) All expenditures of funds appropriated by this act shall be made in accordance with the provisions of Section 82-109, R.C.M. 1947, which specifies that expenditures shall be applied against non-general fund moneys before general fund moneys.

(4) All moneys collected or received by agencies subject to this act from

HeinOnline -- 1977 vol. II 1983 1977

any source whatsoever, including federal grants for research and operations, shall be deposited in the state treasury pursuant to provisions of Title 79, R.C.M. 1947, except that the department of administration may pursuant to 79-603 permit any agency to retain in its possession moneys that would otherwise be deposited in the state treasury.

(5) All expenditures of funds appropriated by this act shall be reported and accounted for in accordance with procedures and systems established by the department of administration pursuant to 82-110.

Section 15. **Membership dues and travel.** It is the intent of the legislature that funds appropriated under the act shall not be expended for the purpose of membership costs to private organizations, nor for the purpose of obtaining memberships to professional organizations for individuals within the various departments and agencies of state government. Further, travel associated with memberships to private or professional organizations shall be reported on a timely basis to the legislative finance committee indicating the number of persons traveling, purpose of trip and cost. The budget director shall develop a state travel policy to restrict expenses for unnecessary travel.

Section 16. **Totals not appropriations.** The totals shown in this act are for informational purposes only and are not appropriations.

Section 17. **Appropriations.** The following moneys are appropriated for the respective fiscal years:

A. LEGISLATIVE, JUDICIAL, ADMINISTRATIVE

	Fiscal 1978		Fiscal 1979	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
OFFICE OF LEGISLATIVE AUDITOR	1,052,766		1,263,938	

State agencies partially or totally funded by federal money shall, based upon a percentage of completion of an audit contracted or conducted by the legislative auditor, transfer an amount to the legislative auditor as reimbursement for the costs of audit associated with the federal funds. The costs of audit and amount to be transferred shall be determined by the legislative auditor, based upon actual costs incurred and available funds. The money transferred shall be deposited by the legislative auditor into the general fund as reimbursement to the general fund for costs of audits of such federally funded programs, unless such a transfer is specifically prohibited by federal law.

Based upon a percentage of completion of each audit of the respective programs and at the request of the legislative auditor, non-general fund and non-federal fund revenue received by the following agencies shall be transferred to the legislative auditor. The amount to be transferred shall be determined by the legislative auditor and, upon transfer, deposited in the general fund as reimbursement for audit costs. Such transfers during the biennium shall not exceed:

HeinOnline -- 1977 vol. II 1984 1977

Public Employees' Retirement System	10,000
Teachers' Retirement System	8,000
Department of Administration, Investment Division (2 audits)	40,000
Department of Highways	60,000
Workers' Compensation Division	30,000
Department of Fish and Game	25,000
Department of Revenue, Liquor Division (2 audits)	40,000
Total	$213,000

OFFICE OF LEGISLATIVE FISCAL ANALYST			
231,537		272,627	
LEGISLATIVE COUNCIL			
938,414	7,500	896,720	7,500

Included within the fiscal 1978 appropriation is $7,500 for the purposes of the Western States Forestry Task Force, and $18,584 per fiscal year for dues to the Council of State Governments. These members of the Western States Forestry Task Force shall be appointed on a bi-partisan basis.

The appropriation from other funds is to fund the coal tax oversight committee.

Expenditures for legislator travel to meetings of the national conference of state legislatures shall not exceed $10,000 per fiscal year.

LEGISLATURE	
30,000	30,000

The above appropriation includes the state's contribution to the legislative retirement plan, health insurance and miscellaneous costs of the forty-fifth legislature.

ENVIRONMENTAL QUALITY COUNCIL	
142,581	156,854

CONSUMER COUNSEL		
150,762		155,717

Other appropriated funds are derived under provisions of 70-709.

JUDICIAL BRANCH		
Supreme Court Operations		
560,498	19,600	619,087
Boards and Commissions		
97,226	11,000	117,490
Law Library		
123,571	7,500	133,626
District Court Operations		
1,175,688	18,000	1,181,194
Total Judicial Branch		
$1,956,983	$56,100	$2,051,397

HeinOnline -- 1977 vol. II 1985 1977

GOVERNOR'S OFFICE

Executive Office			
601,933		612,396	
Mansion Maintenance			
50,323		50,834	
Office of Budget and Program Planning			
629,364		638,028	
Legal Jurisdiction Project			
Treaty review and research			
20,000		20,000	
Jurisdictional litigation			
110,000		110,000	

Legislative oversight by 4 members of the senate, and 4 members of the house, equally bi-partisan, to also hold a public hearing on each reservation, suggest alternative solutions, identify common bonds between Indian and non-Indian, and propose legislation for the next session.

20,000		20,000	
Total Legal Jurisdiction Project			
150,000		150,000	
Lieutenant Governor			
239,522	155,162	243,483	
Citizen's Advocate			
56,865		57,095	
Board of Visitors			
38,912		38,126	

The appropriation for the board of visitors shall not be used for hiring or contracting out-of-state consultants.

Office of Commerce and Small Business Development			
61,300	160,000	63,950	160,000
Economic Development			
67,000	200,000	67,000	200,000
Total Governor's Office			
$1,895,219	$515,162	$1,920,912	360,000

Of the appropriation to the office of commerce and small business development the personal services expense for the five staff members is limited to $106,000 in fiscal 1978 and $108,650 in fiscal 1979. Expenses for the council of economic advisors are limited to $7,500 each year of the biennium.

The purpose of the appropriation for the economic development program is for supplementing or making grants and loans authorized under Section 304 of the federal public works and economic development act of 1965, as amended (42 USC 3153). All grants or loans must be submitted to the legislative finance committee for review and no grants or loans may be made without prior review by the council of economic advisors.

SECRETARY OF STATE

372,699	378,496

HeinOnline -- 1977 vol. II 1986 1977

Administrative Code Program			
83,363		73,114	

Of the appropriation for the Administrative Code Program, the sums of $8,000 in each fiscal year are contingent upon development of a publication format for a Montana Administrative Register as contemplated in Chapter 285, Laws of 1977, with subscription rates and agency filing fees set at levels calculated to bring approximately $8,000 per year in additional revenues to the general fund. The Administrative Code Committee shall certify this format and estimation of revenues to the Legislative Finance Committee; lacking such certification, the Secretary of State shall revert $8,000 each year of the appropriation for the Administrative Code Program to the general fund.

Commissioner of Campaign Finances and Practices			
80,430		86,060	
Total Secretary of State			
$536,492		$537,670	
STATE AUDITOR			
1,012,337	75,000	1,007,434	75,000

In addition to the funds appropriated above, the local assistance distribution of funds provided for in 11-1834, 11-1919, 11-1927.2 and 11-2030, is appropriated.

Revenues generated under provisions of 82-1231 shall be deposited in the general fund.

DEPARTMENT OF JUSTICE			
4,334,143	5,516,161	4,884,565	5,389,363
County Attorneys Salaries			
450,220		450,220	
Crime Control Division			
195,885	790,038	205,751	819,179
Total Department of Justice			
$4,980,248	$6,306,199	$5,540,536	$6,208,542

Appropriation to the crime control division is made for the life of the grant to which it may be matched. All matched funds as of June 30, 1977 are hereby reappropriated for the matching period.

Included in other appropriated funds is the amount of $7,370,684 for the biennium generated under provisions of 84-1847.

Included in other appropriated funds is the amount of $60,051 for the biennium to be derived by charging the users of the law enforcement academy $2.70 per day for the mandatory courses and $5.40 per day for the optional courses at the Bozeman training center.

The county prosecution services program provided for in the above appropriation is terminated as of June 30, 1979.

DEPARTMENT OF HIGHWAYS			
General Operations			
	6,014,556		6,231,051

HeinOnline -- 1977 vol. II 1987 1977

Travel Promotion	634,431		637,031
Construction	87,049,484		82,119,088
Preconstruction	8,839,704		8,930,806
Motor Pool	628,677		655,573
Equipment	7,302,133		6,911,047
Maintenance	22,403,297		23,662,987
Total Department of Highways	$132,872,282		$129,147,583

Funds are not provided within the department's appropriation to conduct a study of tourism.

Of the above appropriation of other funds for the biennium, $752,000 is appropriated to the equipment program and $1,764,806 is appropriated to the maintenance program contingent upon passage of House Bill 769.

DEPARTMENT OF REVENUE

10,628,382	5,699,827	9,838,488	5,904,761

In addition to those amounts appropriated above, there is appropriated to the department funds necessary to maintain an adequate inventory of liquor and wine. This additional appropriation shall be separately accounted for and used only for purchasing goods for resale and accompanying freight costs.

Included in the above appropriation of other funds is $877,035 for the biennium generated under provisions of 84-1847.

DEPARTMENT OF ADMINISTRATION

3,773,126	11,219,372	4,006,277	11,840,781
Board of Housing			
35,067	42,686	0	79,008
P.E.R.S. Program			
2,000	428,805	2,000	442,534
Teachers' Retirement Board			
	238,143		239,815
Merit System Council			
	174,023		178,664
State Tax Appeals Board			
170,121		175,152	
Workers' Compensation Judge			
	152,531		154,906
Total Department of Administration			
$3,980,314	$12,255,560	$4,183,429	$12,935,708

The department of administration is authorized to establish a Self-Insurance Account in the amount of $2,500,000 to be used only for the

HeinOnline -- 1977 vol. II 1988 1977

state to self-insure any property or liability peril determined necessary by the department. The department is authorized to loan $2,500,000 from account 03766 in the sinking fund which is reserved for early retirement of bonds to establish the Self-Insurance Account. The loan shall be repaid from appropriations provided for insurance costs.

Included in the general fund appropriation is the amount of $251,185 which may be spent by the treasurer division during the 1979 biennium only in the event Senate Bill 286 becomes law.

Included in other appropriated funds is the amount of $80,361 for the biennium in spending authority for the purpose of charging non general fund agencies for a portion of the cost of developing personnel systems.

Other appropriated funds of $91,161 in fiscal year 1978 and $94,422 in fiscal year 1979 are hereby transferred from the Superintendent of Public Instruction to the Department of Administration if Senate Bill No. 448 becomes law.

No appropriation is made to the board of examiners.

Included in other appropriated funds is the amount of $564,982 to be generated during the biennium under provisions of 84-3804 to be spent for insurance costs.

In addition to the above appropriations, funds distributed for local assistance provided for in 11-4513 and 84-1840 and generated under provisions of 84-1847 are appropriated.

In addition to the above appropriation of general funds an amount not to exceed $200,000 of the funds remaining on June 30, 1977 for the Vietnam honorarium program is reappropriated for the fiscal year ending June 30, 1978 to be used as originally intended, contingent upon passage of House Bill 376.

Notwithstanding other provisions of law, the salary of the chairman of the state tax appeals board is $19,000 per annum and the salaries of the other two members of the board are $18,500 each per annum for fiscal 1978 and fiscal 1979. No appropriation is made for out-of-state travel for the state tax appeals board.

The moneys appropriated for the workers' compensation judge from other appropriated funds are derived under provisions of 92-116.1.

DEPARTMENT OF MILITARY AFFAIRS

Adjutant General			
560,274	413,865	581,465	414,784
Civil Defense Division			
103,385	342,690	107,101	307,220
Total Department of Military Affairs			
$663,659	$756,555	$688,566	$722,004
TOTAL SECTION A			
$28,048,932	$158,694,947	$28,388,571	$155,516,815

HeinOnline -- 1977 vol. II 1989 1977

B. AGENCIES I

	Fiscal 1978		Fiscal 1979	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
DEPARTMENT OF BUSINESS REGULATION	830,759	311,718	865,387	308,208
DEPARTMENT OF COMMUNITY AFFAIRS	1,405,748	8,949,634	1,412,256	10,099,469

The Department of Community Affairs is authorized to contract for the purchase of a light twin engined aircraft, total purchase price not to exceed $180,000 plus trade in of the currently owned Queen Air, on a lease-purchase plan not to exceed 6 years. The funds are to be derived from aircraft user charges. Such authorization is subject to certification by the budget director that such purchase is feasible without general fund support on the basis of life-cycle costing.

The above appropriation of "Other Appropriated Funds" contains in fiscal 1978 $217,077 and in fiscal 1979 $217,327 from revenues generated under the provisions of 84-1847 relating to other than aviation gasoline, $6,168,750 in fiscal 1978 and $7,350,000 in fiscal 1979 from the revenues generated under the provisions of 84-1314 and allocated to the coal board under provisions of 84-1319(3) for local impact pursuant to 50-1807(3), and $438,835 in fiscal 1978 and $383,835 in fiscal 1979 from the revenues generated under provisions of 84-1314 and allocated to the department of community affairs under provisions of 84-1319(6) for county land planning pursuant to 82-3710.

The appropriation to the coal board for grants may be spent only upon notification to the budget director and the legislative finance committee of any proposed grant. Such notification shall be made at least four weeks prior to approval of a grant.

A grant may be made only upon certification to the coal board by the reclamation division of the department of state lands that significant development will affect the area in which the grant is to be spent.

The appropriation of funds derived from 84-1847 includes $100,000 per year for a driver improvement program. State financial support of the program shall terminate on June 30, 1979.

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES	2,579,678	14,000,474	2,624,632	14,124,183
Water & Waste Water Operations		12,339		12,590
Total Department of Health and Environmental Sciences	$2,579,678	$14,012,813	$2,624,632	$14,136,773
DEPARTMENT OF LABOR AND INDUSTRY				
Workers' Compensation Division	1,013,074	2,917,824	1,013,095	2,947,189
Labor Standards Division	307,491	532,400	312,627	541,111

HeinOnline -- 1977 vol. II 1990 1977

Human Rights Division			
105,161	79,750	102,429	85,420
Board of Personnel Appeals			
245,903	16,000	249,501	16,000
Employment Security Division			
	11,377,886		11,701,220
Total Department of Labor and Industry			
$1,671,629	$14,923,860	$1,677,652	$15,290,940

Included in the appropriation to the workers' compensation division is $30,000 in fiscal 1978 for audits performed under the direction of the legislative auditor.

DEPARTMENT OF PUBLIC SERVICE REGULATION			
804,481	16,000	819,226	16,000
TOTAL SECTION B			
$7,292,295	$38,214,025	$7,399,153	$39,851,390

C. AGENCIES II

Fiscal 1978		Fiscal 1979	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
DEPARTMENT OF AGRICULTURE			
714,336	1,337,215	728,362	1,361,230
Administration-Personnel Technician			
11,148		11,398	
Federal Grain Lab Inspection Fees			
	35,000		35,000
Total Department of Agriculture			
$725,484	$1,372,215	$739,760	$1,396,230
DEPARTMENT OF FISH AND GAME			
Wildlife Program			
	6,238,506		6,410,940
Fish Program			
	3,981,883		4,167,206
Parks and Recreation Program			
448,648	1,441,100	457,969	1,542,416
Administration Program			
	167,458		176,021
Total Department of Fish and Game			
$448,648	$11,828,947	$457,969	$12,296,583

None of the appropriation may be spent on planning for fish and wildlife until the planning division is relocated in the Helena headquarters.

The appropriation from other funds to the parks and recreation program includes coal tax moneys in the park acquisition fund for this biennium only. The department may not propose any expenditure for operation and maintenance from this fund, other than as is authorized under Senate Bill 44, in its budget request to the next legislature.

HeinOnline -- 1977 vol. II 1991 1977

DEPARTMENT OF STATE LANDS			
1,091,995	541,875	1,099,682	491,837

The appropriation to the department of state lands contains sufficient funds to complete the study of saline seep and to publish and disseminate the findings of the study. This project shall be terminated by June 30, 1979.

The appropriation of other funds includes $15,000 per year from interest on the resource indemnity trust fund.

DEPARTMENT OF LIVESTOCK			
Centralized Services			
38,292	130,420	46,005	156,639
Animal Health Administration			
33,778	33,779	35,070	35,070
Diagnostic Laboratory			
224,786	149,857	234,898	156,599
Disease Control			
43,157	388,416	44,850	403,649
Milk and Egg			
124,250	9,352	126,920	9,553
Inspection and Control			
	1,109,305		1,155,297
Predator Control			
	219,470		221,057
Rabies and Rodent Control			
63,137		63,916	
Total Department of Livestock			
$527,400	$2,040,599	$551,659	$2,137,864
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION			
Centralized Services			
758,611	180,377	815,808	182,064
Oil and Gas Regulation			
	325,289		330,158
Resource District Supervision			
224,539	32,761	225,424	22,500
Water Resources			
1,653,576	578,337	1,660,995	558,190
Forest Resources			
1,869,609	2,988,382	1,934,194	3,003,791
Energy Planning			
195,000	1,297,376	245,000	1,152,841
Total Department of Natural Resources and Conservation			
$4,701,335	$5,402,522	$4,881,421	$5,249,544

The water resources program shall submit a detailed program report together with its budget request to the next legislature. The report shall detail specific activities and their related expenses together with an evaluation of the accomplishments of the activities.

The department shall not include any CETA positions within its current level budget request of the next legislature.

HeinOnline -- 1977 vol. II 1992 1977

Included within the appropriation for Water Resources is $25,000 per year to partially finance the high plains weather modification project at Miles City.

DEPARTMENT OF PROFESSIONAL AND OCCUPATIONAL LICENSING		
Centralized Services	98,861	116,903
Abstracters	2,569	2,684
Architects	11,706	12,091
Athletics	1,000	1,000
Barbers	19,866	20,803
Chiropractors	6,216	6,529
Cosmetologists	72,077	72,543
Dentists	15,633	17,055
Electricians	63,656	58,430
Hearing Aid Distributors	2,789	2,781
Horse Racing	81,511	84,575
Massage Therapists	2,501	2,560
Medical Examiners	67,718	76,046
Morticians	9,122	9,545
Nursing	85,452	102,311
Nursing Home Administrators	17,000	18,000
Optometrists	8,232	8,374
Osteopaths	748	782
Pharmacists	53,227	55,855
Plumbers	41,670	42,160
Prof. Engineers & Surveyors	51,063	53,711
Public Accountants	48,506	50,653
Real Estate	170,000	170,000

HeinOnline -- 1977 vol. II 1993 1977

Veterinarians	8,090			8,238
Water Well Contractors	7,490			7,623
Psychologists	3,315			3,457
Sanitarians	1,881			1,934
Private Investigators	2,021			2,127
Landscape Architects	2,922			3,008
Speech Pathologists	5,131			5,245
Warm Air Heating & Air Conditioning	7,379			7,596
Radiologic Technologists	7,111			7,227
Total Department of Professional and Occupational Licensing	$976,463			$1,031,846
DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES	29,504,544	16,114,249	33,206,354	16,298,301
Veterans' Affairs	327,122		332,752	
Total Department of Social and Rehabilitation Services	29,831,666	16,114,249	33,539,106	16,298,301

The payments for aid to families with dependent children shall not exceed, when the food stamp bonus value is included, 77.5 percent of the 1976 poverty threshold as computed by the U.S. department of commerce in fiscal 1978 or 80 percent of the 1977 threshold in fiscal 1979.

The appropriation includes $205,143 per year for utilization review provided by the Montana foundation for medical care. In the event the federal government pays these costs, the $102,571 general fund share shall revert.

The appropriation contains $100,000 per year from the general fund for medical, nursing, pharmaceutical, and technical services in the treatment of chronic renal diseases. Any unspent funds shall revert at the end of the biennium.

The appropriation contains $74,000 per year in the vocational rehabilitation program to be paid to Swan River youth forest camp. Twenty percent of this sum is state general fund moneys.

This appropriation contains funds to provide current services for 215 more developmentally disabled clients on June 30, 1979 than were receiving services from this program on July 1, 1977. It is anticipated that this 215 will include 30 children removed from state institutions. If during

HeinOnline -- 1977 vol. II 1994 1977

the biennium the department finds that the amounts appropriated are insufficient because a larger number of individuals have transferred from state institutions or because recurring program costs for services provided in June 1977 exceeded $538,000, it shall notify the legislative finance committee. This notice shall be made prior to any major reduction of services to individuals than enrolled in programs. In this notice the department shall explain the reasons for anticipated cost overruns, the projected amount of the overrun and what action the department would take to keep expenditures within the appropriated amounts.

The appropriation contains funds to hire an additional veterans' service officer. This officer shall be located at Havre, Montana.

The appropriation to the department contains funds for referral technicians throughout the state and for continuing the foster grandparent program.

The appropriation to the department is based on an estimate of $9,048,000 in fiscal 1978 and $8,700,000 in fiscal 1979 received under authorization of Title XX of the social security act excluding special training funds which are exempt from federal ceiling on these Title XX funds. In the amount additional Title XX funds are made available in excess of $17,748,000 to the state in the next biennium, general fund shall revert, unless a nonsupplanting clause prevents acceptance of such funds under these conditions, in which case the budget amendment process in section 13 of this act applies to all funds.

TOTAL SECTION C			
$37,326,528	$38,276,870	$41,269,597	$38,902,205

D. INSTITUTIONS

Fiscal 1978		Fiscal 1979	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
CENTRAL OFFICE			
5,533,985	2,648,132	6,569,633	2,449,351
Mental Health Advisory Council			
21,700		21,700	
Total Central Office			
5,555,685	2,648,132	6,591,333	2,449,351

Within the above appropriation of general funds are included the following amounts for grants to nonstate agencies only:

	Fiscal 1978	Fiscal 1979
Community Mental Health Centers	2,107,366	3,056,347
Juvenile Aftercare	275,000	275,000

The preceding general fund moneys are appropriated for contracts for services by nonstate entities, and any contracts for these services shall be considered grants for purposes of 79-2310(7), and the contractors may be audited pursuant to 79-2310(7).

HeinOnline -- 1977 vol. II 1995 1977

General funds will be allocated by the department to the community mental health centers upon proof of services. To the extent that a mental health center's unencumbered cash reserves exceed 14.3% of funds other than general funds, general funds shall be withheld by the department until the unencumbered cash reserve equals 14.3% of other funds. General funds for mental health grants shall be reverted by the department in the amount that total other funds available to all community mental health centers exceeds $7,160,278 for the biennium.

All funds for community mental health programs shall pass through the state treasury for accounting purposes, unless prohibited by law.

In the event House Bill 738 fails, the general fund appropriation to the central office is reduced $28,165 for the biennium.

Pursuant to 82A-108 the mental health advisory council is allocated to the department of institutions for administrative purposes.

BOULDER RIVER SCHOOL AND HOSPITAL				
	7,050,233	256,000	7,110,958	256,000

The agency is authorized to carry $106,000 of the fiscal 1976 general fund appropriation into fiscal 1978.

Pursuant to 79-1019, in the event the average daily population is greater than 237.5 during fiscal 1978, a budget transfer from the fiscal 1979 budget may be approved in the amount of $14,508 for each resident in excess of 237.5.

In the event the average daily population is less than 237.5 during fiscal 1978, a general fund reversion shall be made in an amount calculated as follows: subtract the actual average daily population from 237.5 and multiply by $14,508. In the event the average daily population is lower than 213.5, the budget director shall increase the per resident reversion.

In the event the average daily population is less than 212.5 during fiscal 1979, a general fund reversion shall be made in an amount calculated as follows: subtract the actual average daily population from 212.5 and multiply by $15,669. In the event the average daily population is lower than 188.5, the budget director shall increase the per resident reversion.

In the event the average daily population for the 1979 biennium is estimated to exceed 225, the forty-sixth legislature shall consider a supplemental appropriation.

CENTER FOR THE AGED				
	1,341,003		1,320,438	
EASTMONT TRAINING CENTER				
	434,983	51,000	431,103	51,000

Other funds are those authorized under Title I of the Elementary and Secondary Education Act.

GALEN STATE HOSPITAL				
	2,776,242	995,617	2,829,533	985,282

HeinOnline -- 1977 vol. II 1996 1977

MOUNTAIN VIEW SCHOOL

1,084,073	34,924	1,107,784	38,166

PINE HILLS SCHOOL

1,758,456	171,648	1,793,258	165,479

STATE PRISON

5,529,433	1,333,738	5,772,995	1,263,166

SWAN RIVER YOUTH FOREST CAMP

436,001	125,992	447,021	126,580

VETERANS' HOME

152,072	572,006	145,159	587,497

Notwithstanding section 80-1603(8), "other funds" includes $256,518 in fiscal 1978 and $272,009 in fiscal 1979 of patient reimbursements to be used for operating the home.

WARM SPRINGS STATE HOSPITAL

10,781,595	402,928	11,141,165	346,647

Pursuant to 79-1019, in the event the average daily population is greater than 500 during fiscal 1978, a budget transfer from the fiscal 1979 budget may be approved in the amount of $9,543 for each resident in excess of 500.

In the event the average daily population is less than 500 during fiscal 1978, a general fund reversion shall be made in an amount calculated as follows: subtract the actual average daily population from 500 and multiply by $9,543.

In the event the average daily population is less than 500 during fiscal 1979, a general fund reversion shall be made in an amount calculated as follows: subtract the actual average daily population from 500 and multiply by $9,700.

In the event the average daily population for the 1979 biennium is estimated to exceed 500, the forty-sixth legislature shall consider a supplemental appropriation.

BOARD OF PARDONS

74,230	73,826

Pursuant to 82A-804(4) each board member shall be compensated $25 per day for every full day of board business.

CHILDREN'S CENTER

89,443	94,442

Unexpended balance shall revert to the general fund upon sale of the institutions. Subject to the approval of the budget director, moneys designated for reversion under the provisions of this section may be reallocated to the extent necessary to other state institutions or to the department of social and rehabilitation services for the care and treatment of residents and patients of institutions who are transferred from one institution to another or from state institutions to community programs.

HeinOnline -- 1977 vol. II 1997 1977

TOTAL SECTION D			
$37,063,449	$6,591,985	$38,859,015	$6,269,168

E. OTHER EDUCATION

Fiscal 1978		Fiscal 1979	
General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
BOARD OF PUBLIC EDUCATION			
Board Costs			
18,550		18,550	
Office - Administration			
47,337		46,632	
Fire Service Training Academy			
137,162		140,421	
Total Board of Public Education			
203,049		205,603	
SUPERINTENDENT OF PUBLIC INSTRUCTION			
1,246,472	3,023,210	1,305,919	3,071,709
Regional Service Centers			
	1,661,000		1,661,000

The appropriation for regional service centers shall be used by the superintendent of public instruction to contract for services with local school districts. No employee of the state shall be compensated from the appropriation to the centers.

School Lunch			
582,865		655,705	
School Transportation			
3,268,000		3,606,000	
Traffic Education			
	654,505		690,282
Five Vocational Education Centers			
3,435,682	1,700,256	3,607,039	1,772,147
Secondary and Other Vocational Education			
494,943		247,472	
Total Superintendent of Public Instruction			
$9,027,962	$7,038,971	$9,422,135	$7,195,138

Included in other funds appropriated is $329,710 in fiscal 1978 and $347,634 in fiscal 1979 which can be used for internal transfers only.

The office of superintendent of public instruction shall include that portion of state funding of the maximum-general-fund-without-a-vote which supports vocational education programs within the aggregate expenditures for vocational education to comply with the provisions of P.L. 94-482 as amended.

HeinOnline -- 1977 vol. II 1998 1977

PUBLIC SCHOOL SUPPORT			
(1) Foundation Support			
28,820,000		26,760,000	
(2) Permissive			
6,110,000	8,100,000	11,010,000	8,100,000
Total Public School Support			
$34,930,000	$8,100,000	$37,770,000	$8,100,000

The appropriation in item (2) is made to the permissive levy account and notwithstanding 75-6922(3) shall be used to offset a permissive levy deficiency.

All revenues received under provisions of 75-6916 for state equalization aid are appropriated.

"Other appropriated funds" is revenue received by the state under provisions of P.L. 94-488, the federal revenue sharing extension act. Revenue sharing received by the state in excess of the amounts appropriated may be spent only to reduce the levies authorized under the provisions of 75-6921 and 75-6922(3).

ADVISORY COUNCIL FOR VOCATIONAL EDUCATION			
	50,000		50,000
STATE LIBRARY COMMISSION			
317,000	230,915	317,000	237,013
On-Line Reference System			
	25,000		25,000
Total Library Commission			
$317,000	$255,915	$317,000	$262,013

No additional general fund shall be allocated by the budget director to this agency for employee pay increases. Such increases shall be paid from federal funds. Federal funds received in excess of the amount appropriated and in excess of the amount needed for employee raises shall be passed through as grants to local libraries.

MONTANA HISTORICAL SOCIETY			
Administration, Library and Archives, and Museum and Gallery Programs			
387,741	45,000	389,889	45,000
Magazine and Merchandising Programs			
	130,000		130,000
Magazine and Merchandising, Cost of Goods Sold			
	300,000		300,000
Total Historical Society			
$387,741	$475,000	$389,889	$475,000

Of the other funds appropriated for the museum program, $20,000 is restricted to contracted artifact and painting conservation.

HeinOnline -- 1977 vol. II 1999 1977

Magazine and merchandising program personal services, operating expenses, excluding cost of goods sold, and capital will not exceed $130,000 a year.

MONTANA ARTS COUNCIL			
55,624	20,743	57,232	20,852
Local Community Grants			
5,000		5,000	
Jeanette Rankin Statue			
5,000			
Total Arts Council			
$65,624	$20,743	$62,232	$20,852

The general fund grant money is to be used for helping local communities match federal grant funds.

General fund appropriated for the statue is to fund house joint resolution 41, forty-third legislature. Matching funds are expected for costs over $5,000.

SCHOOL FOR DEAF AND BLIND			
1,071,361	395,500	1,112,509	407,943
TOTAL SECTION E			
$46,002,737	$16,336,129	$49,279,368	$16,510,946

F. HIGHER EDUCATION

For units of the university system other than the office of the commissioner of higher education, the appropriations made under the column heading, "Other Appropriated Funds", are from funds within current unrestricted funds unless otherwise indicated.

All funds, other than those specifically appropriated herein, may be spent and are appropriated contingent upon approval by the board of regents by July 1 of each year of a comprehensive program budget containing a detail of revenues and expenditures and anticipated fund balances of current funds, loan funds, endowment funds, and plant funds.

Programs for the university budgets include instruction, organized research, public service, academic support, institutional support and operation and maintenance of plant.

Included within other appropriated funds to the six institutions is the sum of $18,674,161 from revenues generated under the provisions of 84-3804. In the amount such revenues are less than $18,674,161, the appropriation made to millage contingency may be spent.

Unit	Student-Faculty Ratio	Average Faculty Salary Fiscal 1978	Average Faculty Salary Fiscal 1979
University of Montana	19:1	$18,762	$19,672
Montana State University	19:1	18,762	19,672
Eastern Montana College	19:1	16,898	17,729
Western Montana College	16.6:1	16,898	17,729

HeinOnline -- 1977 vol. II 2000 1977

Northern Montana College	16:1	16,898	17,729
Montana College of Mineral Science and Technology	16:1	17,737	18,603

The student-faculty ratios and average faculty salaries shown above were used by the 45th legislature in determining appropriations to the respective units. The board of regents is authorized to transfer the appropriations for personal services between the six universities and colleges in order to maintain the intended faculty salaries and student-faculty ratios.

	Fiscal 1978		Fiscal 1979	
	General Fund	Other Appropriated Funds	General Fund	Other Appropriated Funds
BOARD OF REGENTS	14,145		14,145	
COMMISSIONER OF HIGHER EDUCATION				
(1) Office Administration	511,773	40,000	534,407	40,000
(2) WAMI	827,601		1,169,196	
(3) WICHE-Student Program Assistance	1,343,600		1,275,800	
(4) WICHE-Administrative Dues	28,000		28,000	
(4) (a) Administrative Dues	11,000		11,000	
(5) NDEA	80,000		80,000	
(6) University of Minnesota Rural Dentistry	230,000		228,438	
(7) Federal Incentive Matching Money	174,000	174,000	180,000	180,000
(8) Millage Contingency	200,000			
Total Commission of Higher Education	3,405,974	$214,000	$3,506,841	$220,000

The above appropriations may be spent only for the purposes specified.

The appropriation in item (4)(a) shall be used to pay WICHE dues contingent upon the western governors policy council recommendation to pay the increased dues totaling $39,000 a year.

COMMUNITY COLLEGES		
Flathead Community College	863,536	914,331

Miles Community College			
485,250		547,673	
Dawson Community College			
506,792		530,275	
Total Community Colleges			
$1,855,578		$1,992,279	

The above appropriations provide 65 percent of the respective operating budgets that shall be approved by the board of regents pursuant to 75-8128.

UNIVERSITY OF MONTANA			
Instructional Faculty			
500,000			
Personal Services			
8,888,530	6,695,279	9,348,990	7,022,505
Operating Expenses			
1,818,479	1,371,835	1,891,218	1,426,709
Capital			
457,090	389,373	502,131	378,800
Scholarships and Fellowships			
	545,105		545,105
Total University of Montana			
$11,664,099	$9,001,592	$11,742,339	$9,373,119

The appropriation for instructional faculty is to partially offset the decrease in faculty required. In addition to the above appropriation, the university of Montana may carry unexpended general fund in an amount not to exceed $300,000 from the biennium ending June 30, 1977, into the fiscal year ending June 30, 1978, and such funds are appropriated.

MONTANA STATE UNIVERSITY			
Personal Services			
9,596,805	7,637,592	10,330,608	8,059,440
Operating Expenses			
1,774,791	1,394,479	1,846,042	1,450,462
Capital			
549,572	431,807	582,546	457,715
Scholarships and Fellowships			
	558,199		558,199
Total Montana State University			
$11,921,168	$10,022,077	$12,759,196	$10,525,816
EASTERN MONTANA COLLEGE			
Personal Services			
3,430,026	2,083,406	3,663,308	2,234,121
Operating Expenses			
583,853	389,236	610,715	407,144
Capital			
110,671	73,780	117,311	78,207
Scholarships and Fellowships			
	265,251		265,251

HeinOnline -- 1977 vol. II 2002 1977

Computer			
235,000			
Total Eastern Montana College			
$4,359,550	$2,811,673	$4,391,334	$2,984,723

General fund appropriated for the computer is for eastern Montana college to buy the university of Montana's old computer.

MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY			
Personal Services			
1,331,552	832,402	1,424,075	869,665
Operating Expenses			
264,726	169,251	288,083	176,568
Capital			
50,906	32,546	54,845	33,614
Scholarships and Fellowships			
	71,316		71,316
Computer			
60,000			
Total Montana College of Mineral Science and Technology			
$1,707,184	$1,105,515	$1,767,003	$1,151,163

The $60,000 computer appropriation is to pay off Montana college of mineral science and technology's internal loan for the computer.

WESTERN MONTANA COLLEGE			
Personal Services			
1,138,414	454,285	1,212,119	480,729
Operating Expenses			
184,815	71,873	192,236	74,720
Capital			
35,022	13,620	36,283	15,278
Scholarships and Fellowships			
	50,470		50,470
Total Western Montana College			
$1,358,251	$590,248	$1,440,638	$621,197
NORTHERN MONTANA COLLEGE			
Personal Services			
1,887,475	689,433	1,955,052	769,879
Operating Expenses			
237,952	88,010	247,471	91,530
Capital			
90,502	33,473	95,932	35,482
Scholarships and Fellowships			
	132,785		132,785
Total Northern Montana College			
$2,215,929	$943,701	$2,298,455	$1,029,676

HeinOnline -- 1977 vol. II 2003 1977

COOPERATIVE EXTENSION SERVICE			
Current Unrestricted			
1,098,596	1,247,607	1,175,190	1,309,312
Restricted			
	780,236		738,946
Total Cooperative Extension Service			
$1,098,596	$2,027,843	$1,175,190	$2,048,258
AGRICULTURAL EXPERIMENT STATION			
2,838,216	1,992,361	3,037,250	2,086,541
U.S. Range Station			
	637,413	150,000	534,374
Hanson Property			
	75,000		
Roberts Property			
	7,752		7,276
Total Agricultural Experiment Station			
$2,838,216	$2,712,526	$3,187,250	$2,628,191

The U.S. Range Station expenditures shall not exceed those appropriated and the U.S. Range Station account shall revert all funds over $100,000 ending balance on June 30, 1979 to the state general fund.

The Hanson property appropriation is to continue the provisions of House Bill 581, forty-third legislature. Any funds remaining from this amount at the end of fiscal 1978 may be carried forward to the fiscal year ending June 30, 1979.

The Roberts property appropriation is for payment of the contract for deed between Milo C. Roberts and Edith Z. Roberts for the use and benefit of the agricultural experiment station.

BUREAU OF MINES			
735,448	80,000	777,615	85,000
Groundwater Study			
140,000			
Total Bureau of Mines			
$875,448	$80,000	$777,615	$85,000

General fund appropriated for the groundwater study is to continue research mandated by H.J.R. 54 passed by the 44th legislature. Any of the $140,000 not used on the groundwater study by June 30, 1979 shall revert to the general fund. Any moneys not expended from the General Fund for such groundwater study by June 30, 1977, are hereby reappropriated to the Bureau of Mines for a study of the water table and artesian portions of an underground aquifer underlying the Burton Bench north of Chouteau.

TOTAL SECTION F			
$43,314,138	$29,509,175	$45,052,285	$30,667,143
GRAND TOTAL			
$199,048,079	$287,623,131	$210,247,989	$287,717,667

Approved May 11, 1977.

HeinOnline -- 1977 vol. II 2004 1977

HOUSE BILL NO. 160

AN ACT APPROPRIATING MONEY TO THE LEGISLATIVE COUNCIL FOR THE EXPENSES OF EDITING AND PUBLISHING THE PROCEEDINGS OF THE 1972 CONSTITUTIONAL CONVENTION, AND PROVIDING AN EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund to the legislative council $136,000 for the expenses of editing and publishing the proceedings of the 1972 constitutional convention and for the expenses of the committee created to supervise the editing and publishing of the proceedings.

Section 2. **Effective date.** This act is effective upon passage and approval.

Approved April 20, 1977.

HOUSE BILL NO. 250

AN ACT TO APPROPRIATE $1,070,000 TO THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES FOR A HEALTH EFFECTS AND MONITORING STUDY OF AMBIENT AIR POLLUTION CONCENTRATIONS IN THE BUTTE-ANACONDA, MISSOULA, BILLINGS, COLUMBIA FALLS, HARDIN, COLSTRIP—COAL DEVELOPMENT AREA AND THE EAST HELENA AREA.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriations.** The following moneys are appropriated to the department of health and environmental sciences for the biennium ending June 30, 1979, for a study of the health effects, ambient air pollution concentrations, emission inventories, and meteorological monitoring in the Missoula, Butte-Anaconda, Billings, Columbia Falls, Hardin, Colstrip—coal development area and the East Helena area, if funds are available, in an effort to determine the health impacts of total suspended particulates, sulfur dioxide, sulfates, and trace elements on the populous of these areas:

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

From the Resource Indemnity Trust Interest Account:	*FY 78*	*FY 79*
Health Study	$215,000	$215,000
Meteorological Monitoring	70,000	70,000
Ambient Monitoring	200,000	200,000

HeinOnline -- 1977 vol. II 2005 1977

Emission Inventory	50,000	50,000
TOTAL	$535,000	$535,000

Approved May 13, 1977.

HOUSE BILL NO. 282

AN ACT APPROPRIATING FUNDS FOR THE ESTABLISHMENT OF A SATELLITE AGRICULTURAL EXPERIMENT STATION TO SERVE THE GENERAL AREA OF GLACIER, TOOLE, PONDERA, AND TETON COUNTIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated the sum of $206,000 for the biennium ending June 30, 1979, from the general fund to the Montana Agricultural Experiment Station for the purpose of establishing a satellite agricultural experiment station serving Glacier, Toole, Pondera, and Teton counties and surrounding areas.

Approved April 29, 1977.

HOUSE BILL NO. 295

AN ACT TO APPROPRIATE MONEY FOR THE PURPOSE OF PUBLISHING 3 UNPUBLISHED LEGISLATIVE JOURNALS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund to the office of the secretary of state the sum of $31,000 for the purpose of preparing and publishing the 11th regular session territorial house journal, the 11th regular session territorial council journal, and the 15th regular session and extraordinary session territorial council journal.

Section 2. **Deposit of other moneys.** Any money received from sources other than this appropriation to carry out the purposes of this act shall be deposited in the general fund.

Approved April 28, 1977.

HOUSE BILL NO. 502

AN ACT TO APPROPRIATE FUNDS FOR THE PURPOSE OF MONTANA'S PARTICIPATION IN THE MEDAL OF HONOR GROVE PROGRAM AT FREEDOMS FOUNDATION, VALLEY FORGE.

WHEREAS, a fundamental element of the heritage of America's freedom is the maintenance of her security; and

HeinOnline -- 1977 vol. II 2006 1977

WHEREAS, it is the destiny of the American soldier to train in obscurity for years and to be prepared to meet crises in the defense of America; and

WHEREAS, there is established at Valley Forge a Freedoms Foundation to remind Americans of their heritage of freedom now and for ages to come; and

WHEREAS, a significant part of Freedoms Foundation at Valley Forge is the Medal of Honor Grove; and

WHEREAS, the Medal of Honor Grove is a 52-acre tract of land set aside to honor the men and women serving in the uniform of their country who have received our nation's highest award for valor in actions assuring the security of our country and its freedom; and

WHEREAS, over 32 states now participate in the Medal of Honor Grove Program to honor America's soldiers; and

WHEREAS, the cost to participate in the Medal of Honor Grove Program is $10,000, part of which is used for the construction of the State Memorial acre site and part of which is used for perpetual maintenance; and

WHEREAS, it is fitting that Montana participate in the program to honor for all ages her soldiers.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated $10,000 from the general fund for the biennium ending June 30, 1979, to the Office of the Lieutenant Governor for the purpose of Montana's participation in the Medal of Honor Grove Program. The Lieutenant Governor shall forward the appropriation to Freedoms Foundation, Valley Forge, Pennsylvania. The appropriation shall be used to establish and to maintain a Montana Memorial site in Medal of Honor Grove.

Approved May 10, 1977.

HOUSE BILL NO. 504

AN ACT TO APPROPRIATE SUPPLEMENTAL MONEYS FOR CAPITAL PROJECTS FOR THE BIENNIUM ENDING JUNE 30, 1977; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated, from the funds allocated to the Long-Range Building program established in Title 79, chapter 22, to the director, department of administration, for the biennuim ending June 30, 1979:

HeinOnline -- 1977 vol. II 2007 1977

(1) for the water line project at Mountain View School.....$ 35,000

(2) for the highway patrol district headquarters at Glendive....$ 18,000

Section 2. **Effective date.** This act is effective on its passage and approval.

Approved April 20, 1977.

HOUSE BILL NO. 554

AN ACT TO APPROPRIATE MONEYS TO THE STATE BOARD OF EXAMINERS TO SATISFY VARIOUS COURT JUDGMENTS AGAINST THE STATE AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following moneys are appropriated to the state board of examiners from the sources indicated to satisfy court judgments against the state:

(1) from revenues accruing to the department of highways under the provisions of 84-1847 and 32-2601, $1,327,270.88 or so much thereof as may be necessary to satisfy the judgment in cause number 36705, county of Lewis and Clark, in favor of Zook Brothers Construction Company;

(2) from the general fund, $220,001 or so much thereof as may be necessary to satisfy the judgment in cause number 22296, county of Gallatin, in favor of Sourdough Land and Cattle Company;

(3) from the general fund, $1,300 or so much thereof as may be necessary to satisfy the judgment in cause number 21341, county of Gallatin, in favor of Larry W. Burgess.

Section 2. **Appropriation nonjudgmental.** By appropriating the above sums, the legislature is not passing on the merits of the above three cases.

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved April 28, 1977.

HOUSE BILL NO. 693

AN ACT TO APPROPRIATE MONEY FROM THE GENERAL FUND TO THE LEGISLATIVE COUNCIL FOR THE PAYMENT OF DUES TO THE NATIONAL CONFERENCE OF STATE LEGISLATURES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated from

HeinOnline -- 1977 vol. II 2008 1977

the general fund to the legislative council for the payment of dues to the national conference of state legislatures:

Fiscal Year Ending 6/30/78	$14,560
Fiscal Year Ending 6/30/79	$16,020

Approved April 28, 1977.

HOUSE BILL NO. 708

AN ACT TO APPROPRIATE MONEY TO THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION FROM THE RENEWABLE RESOURCE DEVELOPMENT CLEARANCE FUND ACCOUNT FOR VARIOUS PROJECTS UNDER THE RENEWABLE RESOURCE DEVELOPMENT PROGRAM, AND SPECIFYING CERTAIN CONDITIONS UPON THE APPROPRIATIONS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** The following money is appropriated to the department of natural resources and conservation from the renewable resource development clearance fund account for the following projects under the renewable resource development program:

(1) (a) a grant for the Boulder River reservoir project: $250,000 for the fiscal year ending June 30, 1978, and $250,000 for the fiscal year ending June 30, 1979;

(b) this appropriation is contingent upon appropriate arrangements being made for the maintenance of the proposed recreational facilities;

(2) a grant for the west bench irrigation project: $90,000 for the fiscal year ending June 30, 1978;

(3) (a) a grant for the solid waste management project: $200,000 for the fiscal year ending June 30, 1978, and $100,000 for the fiscal year ending June 30, 1979;

(b) a loan for the solid waste management project: $2 million; this loan is authorized notwithstanding the provisions of 89-3603(4) and 89-3605(4);

(c) (i) this appropriation is contingent upon no funds so appropriated being used for state administrative procedures;

(ii) this appropriation is contingent upon the development of administrative criteria for the project program by the appropriate state agencies;

(iii) if money appropriated for a grant is spent for planning purposes and the planned project is constructed, the money used for such planning shall be repaid to the fund from which appropriated; and if the planned project is not constructed the grant money need not be repaid;

(4) (a) a grant for the Nevada Creek Dam repair project: $50,000 for the fiscal year ending June 30, 1978;

HeinOnline -- 1977 vol. II 2009 1977

(b) this appropriation is contingent upon the Nevada Creek water users' association securing other funds to complete the project.

Section 2. **Water rights study.** There is appropriated $20,000 in fiscal 1978 and $40,000 in fiscal 1979 from the renewable resource development clearance account to fund the provisions of House Joint Resolution 81.

Section 3. **Conditions of grants and loans.** Disbursement of funds under this act shall be made only after (1) the projects have been authorized by other financial sponsors, if any; (2) initial funding from other sources, if any, has been committed for construction, and; (3) an agreement between the department of natural resources and conservation and the applicant has been executed governing the administration and disposal of funds.

Section 4. **Failure of contingency provisions.** If a contingency provision provided for in section 1 fails to occur, the funds appropriated for the associated project revert to the renewable resource development clearance fund account.

Approved April 28, 1977.

HOUSE BILL NO. 826

AN ACT APPROPRIATING FUNDS FOR THE ACQUISITION, RESTORATION, AND PROTECTION OF CHARLES M. RUSSELL PAINTINGS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the interest earnings on the coal tax trust fund established under 84-1319(1) the sum of $295,000 to the Montana historical society for the purpose of acquiring and restoring the Charles M. Russell painting entitled "When the Land Belonged to God". This appropriation is made subject to the receipt of matching historical society funds in the amount of $150,000 for the same purpose. If such funds do not become available, this appropriation shall revert to the coal tax trust fund.

Approved May 10, 1977.

HOUSE BILL NO. 828

AN ACT APPROPRIATING MONEYS TO THE DEPARTMENT OF REVENUE FROM THE GENERAL FUND TO CARRY OUT THE PROVISIONS OF THE STATE FUNDED HOMESTEAD TAX RELIEF ACT.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general

HeinOnline -- 1977 vol. II 2010 1977

fund to the department of revenue $14.5 million for fiscal year 1978 and $15.1 million for fiscal year 1979 to carry out the provisions of the State Funded Homestead Tax Relief Act as passed by initiative on November 2, 1976.

Section 2. **Surplus.** For the fiscal year 1979, the $15.1 million appropriated in section 1 is the maximum amount authorized for distribution. However, this amount shall be reduced dollar for dollar by the amount the actual general fund surplus at the end of fiscal year 1978 is less than $25 million. If the surplus at the end of fiscal year 1978 is less than $15 million, no funds shall be distributed under this act for fiscal year 1979.

Section 3. **Administrative Costs.** Included within the appropriation in Section 1 are funds to administer the Homestead Tax Relief Act, not to exceed a total of $700,000.

Approved April 20, 1977.

HOUSE BILL NO. 832

AN ACT APPROPRIATING FUNDS TO THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES FOR THE PURPOSE OF ESTABLISHING A PROGRAM OF SUBSIDIES FOR THE ADOPTION OF HARD-TO-PLACE CHILDREN.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund $43,000 for the fiscal year ending June 30, 1978, and $92,950 for the fiscal year ending June 30, 1979, to the department of social and rehabilitation services for the purpose of establishing a program of subsidies for the adoption of hard-to-place children as set forth in House Bill No. 330, 45th Legislature, provided such bill is enacted into law. If such bill is not enacted into law, the amount appropriated reverts to the general fund.

Approved April 28, 1977.

HOUSE BILL NO. 835

AN ACT TO APPROPRIATE FUNDS TO THE OFFICE OF THE SUPERINTENDENT OF PUBLIC INSTRUCTION FOR THE PURPOSE OF CONDUCTING ADULT BASIC EDUCATION PROGRAMS.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund $200,000 for the biennium ending June 30, 1979, to the Office of the Superintendent of Public Instruction for the purpose of conducting adult basic education programs.

Approved April 28, 1977.

HeinOnline -- 1977 vol. II 2011 1977

HOUSE BILL NO. 836

AN ACT TO APPROPRIATE MONEY FOR THE PUBLIC ACQUISITION OF WILD HORSE ISLAND, LOCATED ON FLATHEAD LAKE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the state parks federal and private revenue account (04186) the sum of $2,000,000 to the director, department of fish and game.

Section 2. **Purpose of appropriation.** The money appropriated by this act is to be used by the department of fish and game for the purpose of purchasing Wild Horse Island on Flathead Lake should such property become available and the federal funds be received.

Section 3. **Effective date.** This act is effective on its passage and approval.

Approved April 20, 1977.

HOUSE BILL NO. 838

AN ACT TO APPROPRIATE MONEYS FOR THE OPERATION OF THE 45TH LEGISLATURE.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation.** There is appropriated from the general fund for the operation of the 45th Legislature the sum of $70,000, of which $30,000 is allocated to the Senate and $40,000 to the House of Representatives.

Section 2. **Future use.** Any sums remaining in this appropriation after adjournment of the 45th Legislature may be expended in accordance with applicable law and legislative resolution for postsession costs, organization of any special session, or organization of the 46th Legislature.

Approved April 20, 1977.

HOUSE BILL NO. 842

AN ACT TO APPROPRIATE $60,000 TO THE LEGISLATIVE COUNCIL FOR ADDITIONAL INTERIM RESEARCH STUDIES.

Be it enacted by the Legislature of the State of Montana:

Section 1. **Appropriation — interim legislative studies.** There is appropriated from the general fund, for the biennium ending June 30, 1979, the sum of $60,000 to the legislative council for the purpose of con-

HeinOnline -- 1977 vol. II 2012 1977

ducting additional interim studies authorized by the committee on priorities.

Section 2. **Revenue Oversight.** No more than $30,000 of this appropriation may be used over the biennium to fund the activities of the Legislative Revenue Oversight Committee.

Approved April 28, 1977.

HeinOnline -- 1977 vol. II 2013 1977

HeinOnline -- 1977 vol. II 2014 1977

RESOLUTIONS

ENACTED BY THE

Forty-Fifth Legislature

IN REGULAR

SESSION

STATE OF MONTANA

1977

2015

HeinOnline -- 1977 vol. II 2015 1977

HeinOnline -- 1977 vol. II 2016 1977

RESOLUTIONS

SENATE JOINT RESOLUTION NO. 1

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT JOINT RULES TO GOVERN ITS PROCEEDINGS.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the following joint rules are adopted:

CHAPTER 1

Presiding Officer - Decorum, Order and Debate

1-1. The presiding officer of the Senate is the president and the presiding officer of the House of Representatives is the speaker. The presiding officer of each house shall take the chair on every legislative day at the hour to which that house adjourned at the last sitting. After call to order, prayer by the chaplain and roll call, a report on the journal for the preceding legislative day shall be given in the presence of a quorum, and each house shall proceed with the regular order of business.

1-2. The presiding officer, or any member acting as presiding officer, of each house shall preserve order and decorum, and in case of disturbance or disorderly conduct, may order the galleries or lobbies to be cleared.

1-3. The presiding officer of each house has general control and direction of the hall, chamber, rooms, passages and corridors of the house over which he presides. Reporters on assignment in either house are subject to placement by the presiding officer.

1-4. The presiding officer of each house shall decide all questions of order, subject to an appeal by any member seconded by two other members. No member may speak more than once on an appeal without the consent of a majority of the house of which he is a member.

1-5. When a member desires to speak he shall rise and address the presiding officer and, being recognized, shall speak standing in his place unless the presiding officer grants permission to speak from some other place on the floor. When two or more members rise at the same time the presiding officer shall name the member who is to speak first.

1-6. When a member has been called to order, he shall sit down until the presiding officer determines whether he is in order or not. If the member is called to order for words spoken in debate, the language excepted to shall be taken down in writing by the chief clerk or secretary.

HeinOnline -- 1977 vol. II 2017 1977

1-7. Questions of privilege are: first, those affecting the collective rights, safety, dignity, and integrity of the proceedings of either house; and second, those affecting the rights, reputation and conduct of individual members of either house in their capacity as members. A question of privilege affecting either house collectively takes precedence over a question of privilege affecting an individual member.

1-8. The presiding officer of each house shall sign all subpoenas approved or issued by the house over which he presides. The business manager and the presiding officer will cosign all payrolls.

1-9. (1) A communication or paper shall be addressed to the presiding officer, and shall bear the name of the person submitting it. When the reading of a paper is called for and a member objects, it shall be determined by a vote of the house without debate. This subsection does not apply to bills, or to communications from the governor or the other house.

(2) A paper for or against proposed legislation may not be placed on the desks of the members or circulated within the chamber unless the person responsible has signed it and has received permission from the presiding officer to distribute it in the house concerned.

1-10. When the presiding officer is a member of the house over which he is presiding he shall vote as any other member, and may not vote a second time.

CHAPTER 2

Meetings, Quorums and Attendance

2-1. The hour of meeting of the Senate is 1:30 p.m. unless otherwise ordered by the Senate. The hour of meeting of the House of Representatives is 1:30 p.m. unless otherwise ordered by the house.

2-2. Lobbying on the floor of the Senate or House of Representatives is prohibited during the session and within one hour prior to the commencement of a session and within one-half hour after recess or adjournment.

2-3. The sessions of the legislature and of the committee of the whole, all committee meetings, and all hearings shall be open to the public (Montana Constitution, Art. V, Sec. 10(3)).

2-4. Neither house shall, without the consent of the other, adjourn or recess for more than three days, nor to any other place than that in which the two houses shall be sitting (Montana Constitution, Art. V, Sec. 10(5)).

2-5. A majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members, in such manner and under such penalties as each house may prescribe (Montana Constitution, Art. V, Sec. 10(2)).

2-6. Unless he is excused, a member of the House or Senate shall be present at every sitting of the house of which he is a member.

2-7. In the absence of a quorum, a majority of members present in either house may compel the attendance of absent members by ordering a call of the house of which they are members.

HeinOnline -- 1977 vol. II 2018 1977

2-8. If a quorum is present, five members of the Senate may order a call of the Senate, and fifteen members of the House of Representatives may order a call of the house.

2-9. On a call of either house, a member who refuses to attend may be arrested by the sergeant-at-arms or any other person, as the majority of such members present shall direct. When the attendance of an absent member is secured after a call of either house, if the house of which he is a member refuses to excuse his absence, he shall not be paid any per diem during his absence and is liable for the expenses incurred in procuring his attendance.

2-10. During a call of either house, all business of that house shall be suspended. After a call has been ordered no motion is in order except a motion to adjourn or remove the call. The call may be removed by a two-thirds vote.

2-11. If either house is in session upon a given day, whether or not the other house is in session, that day shall constitute a legislative day.

CHAPTER 3

Legislative Employees

3-1. The legislature shall prescribe the compensation of the officers and employees of each house by joint resolution. Each house shall prescribe the duties of its officers and employees and no payment shall be made from the state treasury, or be in any way authorized to any such person, except to an acting officer or employee elected or appointed in pursuance of law.

3-2. Except as provided in Joint Rule 3-3 and Joint Rule 3-4, the business manager, subject to the supervision of the Legislative Council and subject to the approval of the respective houses, shall be responsible for personnel.

3-3. The committee on legislative administration of each house shall appoint secretaries for standing or special committees on recommendation of the committee chairman, subject to the approval of the respective houses. A secretary for a standing or special committee is immediately responsible to the committee chairman, but when not occupied with the duties of a committee, shall work under the direction of the chief stenographer of each house. The director of the Legislative Services Division of the Legislative Council shall hire all engrossing and enrolling typists and proofreaders.

3-4. The presiding officer and the majority and minority floor leader of each house may each appoint a private secretary.

3-5. The secretary of the Senate and chief clerk of the House of Representatives are responsible to the presiding officers of their respective houses. Their duties are:

(a) To have custody of all records, bills, documents and other papers.

(b) To supervise the making and examination of the journal, and the handling of bills and resolutions.

HeinOnline -- 1977 vol. II 2019 1977

(c) To deliver to the appropriate officers or offices, as set forth in these rules during the session or at the close of each session, the journal, bill books and resolution books, and all copies of introduced and engrossed bills and joint resolutions.

(d) To collect from the chairman or secretaries of all standing committees, special committees, committees of the whole, and conference committees, the minutes of such committees and deliver them to the state historical society.

3-6. Journal clerks, bill clerks, typists, and other employees responsible for legislative functions, except secretaries for standing or special committees, secretaries to presiding officers, and secretaries to majority and minority floor leaders, are immediately responsible to the secretary of the Senate or the chief clerk of the House, subject to the general supervision of the presiding officer. Engrossing and enrolling clerks are immediately responsible to the director of the Legislative Services Division of the Legislative Council under the direction of the bills committee.

3-7. The duties of the engrossing and enrolling clerks are:

(a) To engross or enroll all bills delivered to them within forty-eight hours after they have been received, unless further time is granted, in writing, by the presiding officer of the house in which the bill originated.

(b) To correct clerical errors, with the consent of the secretary of the Senate or chief clerk of the House of Representatives, in any bill originating in the house by which they are employed. Clerical errors such as the following may be corrected:

(i) errors in spelling

(ii) errors in numbering sections

(iii) adding or deleting underlining or lines through matter to be stricken

(iv) material copied incorrectly from the most recent Revised Codes of Montana.

The secretary of the Senate or chief clerk of the House shall obtain written permission from the principal sponsor before such corrections are made.

When a committee is the sponsor of a bill, any member thereof so designated by the chairman may be the principal sponsor for the purpose of this section.

3-8. (1) The sergeants-at-arms are responsible to the presiding officers of their respective houses. Their duties are:

(a) To maintain order under the direction of the presiding officer.

(b) To execute commands and serve all processes.

(c) To receive, distribute and have custody of supplies.

3-9. The assistant sergeant-at-arms, doorkeepers, watchmen, janitors,

HeinOnline -- 1977 vol. II 2020 1977

pages and other employees responsible for general housekeeping functions are immediately responsible to the sergeant-at-arms, subject to the general supervision of the presiding officer.

3-10. The duties of the chaplain of each house are to open each day's session with a prayer.

3-11. A legislative aide or legislative intern is a person who has registered with the business manager and to whom the business manager has issued a distinctive identification form such as a name tag. The business manager may issue such identification only upon receiving written verification from a member that the person involved is serving him as an aide or intern. A person may not represent himself to be a legislative aide or intern unless he carries such identification. The sergeants-at-arms and doorkeepers shall enforce this rule.

Qualifications for legislative interns are specified in Sections 43-720 through 43-731, R.C.M. 1947. Legislative aides must be of legal age.

No member may designate more than one aide or intern without the approval of the Joint Rules Committee.

3-12. An employee, legislative aide or legislative intern of either house is prohibited from lobbying as defined in Section 43-802(1), R.C.M. 1947. However, such person may testify before a committee of either house on the request of the committee. Any person violating this rule shall be discharged.

3-13. Disputes or complaints involving the competency or decorum of a legislative employee shall be referred to the committee on legislative administration of the house by which the employee is employed. The committee, in its discretion, may dismiss, suspend or retain the employee. The committee on legislative administration shall periodically review the roster of employees and shall dismiss surplus employees.

3-14. A business manager, under the supervision of the Legislative Council, shall serve both the Senate and House of Representatives.

The duties of the business manager are as follows:

(1) Prior to a legislative session:

(a) order supplies for each house;

(b) requisition printing of:

(i) House and Senate stationery,

(ii) all necessary report forms,

(iii) printout sheets for House and Senate voting machines, and

(iv) name plates for desks;

(c) inventory all interoffice forms and duplicate a supply;

(d) clean all legislative committee rooms, offices, and House and Senate chambers and prepare them for the session;

HeinOnline -- 1977 vol. II 2021 1977

(e) prepare recommendation to Senate Committee on Finance and Claims and House Committee on Appropriations of proposed budget based on past sessions and anticipated expenditures;

(f) requisition rental of office equipment including duplicating machines, adding machines and calculators;

(g) requisition parking permits;

(h) collect applications for employment of legislative employees who are under the jurisdiction of the legislative administration committees in both houses;

(i) supervise installation and connections of legislative telephone services;

(j) assure that House and Senate roll call and sound systems are serviced;

(k) order name tags for each legislator;

(l) prepare packets for first legislative day including printed rules, telephone directory and pencils;

(m) assign committee space and order necessary committee signs for doors;

(n) verify guide service with Legislative Council;

(o) arrange for printing of seating charts;

(p) take responsibility and control of legislative equipment and furniture.

(2) During the session:

(a) verify hours for daily payroll and prepare payrolls for signature;

(b) prepare bimonthly financial report and distribute the report to legislative leaders in each house and to members of the Senate Committee on Finance and Claims and House Committee on Appropriations;

(c) order office supplies as required;

(d) prepare all claims for payment.

(3) Following the session:

(a) provide Legislative Council with keys to all legislative committee rooms during the interim;

(b) complete payroll forms and reports;

(c) prepare claims for bills incurred during session;

(d) take closing inventory of all furniture and equipment and keep the written inventory on file.

(4) Perform any other services for the leadership and the committees on legislative administration.

HeinOnline -- 1977 vol. II 2022 1977

3-15. Contracts for purchase or lease of equipment and supplies made by the business manager during the legislative session shall be made on the approval of the committee on legislative administration of each house, subject to the review of the presiding officer of the respective house.

CHAPTER 4

Order of Business

4-1. After prayer, roll call, and report on the journal, the order of business of the Senate and House of Representatives is as follows:

(1) Communications and petitions

(2) Reports of standing committees

(3) Reports of select committees

(4) Messages from the governor

(5) Messages from the other house

(6) Motions

(7) First reading and commitment of bills

(8) Second reading of bills (committee of the whole)

(9) Third reading of bills

(10) Unfinished business

(11) Special orders of the day

(12) Announcement of committee meetings

To revert to or pass to a new order of business requires only a majority vote. Unless otherwise specified in the motion to recess, the house involved shall revert to order of business No. 1 when reconvening after a recess.

CHAPTER 5

Motions

5-1. When a motion is made it shall be restated by the presiding officer, and, if requested by the presiding officer or a member, shall be reduced to writing and read aloud. A motion may be withdrawn by the member making it at any time before it is amended or voted upon.

5-2. When a question is under debate no motion may be made except the following privileged and subsidiary motions which have precedence in the order listed:

(1) To adjourn

(2) For a call of the house

(3) To recess

(4) Question of privilege

HeinOnline -- 1977 vol. II 2023 1977

(5) To lay on the table

(6) For the previous question

(7) To postpone to a certain day

(8) To refer or commit

(9) To amend

(10) To postpone indefinitely.

A question may be indefinitely postponed by a majority roll call vote of all members present and voting. When a bill or resolution is postponed indefinitely, it is finally rejected and may not be acted upon again during the biennium except upon a motion of reconsideration made pursuant to Rule 5-4.

5-3. No motion or proposition on a subject different from that under consideration shall be admitted under color of amendment or substitute.

5-4. Any member may, on the day the vote was taken or on the next day the house in which the action was taken is in session, move to reconsider the question. A motion to reconsider may not be withdrawn after such next legislative day without the unanimous consent of the house concerned, and thereafter any member may call it up for consideration; however, a motion to reconsider made after the fifty-fourth day of the session shall be disposed of when made. A motion to recall a bill from the other house constitutes notice to reconsider, and shall be acted on as a motion to reconsider. A motion to reconsider or to recall a bill from the other house may be made only under order of business No. 6, and under that order of business takes precedence over all motions except motions to recess or adjourn.

5-5. When a motion to reconsider is laid on the table, a two-thirds majority is required to take it from the table. When a motion to reconsider fails, the question is finally and conclusively settled.

5-6. (1) Except as provided in subsection (2) of this rule, the effect of moving the previous question, if adopted, is to close debate immediately, to prevent the moving of amendments or other subsidiary motions, and to bring to vote promptly the immediately pending main question and the adhering subsidiary motions, whether on appeal or otherwise.

(2) When the previous question is ordered on any debatable question on which there has been no debate, the question may be debated for one-half hour, one-half of such time to be given to the proponents and one-half to the opponents.

5-7. A call of the house is not in order after the previous question is ordered, unless it appears upon an actual count by the presiding officer that a quorum is not present.

5-8. The following motions are not debatable:

(1) To adjourn

(2) For a call of the house

HeinOnline -- 1977 vol. II 2024 1977

(3) To recess

(4) For parliamentary inquiry

(5) For suspension of the rules

(6) To lay on the table

(7) For the previous question

(8) To limit, extend the limits of, or to close debate

(9) To amend an undebatable motion

(10) To divide a question

(11) To pass business in committee of the whole

(12) To take from the table

(13) A decision of the presiding officer, unless appealed or unless he submits the question to the house for advice or decision

(14) All incidental motions, such as motions relating to voting or other questions of a general procedural nature.

5-9. A member may move to divide a question if it includes two or more propositions so distinct in substance that if one thing is taken away a substantive question will remain.

5-10. No more than one amendment and no more than one substitute motion may be made to a motion. This rule permits the main motion and two modifying motions.

CHAPTER 6

Bills and Resolutions

A.—Form of Bills—Definition of Resolutions—General Provisions

6-1. The only types of instruments other than bills which may be introduced in either house of the legislature are:

(1) A simple resolution is a formalized motion passed by one house only and bears the heading "House Resolution" or "Senate Resolution". It may be used to amend the rules of one house or to provide for the internal affairs of the house adopting it. It does not require three readings or a roll call vote. A member offering a simple resolution may read it in his place before introduction. When a simple resolution has been introduced, it shall be referred to a committee. Final action shall be taken on the Committee of the Whole report. The transmittal of copies of simple resolutions is the responsibility of the chief clerk or secretary of the house of origin.

A copy of every simple resolution is to be transmitted after adoption to the secretary of state by the secretary of the Senate or chief clerk of the House.

(2) A joint resolution must be adopted by both houses and is not

HeinOnline -- 1977 vol. II 2025 1977

approved by the governor. It may be used to express desire, opinion, sympathy, or request of the legislature; to amend the joint rules; to ratify or propose amendments to the United States Constitution; and to direct changes to, repeal, or direct adoption of, a rule in the Montana Administrative Code. Except as otherwise provided in these rules or the Constitution of the State of Montana, a joint resolution is treated in all respects as a bill.

A copy of every joint resolution is to be transmitted after adoption to the secretary of state by the secretary of the Senate or chief clerk of the House.

6-2. Bills shall be typewritten on paper eight and one-half by eleven inches with twenty-five numbered lines, and shall be introduced in quadruplicate. Pica type and a good black ribbon must be used. Bills shall be numbered at the foot of each page (except page one) and shall have white covers of a substantial material. In sections amending existing statutes, matter to be stricken out shall be indicated with a line through the words or part to be deleted, and new matter shall be underlined. Sections of the most recent Revised Codes of Montana repealed or amended in a bill shall be stated in the title except for general appropriation bills and bills for the codification and general revision of the laws. Introduced bills will be reproduced on white paper and distributed to legislators.

6-3. No bill, except general appropriation bills, and bills for the codification and general revision of the laws, shall contain more than one subject, which shall be clearly expressed in the title. The enacting clause of every law shall be as follows: "Be it enacted by the legislature of the state of Montana".

A bill shall be used to propose amendments to the Constitution of the State of Montana and shall not be subject to the veto of the governor (Montana Constitution, Art. VI, Sec. 10(1)).

6-4. All appropriation bills shall originate in the House of Representatives.

The general appropriation bills shall embrace nothing but appropriations for the ordinary expenses of the legislative, executive and judicial departments of the state, interest on public debt and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject (Montana Constitution, Art. V, Sec. 11 (4)). Appropriation bills for the operation of the legislature shall be introduced by the chairman of the House Committee on Appropriations.

6-5. Every statute, unless a different time is prescribed therein, takes effect on the first day of July of the year of its passage and approval. Every joint resolution, unless a different time is prescribed therein, takes effect from its passage (Sections 43-507 and 43-509, R.C.M. 1947).

B.—Introduction

6-6. Bills will be checked by the staff of the Legal Services Division of the Legislative Council prior to consideration by a committee of the legislature, for proper format, style, and legal form. A stamp shall be affixed to the bill cover and initialed indicating this review. If such stamp

HeinOnline -- 1977 vol. II 2026 1977

is not affixed at the time the bill is delivered to the appropriate committee chairman, the chairman shall cause the bill to be transmitted to the Legal Services Division for such review. Members should make every effort to present proposed bills to the Division in advance of introduction of the bill. Bills will be entered on the automated bill drafting equipment and typed to facilitate a more rapid reproduction. If a bill is not so entered prior to introduction, it will not be considered by any committee until it has been reviewed and entered. This review will be made after the eighteenth day. If the sponsor is notified of a problem with a bill and does not respond to the director of the Legal Services Division, Legislative Council, within two legislative days, the bill will be referred to the committee on rules in the house where the bill was introduced.

A bill may be introduced by endorsing it with the name of a member or committee and presenting it to the chief clerk or secretary in quadruplicate. Bills, joint resolutions, and simple resolutions shall be numbered consecutively in each session of the legislature in separate series in the order of their receipt.

Any bill proposed by a legislative committee or introduced by request of an administrative or executive agency or department shall be so indicated following the names of the sponsors, "By Request of _____ (Name of Agency or Committee)".

A bill which results from a interim study committee may be introduced in the name of the interim committee. The chairman of the interim committee, or a member designated by him, shall manage the bill.

Bills may be prefiled, numbered and preprinted prior to a legislative session. This will be the responsibility of the staff of the Legislative Council. Actual signatures may appear on the face of the prefiled bill or signatures may be obtained on a consent form from the Legislative Council. Additional sponsors may be added at the time of introduction on the first legislative day, on motion of the chief sponsor. These names will be forwarded to the Legislative Council to be included on the face of the bill following standing committee approval.

All prefiled bills will be made available to the public.

6-7. Bills may be introduced until 5 p.m. on the eighteenth legislative day, except revenue bills, Committee Bills approved by the rules committee of the house in which the committee bill originated and appropriation bills.

All bill drafting requests must be submitted to the Legislative Council staff by 5 p.m. of the fourteenth legislative day. A sponsor of a bill drafted pursuant to a timely request, but which is not delivered by the eighteenth day by the Legislative Council, shall have two legislative days after delivery to introduce the bill. No other bills except revenue and appropriation bills may be introduced after 5 p.m. on the eighteenth legislative day.

Revenue bills must be introduced by 5 p.m. on the twenty-fifth legislative day. Committee bills approved by the rules committee of the house in which the committee bill originated may be introduced by the fortieth legislative day. There is no time limit for introduction of appropriation bills.

HeinOnline -- 1977 vol. II 2027 1977

Joint Resolutions affecting rules adopted in the Montana Administrative Code may be introduced and transmitted at any time during a session.

Requests for interim studies may be made by joint resolution only and may be introduced and transmitted at any time during a session.

6-8. No bill may be introduced or received in a house after that house has finally rejected a bill during that session designed to accomplish the same purpose save upon approval by the rules committee of the house in which the bill is offered for introduction or reception.

Failure to override a veto does not constitute final rejection.

6-9. At least three-fourths of a standing committee must consent to the introduction of a committee bill.

C.—First Reading and Commitment

6-10. No motion affecting a bill is in order on its first reading except as provided in Joint Rule 6-6.

Upon introduction or reception of a bill, the chief clerk of the House or the secretary of the Senate shall publicly post upon a listing that bill by a summary of its title in the house of origin and by a summary of its title and by its history in the second house, together with a notation of the committee to which it has been assigned, and such posting shall constitute the first reading of the bill.

6-11. No bill shall be considered or become a law unless referred to a committee and returned therefrom.

6-12. Upon introduction or reception of a bill, it shall be referred to a committee by the presiding officer.

6-13. A bill may be recommitted at any time before its passage.

D.—Amendments and Substitute Bills

6-14. No law shall be revised or amended, or the provisions thereof extended by reference to its title only, but so much thereof as is revised, amended or extended shall be reenacted and published at length.

6-15. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either house as to change its original purpose (Montana Constitution, Art. V, Sec. 11(1)).

6-16. A committee may recommend that every clause in a bill be changed and that entirely new matter be substituted so long as the new matter is relevant to the title and subject of the original bill. A substitute bill shall be considered as an amendment and not as a new bill.

6-17. The proper form of reporting a substitute bill by a committee is to propose amendments to strike out all of the bill following the enacting clause and to substitute the new bill, recommending also any necessary changes in the title. If a committee report recommending a substitute for a bill originating in the other house is adopted, the substitute bill shall be printed.

HeinOnline -- 1977 vol. II 2028 1977

6-18. Amendments to a bill by the second house shall not be further amended by the house in which the bill originated, but must either be accepted or rejected. If the amendments are rejected, a conference committee may be requested by the house in which the bill originated.

6-19. If a majority of a house adopts a recommendation for the passage of a bill originating in that house after it has been returned from a committee with amendments, not less than six hundred copies of the bill shall be printed on canary paper with all amendments incorporated into the printed copies. If the bill has been returned from a committee without amendments, only the first sheet shall be printed on canary paper, and the remainder of the text incorporated by reference to the preceding printed version of the entire bill. Bills referred to the bills committee of the house of origin for printing must be reported within three days unless further time is granted by that house.

E.—Engrossing and Enrolling

6-20. When a bill has been reported favorably by committee of the whole of the house of origin and the report has been adopted, the bill shall be engrossed under the direction of the bills committee, and when reported correctly engrossed by the committee shall be placed on the calendar for third reading on the succeeding legislative day. Committee of the whole amendments shall be included in the engrossed bill. Copies of the engrossed bill to be distributed to legislators will be reproduced on blue paper. If a bill is unamended by the committee of the whole, contains no clerical errors, and is neatly written, it may be engrossed without retyping, and only the first sheet shall be printed on blue paper with the remainder of the text incorporated by reference to the preceding printed version of the entire bill.

If a bill is amended by the standing committee or committee of the whole in the second house, the amendments will be included in a reference bill and distributed in the second house for third reading consideration. The amendments will also be reproduced and attached to the reference bill. If the bill passes on third reading, copies of the reference bill and second house amendments will be distributed in the original house.

6-21. When a bill has passed both houses it shall be enrolled by the Legislative Services Division of the Legislative Council as an act of the legislature under the direction of the bills committee of the house of origin. An original and three duplicate typewritten copies of the bill shall be enrolled, free from all corrections and errors, with a margin of two inches at the top and one inch on each side, with twenty-five unnumbered lines to the page. In sections amending existing statutes new matter shall be underlined, and matter stricken with a line through it shall be omitted. The typewriting shall be done with a black record ribbon, pica type, on paper eight and one-half inches wide and eleven inches long. The original and two copies only of the bill shall be red lined. The history of the bill shall also be enrolled and placed in back of the bill in a white manuscript cover, upon which is written the number of the bill and the title.

When the enrolling has been completed, the bill shall be examined by the author and the bills committee and reported correctly enrolled.

HeinOnline -- 1977 vol. II 2029 1977

The correctly enrolled bill shall be delivered to the presiding officer of the house in which the bill originated. The presiding officer shall announce from the rostrum, the announcement to be entered in the journal, the specific bills to be signed by him and shall designate a time when such bill shall be signed, and he shall sign the original and two copies of each bill delivered to him not later than the next legislative day after it has been reported correctly enrolled, unless the bill is delivered on the last legislative day in which event it shall be signed that day. The fact of signing shall be entered upon the journal no later than the next legislative day. At any time after the report of a bill correctly enrolled and before the signing, if a member signifies his desire to examine the bill, he shall be permitted to do so. The bill shall then be transmitted to the other house where the same procedure shall be followed.

The original and two copies signed by the presiding officer of each house shall be presented by the bills committee to the governor. The bills committee shall take a receipt from the governor and shall report to the house the day and hour of such presentation, which shall be entered in the journal. The original and the unsigned copy shall be filed with the secretary of state. Signed copies with chapter numbers assigned pursuant to Section 82-2209, shall be filed with the clerk of the supreme court and the Legislative Services Division of the Legislative Council.

F.—Second Reading—Committee of the Whole

6-22. All bills which have been reported by a committee, accepted by the house concerned and printed, shall be posted on the calendar for consideration by committee of the whole. The sergeants-at-arms of the respective houses shall record the time each bill is received and the time the bill is placed on members' desks. Until the fiftieth legislative day, one day must elapse between the time a committee approved bill is placed on the members' desks and consideration by committee of the whole. Bills shall be arranged on the calendar in numerical order unless they are companion bills or are otherwise ordered by the house or committee of the whole of the house concerned.

6-23. Every bill considered in committee of the whole shall be read by a summary of its title and by its history and considered section by section.

6-24. Prior to adoption of a committee of the whole report, a member may move to segregate a bill. If the motion prevails, the bill remains on second reading.

6-25. When a committee of the whole report on a bill is rejected the bill shall remain on second reading.

6-26. Either house may resolve itself into a committee of the whole by approval of a motion for that purpose. So far as may be applicable, the rules governing each house shall be observed when that house resolves itself into a committee of the whole, except as follows:

(1) The only motions in order are: to amend; to recommend passage or nonpassage; to recommend concurrence or nonconcurrence; to indefinitely postpone; to pass consideration; to rise; to rise and report; and to rise and report progress and ask leave to sit again.

HeinOnline -- 1977 vol. II 2030 1977

(2) The committee may not appoint subcommittees.

(3) The committee may not punish its members for misconduct, but may report disorder to the house concerned.

(4) Unless otherwise prescribed by either house before going into committee of the whole, a member may speak as often as he is recognized and for as long each time as is allowed in debate in the particular house.

6-27. After a committee of the whole has been formed, the presiding officer shall appoint a chairman to preside. Upon resuming the chair, the presiding officer shall receive the report of the chairman of the committee and the house shall take action on the report.

G.—Third Reading—Governor's Veto

6-28. No bill shall become a law except by vote of a majority of all the members present in each house, nor unless on its final passage the vote be taken by ayes and noes, and the names of those voting be entered on the journal (Montana Constitution, Art. V, Sec. 11(1) and (2)).

Any vote in one house on a bill proposing an amendment to the Montana State Constitution where the mathematical possibility exists of obtaining the necessary two-thirds vote of the legislature will cause the bill to progress as though it had received the majority vote.

6-29. Every bill shall be read three times prior to passage, either by title or by summary of title as provided in these rules. The first reading shall be as prescribed in Joint Rule 6-10; the second prior to debate in committee of the whole; and the third, which shall be by complete title, prior to final passage. No bill shall receive more than one reading on the same day except on the last legislative day. No amendment may be offered on the third reading.

6-30. (1) Each bill passed by the legislature, except bills proposing amendments to the Montana Constitution, bills ratifying proposed amendments to the United States Constitution, resolutions, and referendum measures of the legislature, shall be submitted to the governor for his signature. If he does not sign or veto the bill within five days after its delivery to him if the legislature is in session or within twenty-five days if the legislature is adjourned, it shall become a law. The governor shall return a vetoed bill to the legislature with a statement of his reasons therefor.

(2) The governor may return any bill to the legislature with his recommendation for amendment. If the legislature passes the bill in accordance with the governor's recommendation, it shall again return the bill to the governor for his reconsideration. The governor shall not return a bill for amendment a second time.

(3) If after receipt of a veto message, two-thirds of the members present approve the bill, it shall become law.

(4) If the legislature is not in session when the governor vetoes a bill, he shall return the bill with his reasons therefor to the legislature as provided by law. The legislature may reconvene to reconsider any bill so vetoed.

HeinOnline -- 1977 vol. II 2031 1977

(5) The governor may veto items in appropriation bills, and in such instances the procedure shall be the same as upon veto of an entire bill (Montana Constitution, Art. VI, Sec. 10).

6-31. Upon receipt of a veto message the presiding officer shall read the message. After the reading a member may move that the governor's veto shall be overridden. A vote on the motion shall be determined by roll call. If two-thirds of the members present vote "aye" the veto is overridden. If two-thirds of the members present do not vote "aye" the veto is sustained.

6-32. If the governor returns a bill to the originating house with his recommendations for amendment, such house shall reconsider the bill under its rules relating to amendment offered in committee of the whole. The bill is then subject to the following procedures:

(a) The originating house shall transmit to the second house, for consideration under its rules relating to amendments in committee of the whole, the bill and the originating house's approval or disapproval of the governor's recommendations.

(b) If both houses approve the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(c) If both houses disapprove the governor's recommendations the bill shall be returned to the governor for his reconsideration.

(d) If one house disapproves the governor's recommendations and the other house approves, then either house may request a conference committee which may be a free conference committee.

(i) If both houses adopt a conference committee report, the bill in accordance with the report shall be returned to the governor for his reconsideration.

(ii) If a conference committee fails to reach agreement or if its report is not adopted by both houses the governor's recommendations shall be considered not approved and the bill shall be returned to the governor for further consideration.

H.—Transmittal of Bills

6-33. Each house shall transmit to the other with any bill all relevant papers. When a house bill is transmitted from the House of Representatives to the Senate, the secretary of the Senate shall give a dated receipt for the bill to the chief clerk of the House. When a Senate bill is transmitted to the House of Representatives, the chief clerk of the House shall give a dated receipt to the secretary of the Senate.

6-34. No bills, except for appropriation bills, revenue bills and amendments considered by joint committee need to be acted upon (save for reference to a committee by the presiding officer) if transmitted from one house to the other after the forty-fifth legislative day, but shall be held pending in the house to which it is transmitted unless two-thirds of the members present and voting shall determine that the bill shall be acted upon. Amendments, except to appropriation bills and revenue bills, shall like-

HeinOnline -- 1977 vol. II 2032 1977

wise be deferred for consideration if transmitted after the fifty-fifth legislative day thereof.

A revenue bill is one which would either increase or decrease tax collections.

Appropriation and revenue bills shall be transmitted from the original house on or before the fiftieth day unless two-thirds of the members present and voting in the receiving house shall determine that the bill may be transmitted after the fiftieth day.

6-35. When a bill has received its third reading or has been rejected, the house that considered the bill shall immediately transmit it to the other house with notice of its action.

6-36. All bills reported out of a committee of the legislature having an effect on the revenues, expenditures, or fiscal liability of the state, except appropriation measures carrying specific dollar amounts, shall include a fiscal note incorporating an estimate of such effect. The Legislative Council staff shall indicate at the top of each bill prepared for introduction that a fiscal note may be necessary under this rule. Fiscal notes shall be requested by the presiding officer of either house, who shall determine the need for the note at the time of introduction, based on the Legislative Council staff recommendation.

The state budget director, in cooperation with the agency or agencies affected by the bill, is responsible for the preparation of the fiscal note and shall return the same within six days, unless further time is granted by the presiding officer or committee making the request based upon a written statement from the budget director that additional time is necessary to properly prepare the note.

A completed fiscal note shall be submitted by the budget director to the presiding officer who requested it, who shall refer it to the committee considering the bill. All fiscal notes shall be printed and placed on the members' desks.

Fiscal notes shall, where possible, show in dollar amounts the estimated increase or decrease in revenues or expenditures, costs which may be absorbed without additional funds, and long-range financial implications. No comment or opinion relative to merits of the bill shall be included; however, technical or mechanical defects may be noted.

A fiscal note also may be requested on a bill and on an amendment by:

(1) a committee considering the bill, or

(2) a majority of the members of the house in which the bill is to be considered, at the time of second reading, or

(3) the chief sponsor through the presiding officer.

The budget director shall make available on request to any member of the legislature all background information used in developing a fiscal note (Sections 43-1001 through 43-1006, R.C.M. 1947).

HeinOnline -- 1977 vol. II 2033 1977

CHAPTER 7

Committees

7-1. The committee on legislative administration of each house shall consider all matters concerned with seating, mileage and per diem, legislative employees, the control of the legislative property, and the budgeting for and expenditure of appropriations for the operation of the legislature, in cooperation with the business manager.

7-2. A standing committee shall submit a written report in triplicate on all bills or matters referred to it within seven days after reference, unless at the request of the committee and for good cause shown, further time is granted by the house concerned.

7-3. If the members of a committee cannot agree on a report, the majority and minority of the committee present at a committee meeting may submit separate reports. Only one minority report may be submitted. Such reports shall be entered at length on the journal, unless otherwise ordered by the house concerned.

7-4. All committees and subcommittees shall keep minutes of their meetings and, at the close of the session, shall make five complete copies and shall turn the original of the minutes over to the chief clerk of the House or secretary of the Senate for delivery to the historical society. The majority and minority leader of each house and the Legislative Council shall each be given one copy of the minutes.

7-5. The committee on bills and journal, the rules committee, and conference committees may report at any time, except during a call of the house or when a vote is being taken. Reports from the bills and journal committee shall stand approved without formal action.

7-6. All bills providing for an appropriation of public moneys may first be considered by a joint committee composed of the members of the Senate Committee on Finance and Claims and the House Committee on Appropriations, and then by each separately. Meetings of the joint committee shall be held upon call of the chairman of the House Committee on Appropriations who shall be chairman of the joint committee.

7-7. The chairman of each committee has general control and direction of the hall and committee room of the committee over which he presides, subject to the control of the presiding officer under Rule 1-3. Except as provided in Joint Rule 7-6, the chairman of the Senate committee shall be chairman of all joint committees.

7-8. If either house requests a conference and appoints a committee for the purpose of discussing an amendment on which the Senate and the House of Representatives cannot agree, the other house shall appoint a committee consisting of the same number of members. The time and place of all conference committee meetings shall be agreed upon by their chairman and be announced from the rostrum. This announcement is in order at any time. Failure to make this announcement shall not affect the validity of the legislation. The conference committees, having conferred, shall report to their respective houses the result of their conference. A conference committee shall confine itself to the disputed amendment.

HeinOnline -- 1977 vol. II 2034 1977

If either house requests a free conference committee and the other house concurs, appointments will be made the same as above. A free conference committee may discuss a bill in its entirety and is not confined to a particular amendment.

7-9. In joint committees other than conference committees, members vote individually and not by houses. Because conference committees are joint meetings of separate committees, in conference committees the committees from each house vote separately, and a majority of each committee must agree before any action may be taken.

7-10. When a conference committee report is filed with the secretary or clerk the same shall be read under order of business No. 3, select committees, and placed on the calendar for consideration on second reading. If recommended favorably by the committee of the whole, it may be considered on third reading the same legislative day. On the final legislative day a conference committee report shall be placed on the calendar for immediate consideration on second reading and shall be further considered on third reading the same legislative day.

7-11. Accredited press representatives may not be excluded from any public legislative meeting or hearing and may not be prohibited from taking photographs, televising, or recording the committee or house hearings, subject to the discretion of the presiding officer in all matters of decorum and order.

CHAPTER 8

Rules and Journal

8-1. Each house shall keep a journal of its proceedings, and may, in its discretion, from time to time, publish the same, and the ayes and noes on any question shall, at the request of any two members, be entered on the journal.

8-2. The proceedings of each house which shall be entered on its journal include:

(1) the number of each bill when it is introduced and subsequently considered; the title of each bill shall be printed in the index of the permanent journals.

(2) every motion and the name of the member making it;

(3) proposed constitutional amendments which have been voted for by two-thirds of the members (Montana Constitution, Art. XIV, Sec. 8);

(4) committee reports;

(5) roll call votes;

(6) messages from the governor and the other house;

(7) an entry of the oath taken by the members (Sec. 43-209, R.C.M. 1947).

8-3. The bills and journal committee of each house shall supply the

HeinOnline -- 1977 vol. II 2035 1977

director of the Legislative Services Division of the Legislative Council with the contents of the daily journal to be programmed on automated equipment, examine its journal, distribute a daily journal to all legislators, correct any errors, and report each legislative day immediately after roll call.

8-4. The journal of the Senate must be authenticated by the signature of the president, and the journal of the House of Representatives by the signature of the speaker. The distribution of the completed journals shall be made by the Legislative Services Division of the Legislative Council (Sec. 43-304, R.C.M. 1947).

8-5. (1) A joint rule may be repealed or amended only with the concurrence of both houses, under the procedures adopted by each house for the repeal or amendment of its own rules.

(2) A joint rule governing the procedure for handling bills may be temporarily suspended by the consent of two-thirds of the members of either house, insofar as it applies to the house suspending it.

(3) Any rules committee report recommending a change in joint rules shall be referred to the other house for concurrent action. Any new rule or any change in the rules of either house shall be transmitted to the other house for informational purposes.

8-6. Mason's Manual of Legislative Procedure governs the proceedings of the Senate and House of Representatives in all cases not covered by these rules.

8-7. The Legislative Council shall codify and publish in one volume the rules of the Senate, the rules of the House of Representatives and the joint rules of the Senate and House of Representatives. Upon adoption, the secretary of the Senate and the chief clerk of the House of Representatives shall provide the office of the Legislative Council with one copy of all motions or resolutions amending Senate, house or joint rules, and with copies of all minutes and reports of the rules committees. After the rules have been published, the Legislative Council shall distribute copies as directed by the Senate and House of Representatives.

8-8. Pursuant to the authority established in Sections 43-901 through 43-904, the following fee schedule is established for the legislative proceedings:

One complete set of the proceedings of any regular session, $200; an additional $75 is required for mailing by first-class mail; an additional $100 is required for airmail delivery.

One complete set of the proceedings of any special session, $25.

Single copies of bills, resolutions or amendments may be purchased according to the length of the document as follows:

1-15 pages	$ .25
16-40 pages	$ .50
41-100 pages	$ .75
101-200 pages	$1.00
Over 200 pages	$2.00

HeinOnline -- 1977 vol. II 2036 1977

Single copies of status sheets, status of proceedings, indices.....$ .10
Copies of enacted bills.....cost of reproduction.

CHAPTER 9

Voting Procedure

9-1. Except as provided in Joint Rule 9-2, every member present when a question is put shall vote unless the house of which he is a member excuses him.

9-2. A member who has a personal or private interest in any measure or bill proposed or pending before the legislature shall disclose the fact to the house of which he is a member, and shall not vote thereon.

9-3. Amendments to the constitution may be proposed by any member of the legislature. If adopted by an affirmative roll call vote of two-thirds of all the members of the legislature, the amendment shall be deemed approved by the legislature (Montana Constitution, Art. XIV, Sec. 8).

9-4. When a measure requiring the concurrence of two-thirds of the members is under consideration, a majority vote is sufficient to decide any question relating to the measure short of third reading.

9-5. A roll call vote shall be taken on the request of two members.

9-6. On a roll call vote the names of the members shall be called alphabetically, unless an electrical voting system is used. A member may not vote or change his vote after the decision is announced from the chair. A member may not explain his vote until after the decision is announced from the chair.

9-7. (1) On third reading the question shall be stated as follows: "Senate (or House) bill number _____ having been read three several times, the question is, shall the bill pass (or be concurred in)."

(2) If an electrical voting system is used the presiding officer shall ring the bell after stating the question and then state "Those in favor vote yea and those opposed vote no." After a reasonable pause the presiding officer asks "Has every member voted?" (reasonable pause) "Does any member wish to change his or her vote?" (reasonable pause) "The clerk (secretary) will now record the vote."

9-8. Two members may pair on a measure that will be determined by a majority vote. On a measure requiring a two-thirds vote for adoption three members may pair, with two members for the measure and one member against. Pairing is permitted only when one of the paired members is absent when the vote is taken.

9-9. An agreement to pair must be in writing and dated and signed by the members agreeing to be bound, and must specify the duration of the pair. When an agreement to pair is filed with the secretary of the Senate or chief clerk of the House of Representatives, it shall bind the members signing until the expiration of time for which it was signed, unless the paired members sooner appear and ask that the agreement be cancelled.

HeinOnline -- 1977 vol. II 2037 1977

9-10. Every vote of each member of the legislature on each substantive question in the legislature, in any committee, or in committee of the whole shall be recorded and made public. On final passage of any bill or joint resolution the vote shall be taken by ayes and noes and the names entered on the journal. A roll call vote shall be taken on nonsubstantive questions on the request of two members, who may likewise on any vote, request that the ayes and noes be spread upon the journal. Roll call votes and other votes which are to be made public but are not specifically required to be spread upon the journal shall be entered in the minutes of the appropriate committee or of the appropriate house and a copy of such minutes shall be filed with the Montana state historical society (Montana Constitution, Art. V, Sec. 11(2)).

Approved February 7, 1977.

SENATE JOINT RESOLUTION NO. 2

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COMMITTEE ON PRIORITIES TO APPOINT THE APPROPRIATE STANDING COMMITTEE TO CONDUCT AN INTERIM STUDY OF THE BEST MEANS TO PROMOTE GOOD QUALITY MIDDLE AND LOWER INCOME HOUSING AND OTHER MONTANA INVESTMENTS THROUGH THE INVESTMENT OF THE VARIOUS TRUST FUNDS AND TO PRESENT RECOMMENDATIONS AND PROPOSED LEGISLATION TO THE 46TH LEGISLATURE.

WHEREAS, the Board of Investments is responsible for hundreds of millions of dollars; and

WHEREAS, the directives under which many of the funds involved are managed require the highest practical earnings commensurate with safety; and

WHEREAS, in order to earn the highest practical earnings, most of our investments are made out of state; and

WHEREAS, although high earnings cannot generally be obtained from investments in Montana, capital investment is needed in Montana; and

WHEREAS, the newly established Coal Trust Fund will receive continuous infusions of additional funds and has neither a directive nor a necessity to maximize its earnings; and

WHEREAS, private lending institutions cannot supply the capital needed to finance homes for middle income and low income people because such people cannot make sufficiently high payments.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Committee on Priorities is requested to appoint

HeinOnline -- 1977 vol. II 2038 1977

the appropriate standing committee to conduct an interim study and present recommendations and proposed legislation to the 46th Legislature concerning the best means to promote good quality middle and lower income housing through the investment of the various trust funds under the supervision of the state in a manner which will prevent loss or diversion of the corpus but will give priority to promoting such housing and other investments in the state of Montana rather than to achieving a high rate of return. The study should also determine the roles to be played, if any, by the Board of Investments, the Board of Housing, other state officers and agencies, and private financial institutions.

Approved April 14, 1977.

SENATE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN AN INTERIM SELECT COMMITTEE TO CONSIDER PROBLEMS CONCERNING THE USE OF PUBLIC AND PRIVATELY OWNED LANDS FOR HUNTING AND FISHING AND FOR ACCESS TO OTHER HUNTING AND FISHING AREAS, ALL FOR THE PURPOSE OF DEVELOPING BETTER UNDERSTANDING AND RELATIONSHIPS BETWEEN LANDOWNERS AND SPORTSMEN FOR THEIR MUTUAL BENEFIT.

WHEREAS, the members of the 45th Legislature recognize that hunting and fishing are an inherent and important way of life to the people of Montana; and

WHEREAS, much of this activity has historically been pursued on and through private lands at the pleasure and permission of those individual landowners; and

WHEREAS, the use and misuse of these lands by an increasing number of hunters and fishermen from both in and out of state have encouraged the closing of such private lands to the public, creating a crisis situation in available recreation areas; and

WHEREAS, recognizing that the landowner provides food and habitat for game, together with the access to and use of his land by hunters and fishermen at some expense, inconvenience, and exposure to damage and liability; and

WHEREAS, we believe there is a drastic need for a use program covering this entire situation for the benefit of both the landowner and the sportsman.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is directed to assign a study of the problems described above to a select committee composed of eight members appointed as follows: two senators who are rancher-farmers; two senators who are sportsmen; two members of the House Fish and Game

HeinOnline -- 1977 vol. II 2039 1977

Committee who are rancher-farmers; and two members of the House Fish and Game Committee who are sportsmen. Senate members shall be appointed by the Senate Committee on Committees; and House members shall be appointed by the Chairman of the House Fish and Game Committee, with no more than two members from either house in the same political party. Two representatives of the Fish and Game Department shall be appointed by the director, subject to approval of the legislative members of the committee, to serve as nonvoting members. The committee shall conduct a study of the above matters for the purpose of advising the Fish and Game Department and presenting legislation to the 46th Legislature to improve the entire hunting, fishing, and access situation. This study shall include the following:

(1) federal, state, and private incentives for the landowner to provide game habitat and sustenance for wildlife;

(2) insurance for the landowner against damage or liability from hunting and fishing use;

(3) measures to provide the proper regulated use of public and private lands for outdoor pleasure pursuits;

(4) suggestions and outlines for voluntary access agreements between the state and the landowner;

(5) management plans; and

(6) other matters pertinent to this study.

Approved April 9, 1977.

SENATE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING AN AMENDMENT TO RULE 40-3.54(14)-S54050 OF THE MONTANA ADMINISTRATIVE CODE TO PERMIT A LICENSED ACUPUNCTURIST TO TREAT A PATIENT WITH ACUPUNCTURE WITHOUT THE REQUIREMENT THAT A PERSON LICENSED TO PRACTICE MEDICINE AND SURGERY IN THE STATE OF MONTANA FIRST HAVE PRESCRIBED ACUPUNCTURE TREATMENT FOR THE PATIENT.

WHEREAS, the rules adopted by the Montana State Board of Medical Examiners regulating the practice of acupuncture require that a person licensed to practice medicine and surgery in the State of Montana shall first have prescribed acupuncture treatment to a patient before a licensed acupuncturist can treat the patient with acupuncture; and

WHEREAS, this rule is arbitrary in that it causes a great injustice on citizens of Montana who desire to receive acupuncture treatment; and

WHEREAS, this rule is against public policy in that it fails to recognize the right of citizens of Montana to choose the type of medical treatment they desire.

HeinOnline -- 1977 vol. II 2040 1977

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana State Board of Medical Examiners is directed to proceed within 30 days to amend Rule 40-3.54(14)-S54050 of the Montana Administrative Code to delete the requirement that a person licensed to practice medicine and surgery in the State of Montana must first prescribe acupuncture treatment to a patient before a licensed acupuncturist can treat the patient with acupuncture.

Approved March 30, 1977.

SENATE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEES TO STUDY THE LAWS RELATING TO COMMUNITY COLLEGE DISTRICTS FOR THE PURPOSE OF GENERALLY CLARIFYING, UPDATING, SUPPLEMENTING, AND REVISING SUCH LAWS.

WHEREAS, in 1971 the Legislature transferred supervision of the community college districts to the Board of Regents; and

WHEREAS, such transfer was not accompanied by enactment of an adequately comprehensive body of law dealing with community college districts; and

WHEREAS, there is no clearly applicable and adequately comprehensive body of law relating to powers and duties of community college district trustees, the relationship between the trustees and the Board of Regents, the relationship between the trustees and local government officers, and budgeting and financial administration procedures for community college districts; and

WHEREAS, a legislative study of the community college district laws, which would make recommendations for the general clarification, updating, supplementation, and revision of such laws, would be useful to the Legislature and the people of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committee to study the statutory provisions governing community college districts, to prepare recommendations for the general clarification, updating, supplementation, and revision of such provisions, and to report its findings and recommendations to the regular session of the 46th Legislature.

Approved March 30, 1977.

HeinOnline -- 1977 vol. II 2041 1977

SENATE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THOSE STATE AGENCIES REQUIRED TO PREPARE ENVIRONMENTAL IMPACT STATEMENTS AND ASSESSMENTS TO MINIMIZE DUPLICATION OF EFFORT, EXPENSE, AND TIME SPENT IN THEIR PREPARATION.

WHEREAS, various environmental laws in Montana, including the "Montana Environmental Policy Act", the "Montana Major Facility Siting Act", and the "Montana Subdivision and Platting Act", require state agencies to prepare environmental impact statements and assessments to inform the public of possible adverse environmental effects of various projects; and

WHEREAS, over the years these impact statements have grown too cumbersome, lengthy, and costly in relation to their social value; and

WHEREAS, it is unnecessary to duplicate studies of similar aspects of resource factors with each study; and

WHEREAS, many Montana citizens, who should be the primary beneficiaries of these impact statements, are unable to pierce the veil of bureaucratic jargon that enshrouds the reports.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That those state agencies charged with participating in the environmental impact statement process, particularly the Departments of Natural Resources and Conservation, Health and Environmental Sciences, Highways, Fish and Game, Community Affairs, and State Lands and the Environmental Quality Council take immediate measures to simplify and minimize the cost of these reports.

(2) That in order to avoid duplication of material on particular aspects of environmental problems in similar reports, the above-cited agencies cooperate in providing summaries of these reports to interested and affected citizens who request them.

(3) That the lead agencies supply the full reports only to directly affected parties and to the public libraries and county clerk and recorders of each county affected, thereby preventing a needless waste of state resources.

(4) That the lead agencies avoid the duplication of errors, omissions, and mistakes of previous environmental impact statements.

(5) That copies of this resolution be sent by the Secretary of State to the Governor and to the state agencies enumerated herein.

Approved March 31, 1977.

SENATE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF

HeinOnline -- 1977 vol. II 2042 1977

REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THE LEGISLATURE'S INTENT TO ADEQUATELY MAINTAIN FUNDING FOR COMMUNITY-BASED FACILITIES FOR DEVELOPMENTALLY DISABLED PERSONS IN MONTANA AND FOR COMMUNITY MENTAL HEALTH CENTERS LOCATED IN MONTANA.

WHEREAS, the Legislature established a policy of and programs for deinstitutionalization of citizens afflicted with developmental disabilities, mental illness, and mental retardation; and

WHEREAS, the deinstitutionalization program has substantially decreased the populations of the Warm Springs State Hospital and the Boulder River School and Hospital; and

WHEREAS, the reduction in population of state institutions saves valuable fiscal resources of the state; and

WHEREAS, substantial savings have inured to the state because of a community emphasis in programs; and

WHEREAS, the developmentally disabled, mentally ill, and mentally retarded citizens of Montana have benefited greatly from these programs and have increased their potential for a more fulfilling, productive, and enjoyable life as a result of participation in community-based programs; and

WHEREAS, community-based programs provide the least restrictive alternative to developmentally disabled, mentally ill, and mentally retarded citizens as guaranteed by law; and

WHEREAS, there is considerable uncertainty among the providers of community-based services and programs as to whether or not continued support can be expected from state government.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature recognizes and appreciates the value and merit of existing community services and programs for developmentally disabled, mentally ill, and mentally retarded citizens and realizes the need for continued and substantial state support for these programs. Therefore, it is the intent of the Legislature that the state shall continue its obligation to support financially those programs that are needed to maintain the developmentally disabled, mentally ill, and mentally retarded citizens who are returned to the community as a part of the deinstitutionalization policy of this state.

Approved April 21, 1977.

SENATE JOINT RESOLUTION NO. 16

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE

SUPREME COURT TO RESCIND ITS RULE REQUIRING ASPIRANTS TO THE MONTANA BAR TO HOLD A DEGREE FROM AN ACCREDITED COLLEGE OF LAW.

WHEREAS, there are presently many members of the Montana bar who discharge their duties in a competent and professional manner who do not hold degrees from accredited law schools, and

WHEREAS, there is but one accredited law school in the entire state of Montana, and

WHEREAS, there are many otherwise capable and qualified citizens of the state of Montana desirous of becoming members of the bar who because of financial, family, or other reasons find it difficult or impossible to attend law school, and

WHEREAS, the Supreme Court of Montana which under Article VII, section 2, of the Montana constitution has the power to make rules governing admission to the bar and has pursuant to this power adopted a rule requiring that each new member of the bar be a graduate of an accredited law school, and

WHEREAS, many citizens of Montana in reliance upon the former practice of entry into the bar upon passage of the bar examination suffered loss in terms of both time and money spent preparing for the bar examination by the adoption of Rule VI.A.1., and

WHEREAS, the administration of a comprehensive and well-planned bar examination is the only fair and equitable method of maintaining a competent and professional bar.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Supreme Court of the state of Montana is urged to rescind Rule VI.A.1., which rule requires a law degree from an accredited law school before entry into the bar, and

BE IT FURTHER RESOLVED, that the Montana Supreme Court is urged to adopt the rule establishing qualifications for applicants to the Montana bar which existed prior to December 31, 1969, and

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State of Montana to each Justice of the Montana Supreme Court.

Approved March 31, 1977.

SENATE JOINT RESOLUTION NO. 17

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING PUBLIC AUTHORITIES TO SEEK A DISTRIBUTION POINT FOR MONTANA ALONG ANY ARCTIC GAS PIPELINE WHICH MAY BE CONSTRUCTED AND URGING THE CONSTRUCTION OF THE

HeinOnline -- 1977 vol. II 2044 1977

ARCTIC GAS PROJECT PIPELINE ALONG THE INLAND ROUTE THROUGH MONTANA.

WHEREAS, proposals have been advanced for an Arctic Gas Pipeline, to bring natural gas from Alaskan and northern Canadian fields to various regions of the United States; and

WHEREAS, one proposal, the Arctic Gas Project pipeline, would follow an inland route through Canada and the United States; and

WHEREAS, one major extension of this proposed pipeline would cross northeastern Montana without provision for distributing any of the gas thus transported to markets within Montana; and

WHEREAS, Montana needs to plan for alternatives to our present dependence on natural gas from the province of Alberta since such gas may not be available for export after a few years.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That all responsible state authorities, including the Montana Energy Advisory Council and its constituent agencies, and federal authorities are urged to seek to obtain a distribution point for Montana along any pipeline built across the state to transport natural gas from arctic regions to American markets.

BE IT FURTHER RESOLVED, that the Senate and House of Representatives of the State of Montana urge the selection and construction of the proposed Arctic Gas Project pipeline proposal along the inland route.

BE IT FURTHER RESOLVED, that the Secretary of State of Montana send a copy of this resolution to the Montana Congressional delegation and the Chairman of the Federal Power Commission.

Approved March 31, 1977.

SENATE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CONGRESS OF THE UNITED STATES TO REFRAIN FROM WEAKENING THE APPLICATION OF MONTANA'S SURFACE MINING STATUTES AND THEREBY USURPING THE AUTHORITY OF THE STATE OF MONTANA REGARDING REGULATION OF SURFACE MINING.

WHEREAS, the Legislature of the State of Montana has passed outstanding surface mine reclamation laws; and

WHEREAS, the people of Montana have demonstrated their ability and authority to regulate surface mining on all lands within the borders of this state.

HeinOnline -- 1977 vol. II 2045 1977

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and the House of Representatives request that the United States Congress refrain from passing surface mine legislation weakening the application of Montana's surface mining statutes and thereby usurping the authority of the people of Montana.

BE IT FURTHER RESOLVED, that the Secretary of State be directed to send a copy of the resolution to each member of the Montana Congressional Delegation and to the Chairman of the United States Senate and House Interior Committees.

Approved March 26, 1977.

SENATE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COMMITTEE ON PRIORITIES TO ASSIGN TO THE APPROPRIATE STANDING COMMITTEE A STUDY OF LEGISLATION TO COMPENSATE VICTIMS OF CRIME AND TO HAVE THE COMMITTEE REPORT ITS FINDINGS AND RECOMMENDATIONS TOGETHER WITH ANY PROPOSED LEGISLATION TO THE 46TH LEGISLATURE.

WHEREAS, Montana presently has provided minimal protection for the innocent victims of crimes; and

WHEREAS, 11 states have adopted systems of compensation for innocent victims of crimes; and

WHEREAS, there are many variables involved in drafting legislation of this type such as: (1) should compensation depend on financial need?; (2) should pain and suffering be compensable?; (3) should property damage be included?; (4) should a board or court administer the plan?; (5) should members of the family be excluded?; (6) what is the offender's restitution duty?; and

WHEREAS, the Legislature has no available data or comprehensive study upon which to base enlightened decisions or legislation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign to the appropriate standing committee a study of legislation to compensate victims of crime.

BE IT FURTHER RESOLVED, that in conducting the study the committee:

(1) utilize and compare the laws of other states, including the Uniform Crime Victims Reparation Act;

HeinOnline -- 1977 vol. II 2046 1977

(2) seek the advice of criminologists and other experts in the field; and

(3) hold public hearings in order that the people of Montana may provide input for the study.

BE IT FURTHER RESOLVED, that the committee submit a written report of its findings and recommendations, together with any proposed legislation, to the 46th Legislature.

Approved April 14, 1977.

SENATE JOINT RESOLUTION NO. 20

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THAT THE REREGULATING DAM ON THE KOOTENAI RIVER BE DESIGNED AND BUILT TO REGULATE RIVER FLOWS.

WHEREAS, the reregulating dam below Libby Dam was designed primarily to regulate down-stream flows to enhance the fishery and recreational use of the Kootenai River; and

WHEREAS, the U.S. Army Corps of Engineers has designed power generation into the reregulating dam at the expense of increased river fluctuations or at best, the present criteria; and

WHEREAS, the river fluctuations of criteria of six feet per day in the winter and four feet per day in the summer were set arbitrarily and without adequate public input; and

WHEREAS, these fluctuations are sufficiently high to greatly reduce fishing and recreational opportunities in the river.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the reregulating dam be designed and built to regulate river flows for enhancement of the fishery and the recreational use and that the maximum allowable fluctuation be limited to less than three feet per day.

Approved April 1, 1977.

SENATE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CONGRESS OF THE UNITED STATES TO DEREGULATE THE PRICE OF NEW NATURAL GAS.

WHEREAS, the natural gas pricing practices of the Federal Power Commission during past years have resulted in a decline in exploration for natural gas by keeping the price of interstate gas artificially low; and

HeinOnline -- 1977 vol. II 2047 1977

WHEREAS, a tremendous increase in the use of this clean-burning and environmentally acceptable fuel has resulted mainly from FPC policies; and

WHEREAS, increased exploration and production of this valuable energy source would be in the best interests of the citizens of Montana and of the entire United States.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 45th Legislature of the State of Montana respectfully requests prompt action by the United States Congress to effect the deregulation of the price of new natural gas from wells that were commenced after January 1, 1975.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Montana Congressional Delegation.

Approved March 26, 1977.

SENATE JOINT RESOLUTION NO. 23

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO SEND DELEGATES TO THE WESTERN STATES FORESTRY TASK FORCE.

WHEREAS, the forests of the Western States play a vital role in the economic development of these states; and

WHEREAS, there is an obvious need for developing means to protect and foster these forests so as to maximize yield while protecting the resource for future generations; and

WHEREAS, proper forest management and use is necessary for the protection and conservation of other important resources such as wildlife, recreation, and scenic beauty; and

WHEREAS, the subjects that require interstate cooperation include but are not limited to insect infestations, conservation, production, and marketing, all of which know no state boundaries.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Committees of the Senate and the Speaker of the House of Representatives appoint two senators and two representatives to represent Montana on the Western States Forestry Task Force, which shall operate as a clearinghouse for opinion from all the various interests involved in the Western States forests and which shall include among its duties a report to the legislatures of the participating states and to the state delegations in the United States Congress concerning means of protecting and fostering the forests of the participating states.

BE IT FURTHER RESOLVED, that copies of this resolution shall be

HeinOnline -- 1977 vol. II 2048 1977

sent to the presiding officers of the legislatures of Washington, Idaho, Oregon, and California.

Approved March 31, 1977.

SENATE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING SUPPORT FOR THE CONSTRUCTION OF ADDITIONAL HYDRO-ELECTRIC GENERATION CAPACITY AT THE FORT PECK PROJECT.

WHEREAS, the energy crisis is one of the most important and perplexing problems facing Montana and the nation; and

WHEREAS, considerable controversy surrounds the construction of many energy production facilities for environmental, social, and economic reasons; and

WHEREAS, upgrading and increasing the generating capacity of existing hydroelectric facilities would have minimal adverse environmental, social, and economic impacts; and

WHEREAS, generating capacity at Fort Peck Project could be doubled with relative ease and help to resolve the energy crisis.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That additional hydroelectric generating facilities should be constructed at the Fort Peck Project.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent by the Secretary of State to Montana's Congressional Delegation and to the Secretary of the Interior.

Approved March 31, 1977.

SENATE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO HONOR THE FIGHTING BOBCATS OF MONTANA STATE UNIVERSITY, THIS YEAR'S NATIONAL CHAMPIONS OF DIVISION II FOOTBALL.

WHEREAS, excellence in any field of endeavor should be commended; and

WHEREAS, the Bobcats have demonstrated without question, the coming of age of Montana collegiate football, and thus have reflected favorably upon the great State of Montana, the Big Sky Country; and

HeinOnline -- 1977 vol. II 2049 1977

WHEREAS, Montana State University President, Carl W. McIntosh, has supported the mighty Bobcats with boundless energy; and

WHEREAS, athletic director Tom Parac has worked tirelessly during his six years as athletic director to keep the athletic program moving forward; and

WHEREAS, Sonny Holland, through imaginative and sound organization, has led the Bobcats to victory; and

WHEREAS, every great coach needs strong assistant coaches to conduct a successful program, and Coach Holland was ably assisted by the following:

(1) Don Christensen, whose primary responsibility was the offensive backfield;

(2) Sonny Lubick, whose primary responsibility was the defensive secondary;

(3) Cliff Hysell, whose primary responsibility was the defensive line; and

(4) Howie Ross, whose primary responsibility was the offensive line; and

WHEREAS, the following young men are the United States NCAA Division II Champions:

No.	Name	Pos.	Class	Hometown
7	Terry Bladow	CB	So.	Moorhead, Minn.
8	Mark McGrath	WR	Fr.	Seattle, Wash.
10	Keith Swenson	QB	Sr.	Spokane, Wash.
11	Paul Dennehy	QB	So.	Butte, Mont.
12	Delmar Jones	TB	So.	Helena, Mont.
14	Dennis Dunn	QB	So.	Denver, Colo.
16	Mike Anderson	S	Jr.	Seattle, Wash.
18	Don Walsh	QB	Fr.	Glendive, Mont.
20	Jerry Reisig	WR	Sr.	Billings, Mont.
22	Jeff Losett	S	Fr.	Miles City, Mont.
23	Vince Dodds	S	Sr.	Spokane, Wash.
24	Tom Kostrba	TB	Jr.	Troutdale, Ore.
25	Don Ueland	TB	Sr.	Butte, Mont.
30	Tommy Gray	FB	So.	Seattle, Wash.
31	Jim Mickelson	CB	So.	Spokane, Wash.
32	Mike McLeod	CB	Fr.	Cheyenne, Wyo.
33	Len Kelly	WR	Sr.	Butte, Mont.
34	Tom Weninger	FB	So.	Inver Grove Hts., Minn.
35	Mike Vidmar	FB	Jr.	Brooklyn Ct., Minn.
40	Greg Wiggs	CB	Jr.	Richmond, Va.
41	Ron Muri	CB	Jr.	Miles City, Mont.
42	Jim Janhunen	S	So.	Butte, Mont.
43	Stuart Dodds	S	Fr.	Spokane, Wash.
44	Scott Hoard	CB	So.	Great Falls, Mont.

HeinOnline -- 1977 vol. II 2050 1977

45 Brian Febach..... LB Fr.	Great Falls, Mont.
46 Calvin Oliver..... TB Fr.	Butte, Mont.
50 Bert Markovich..... C Sr.	Butte, Mont.
51 Jon Kienberger..... LB Jr.	Portland, Ore.
53 Mark DeVore..... LB So.	Butte, Mont.
54 Brian McFaul..... LB So.	Great Falls, Mont.
55 Bill Hansen..... OG Jr.	Bozeman, Mont.
56 Tony Woolery..... C So.	Renton, Wash.
60 Grant Fleming..... MG Fr.	Cheyenne, Wyo.
61 Mark Allison..... DE Jr.	Bellevue, Wash.
62 Dan Ueland..... DE Jr.	Butte, Mont.
63 Tim Nixon..... LB Sr.	Seattle, Wash.
64 Dave Mueller..... LB Sr.	Great Falls, Mont.
65 John Close..... DE So.	Spokane, Wash.
66 Jim Regan..... OG So.	Butte, Mont.
67 Bob Lubig..... OT Jr.	Calgary, Alta.
68 Ken Verlanic..... OG Sr.	Anaconda, Mont.
70 Jon Borchardt..... OT So.	Minneapolis, Minn.
71 Rick Kelsic..... DT So.	Denver, Colo.
72 Chris Jensen..... DT Fr.	Renton, Wash.
73 Scott Keyser..... DT Fr.	Ennis, Mont.
74 Lee Washburn..... OG Jr.	Bozeman, Mont.
75 Rick Vancleeve..... DT So.	Great Falls, Mont.
76 Jeff Conley..... OT Jr.	Spokane, Wash.
79 John Beach..... OG Fr.	Baker, Mont.
80 Ron McCullough..... TE Jr.	Great Falls, Mont.
81 Jeff Muri..... WR-K Fr.	Miles City, Mont.
82 Al Reichow.....TE-WR Sr.	Wayzata, Minn.
83 Les Leininger..... DE Sr.	Westby, Mont.
84 Mark Mading.....WR-TE So.	Billings, Mont.
86 Les Sherrill..... DE Fr.	Federal Way, Wash.
87 Butch Damberger.... TE Fr.	Cut Bank, Mont.
88 Scott Quittem..... WR So.	Inver Grove Hts., Minn.
89 Bryan Flaig..... WR Sr.	Missoula, Mont.
90 Tom Powell..... MG So.	Seattle, Wash.
95 Chip Young..... MG So.	Malta, Mont.
99 Dick Lyman..... DT Jr.	Great Falls, Mont.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature heartily congratulates President McIntosh, Coach Holland, and the fine Bobcat football staff and team for the great efforts they exerted to become number one.

BE IT FURTHER RESOLVED, that the Legislature heartily congratulates and commends all of the students whose fees were used to finance the athletic program that produced the championship team.

BE IT FURTHER RESOLVED, that the Legislature is extremely proud of the fact that over 30 members of the Bobcat team were Montanans.

Approved April 16, 1977.

HeinOnline -- 1977 vol. II 2051 1977

SENATE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING AMENDMENT OF THE ACT AUTHORIZING THE FORT PECK PROJECT TO INCLUDE RECREATION AND CONSERVATION OF FISH AND WILDLIFE AS A PURPOSE.

WHEREAS, tourism and recreation are growing and increasingly important industries; and

WHEREAS, eastern Montana has considerable potential for increased tourist and recreation interests; and

WHEREAS, the Fort Peck Project has immediate potential for increased tourist and recreation use; and

WHEREAS, the act authorizing the completion, maintenance, and operation of the Fort Peck Project does not include recreation and conservation of fish and wildlife as a purpose.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress is urged to amend P.L. 529, approved May 18, 1938, the act authorizing the Fort Peck Project to include recreation and conservation of fish and wildlife as a purpose.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent by the Secretary of State to Montana's Congressional Delegation.

Approved March 17, 1977.

SENATE JOINT RESOLUTION NO. 28

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF THE SENTENCING PROVISIONS OF THE MONTANA CRIMINAL CODE OF 1973 AND OF POSSIBLE ALTERNATIVE PROVISIONS WHICH WOULD PROVIDE FOR MORE UNIFORM SENTENCING OF CRIMINALS AND FOR MANDATORY SENTENCES FOR DANGEROUS CRIMINALS.

WHEREAS, the Montana Criminal Code of 1973 provides for maximum penalties and no minimum penalties, leaving wide discretion in each judge regarding the penalty to be imposed upon an individual; and

WHEREAS, individuals with similar backgrounds convicted of the same crime are given greatly varying sentences depending upon the county in which they are convicted; and

WHEREAS, guidelines are needed to make sentencing more uniform and, if necessary, to provide for mandatory sentencing of dangerous criminals for the protection of the public.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HeinOnline -- 1977 vol. II 2052 1977

That the Legislative Committee on Priorities is requested to appoint the appropriate standing committee to study the sentencing provisions of the Montana Criminal Code of 1973, to study sentencing alternatives which would provide for more uniform sentencing of criminals and for mandatory sentences for dangerous criminals, and to evaluate the alternatives and compare them with the sentencing provisions currently being used.

BE IT FURTHER RESOLVED, that the committee conducting the study prepare and present to the 46th Legislature a report analyzing the sentencing provisions of the Montana Criminal Code of 1973 and possible alternatives, together with recommendations and a draft of proposed legislation, if necessary, to carry out such recommendations.

Approved April 18, 1977.

SENATE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THAT AN INTERIM COMMITTEE OF THE LEGISLATURE STUDY THE TAXATION OF FOREST LANDS IN THE STATE OF MONTANA AND FULLY CONSIDER ALTERNATIVE SYSTEMS, INCLUDING A TIMBER YIELD TAX, AS A POSSIBLE REPLACEMENT FOR THE PRESENT AD VALOREM SYSTEM OF TAXING FOREST LANDS.

WHEREAS, the State of Montana does not possess or have available to it factual data upon which a reasonably accurate inventory of forest lands within the state may be compiled; and

WHEREAS, the absence of such data has caused the Department of Revenue considerable difficulty in the assessment and taxation of forest lands within the state; and

WHEREAS, alternatives to the present system of taxing forest lands in Montana have not been fully considered or studied; and

WHEREAS, the interests of the state, the woodlot owners, and the wood products industry require that either the present system of taxing forest lands be improved or that alternative systems be considered.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities assign the appropriate standing committee to study the taxation of forest lands in Montana and thereafter provide a written report:

(1) explaining what should be done to improve the present system of taxing forest lands;

(2) explaining both the advantages and disadvantages of changing to a yield tax system, as envisioned by House Bill No. 83 introduced during the 45th Legislature; and

HeinOnline -- 1977 vol. II 2053 1977

(3) explaining both the advantages and disadvantages of any other system which should be considered as an alternative to the present system.

BE IT FURTHER RESOLVED, that the Committee publish and distribute the report and recommendations for the 46th Legislature no later than December 1, 1978.

Approved April 16, 1977.

SENATE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONSENTING TO THE CONSTRUCTION, IMPROVEMENT, AND EQUIPMENT OF PHYSICAL EDUCATION, ATHLETIC, AND RECREATIONAL FACILITIES AT MONTANA STATE UNIVERSITY.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, under the provisions of Sections 75-8503 and 82-3316, R.C.M. 1947, and subject to the availability of funds other than the appropriated funds from regular state revenues for state operations, the Legislature consents to a capital construction program at Montana State University, Bozeman, Montana, consisting of the construction, improvement, and equipment of physical education, athletic, and recreational facilities in the nature of outdoor tennis courts estimated to cost $120,000 and handball-racketball courts estimated to cost $350,000; and further consents to the financing of this project, without legislative appropriation of moneys, from student building fees not required to service existing debt service obligations.

Approved March 26, 1977.

SENATE JOINT RESOLUTION NO. 33

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CONSENTING TO THE CONSTRUCTION OF AN AUTO REPAIR SHOP AT MONTANA STATE UNIVERSITY.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, under the provisions of Sections 75-8503 and 82-3316, R.C.M. 1947, and subject to the availability of funds other than the appropriated funds from regular state revenues for state operations, the Legislature consents to the capital construction program at Montana State University, Bozeman, Montana, consisting of the construction and equipment of an

HeinOnline -- 1977 vol. II 2054 1977

auto repair shop estimated to cost $100,000 and further consents to the financing of this project, without legislative appropriation of moneys, from student building fees not required to service existing debt service obligations.

Approved March 26, 1977.

SENATE JOINT RESOLUTION NO. 34

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THAT A BUST OF THE LATE SENATOR BURTON K. WHEELER COMMISSIONED BY THE GREATER MONTANA FOUNDATION BE ACCEPTED FOR PLACEMENT IN THE CAPITOL ROTUNDA OR ELSEWHERE.

WHEREAS, the late Senator Burton K. Wheeler exemplified the individualistic and distinct spirit of Montana; and

WHEREAS, Senator Wheeler, as the federal district attorney in the great city of Butte, Montana, championed civil liberties during World War I; and

WHEREAS, the Senatorial career of Senator Wheeler spanned some of the most crucial years in this country's and Montana's history; and

WHEREAS, Senator Wheeler, along with Senator Thomas J. Walsh, was instrumental in uncovering and in investigating the Tea Pot Dome Scandal of the 1920's; and

WHEREAS, Senator Wheeler was a vice-presidential running mate of Robert La Follette on the Progressive Ticket in 1924; and

WHEREAS, Senator Wheeler sponsored many important pieces of legislation such as the Wheeler-Howard Act; and

WHEREAS, the Greater Montana Foundation has commissioned artist Bob Scriver to produce a sculpture of former Senator Burton K. Wheeler; and

WHEREAS, the bust of Senator Wheeler is available to the State of Montana for placement in the state capitol at no expense to the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Administration is directed to accept the bust of Senator Wheeler when completed and made available.

BE IT FURTHER RESOLVED, that the Department of Administration is directed to find a suitable place in the capitol rotunda or elsewhere to place the bust of Senator Wheeler.

BE IT FURTHER RESOLVED, that the Secretary of State is directed to send a copy of this resolution to the Director of the Department of Administration, the Greater Montana Foundation, and to artist Bob Scriver.

Approved March 26, 1977.

HeinOnline -- 1977 vol. II 2055 1977

SENATE JOINT RESOLUTION NO. 35

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS AND THE PRESIDENT TO ENACT LEGISLATION GRANTING STATES JURISDICTION OVER NON-INDIANS ON INDIAN RESERVATIONS WITHIN THEIR BOUNDARIES AND PROVIDING INCREASED LAW ENFORCEMENT ON INDIAN RESERVATIONS.

WHEREAS, Montana exists as a sovereign state within the United States; and

WHEREAS, seven Indian reservations exist within its boundaries; and

WHEREAS, the tribal governments of several of these Indian reservations are attempting to declare themselves sovereign nations and assert executive, legislative, and judicial control over non-Indians and over their lands, water, and resources without representation or participation of the non-Indians in tribal government; and

WHEREAS, state government has a legal and moral obligation to protect all of its citizens, Indian and non-Indian alike; and

WHEREAS, nonrepresentative sovereign tribal government would create serious problems for land ownership, management of property, public finance, taxation, law enforcement, management of fish, wildlife, and other natural resources, environmental protection and pollution control, water management and rights, commercial intercourse, and professional licensing throughout the State of Montana and its political subdivisions; and

WHEREAS, federal jurisdiction over criminal offenses committed within the boundaries of the Indian reservations located within the state of Montana is ineffective and limited because of the lack of adequate staff and attention from the United States Attorney's Office and the great distance between the reservation areas and the nearest Federal District Judge; and

WHEREAS, there is a need for more appropriate action to insure the peace among all people residing on and within the reservation boundaries of Montana's Indian reservations.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States and the President of the United States and his subordinates are requested to support and pass legislation to establish that the states have exclusive jurisdiction and authority in all executive, legislative, and judicial matters over all non-Indians and non-Indian lands and interest in lands existing wholly or in part within the geographic boundaries of any Indian reservation.

HeinOnline -- 1977 vol. II 2056 1977

BE IT FURTHER RESOLVED, that the Congress of the United States is urged and requested to provide for employment of federal prosecutors under the supervision of the Attorney General of the United States and to appoint sufficient United States Magistrates and take any other action necessary to insure more adequate law enforcement within the boundaries of Indian reservations in the state of Montana.

BE IT FURTHER RESOLVED, that the proper representatives of Indians and non-Indians on or adjacent to each reservation shall meet together and work out the mutual problems of jurisdiction on each reservation. Then efforts should be made to implement solutions for the handling of jurisdiction on each reservation upon the full consent of Indians and non-Indians alike.

BE IT FURTHER RESOLVED, that the Secretary of State is instructed to send a copy of this resolution to the President of the United States, to the Secretary of the Interior, and to Senator John Melcher and Senator Lee Metcalf, and to Representative Max Baucus and Representative Ron Marlenee.

Approved April 2, 1977.

SENATE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CALLING FOR A JOINT FEDERAL-STATE-LOCAL COMMITTEE TO FORMULATE A PLAN FOR A BRIDGE ACROSS THE MISSOURI RIVER IN THE VICINITY OF WINIFRED, MONTANA.

WHEREAS, the Congress has included the Missouri Breaks within the National Wild and Scenic Rivers System, to be managed as a federal recreation area with special multiple-use provisions; and

WHEREAS, the Congress specifically provided, in section 203(d) of the enabling legislation, Public Law 94-486, that a bridge may be built across the Missouri River between Winifred and Big Sandy if such bridge is constructed in accordance with a plan which is mutually acceptable to the Secretary of the Interior and to the Montana Highway Commission and the governing bodies of Chouteau and Fergus Counties and is consistent with the purposes of the Wild and Scenic Rivers Act; and

WHEREAS, it would be in the public interest to construct a bridge across the Missouri on the Winifred-Big Sandy Road; and

WHEREAS, it is essential that state and local highway officials confer with Department of the Interior officials to ascertain the position of the Department as to appropriate design of the bridge, including recreational access considerations and appropriate jurisdiction over the bridge, in order to formulate the plan required by section 203(d) of Public Law 94-486.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HeinOnline -- 1977 vol. II 2057 1977

That the Director of the Montana Department of Highways is instructed to invite representatives of the Secretary of the Interior and Fergus and Chouteau Counties to join with him in forming a federal-state-local Winifred Bridge Planning Committee, to formulate a plan for the design, construction, funding, and jurisdiction of a bridge across the Missouri River between Winifred and Big Sandy.

Approved March 30, 1977.

SENATE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF LABOR AND INDUSTRY, EMPLOYMENT SECURITY DIVISION, TO PROVIDE THE LEGISLATIVE AUDITOR WITH QUARTERLY REPORTS AS TO THE NUMBERS AND RESULTS OF REVIEWS AND INVESTIGATIONS OF UNEMPLOYMENT COMPENSATION CLAIMS.

WHEREAS, the Unemployment Compensation Fraud Detection Program has undergone recent internal changes in claims review and investigation processes; and

WHEREAS, these changes have resulted in a commendable number of cases being recommended for prosecution to county attorneys; and

WHEREAS, this level represents a sharp contrast with previous levels of referrals for prosecution which contrast has caused some concern among legislators and others as to the need for monitoring the fraud detection program; and

WHEREAS, the Legislature feels the fraud detection program is sufficiently important as to require continued monitoring.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature directs the Employment Security Division to report to the Legislative Auditor concerning the number of cases being reviewed, investigated, or referred for prosecution on a quarterly basis until the 46th Legislative Session.

Approved March 26, 1977.

SENATE JOINT RESOLUTION NO. 39

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM LEGISLATIVE STUDY OF THE PROPOSED LOCAL GOVERNMENT CODE.

WHEREAS, the Commission on Local Government has drafted a pro-

HeinOnline -- 1977 vol. II 2058 1977

posed revision of the laws governing local governments in Montana, introduced as House Bill 122; and

WHEREAS, this bill has been drafted in the form of wholesale repealers of existing code sections and reenactment of the provisions of those sections in new language which frequently contains substantive changes; and

WHEREAS, hundreds of amendments to House Bill 122 have been proposed to this the largest bill ever presented to the Montana Legislature, and very few members are in a position to cast an informed vote on the bill; and

WHEREAS, further study of the bill by an interim committee of legislators appears to be necessary.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committees, including without limitation the Committees on Local Government, Taxation, and State Administration, to each designate two members to a Select Joint Interim Subcommittee on Local Government Law; this select committee may therefore have more than eight members but otherwise shall operate under the provisions of Section 43-716, R.C.M. 1947, to study the proposals advanced in House Bill 122 and to file its recommendations to the 46th Legislature with the Legislative Council not later than August 31, 1978.

Approved April 19, 1977.

SENATE JOINT RESOLUTION NO. 40

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN A STUDY ON THE CHILD LABOR LAWS OF MONTANA.

WHEREAS, the Legislature of the State of Montana recognizes that the children of Montana are Montana's most valuable resource and that all children must be protected from possible abuses in relation to child labor; and

WHEREAS, severe abuses can result when the state does not give proper protection to children who may work in the labor market; and

WHEREAS, the present Montana child labor laws were originally passed in 1907; and

WHEREAS, there have been substantial changes in Montana's industrial society since the passage of the present Montana labor laws and there has been substantial technical progress since 1907; and

WHEREAS, the present child labor laws do not reflect the changes that have occurred in the market place since 1907 and cannot be adequately applied to the present work environment; and

HeinOnline -- 1977 vol. II 2059 1977

WHEREAS, the present labor laws have limited application and exclude a substantial portion of the employers in Montana which can lead to abuses because of these exclusions; and

WHEREAS, there are substantial conflicts and inconsistencies between the present Montana child labor laws and federal laws concerning child labor.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign to the appropriate standing committee a study of Montana's child labor laws in relation to the present work environment and in relation to federal laws on this subject and submit a report and draft proposed legislation to update and modernize the child labor laws of Montana.

BE IT FURTHER RESOLVED, that copies of this resolution shall be sent to the Secretary of State, the Commissioner of Labor and Industry, the Committee on Priorities, and the Legislative Council.

Approved March 26, 1977.

SENATE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS AND THE UNITED STATES FISH AND WILDLIFE SERVICE TO RECOGNIZE THE IMPORTANCE OF LIVESTOCK IN THE CHARLES M. RUSSELL GAME RANGE.

WHEREAS, Congress has enacted legislation transferring the Charles M. Russell Game Range from the joint administration of the United States Fish and Wildlife Service and the Bureau of Land Management to administration by the Fish and Wildlife Service only; and

WHEREAS, this transfer of authority has caused confusion and concern among livestock producers operating within the Game Range; and

WHEREAS, the Charles M. Russell Game Range is, by tradition, "cow country" and the livestock industry is an integral and important part of Charles Russell country; and

WHEREAS, the Executive Order creating the Charles M. Russell Game Range recognized that livestock grazing and game production are compatible in this area.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the 45th Montana Legislature urges the Congress of the United States and all federal and state agencies to recognize that the Charles M. Russell Game Range is not merely a wildlife refuge but also an important livestock and game range that should be administered as such, in conformity with the Executive Order that created the Game Range.

HeinOnline -- 1977 vol. II 2060 1977

BE IT FURTHER RESOLVED, that the 45th Montana Legislature requests the United States Fish and Wildlife Service to implement the intent of this Executive Order by adopting rules concerning grazing in the Charles M. Russell Game Range in accordance with the Federal Range Code and by considering the stability of the livestock industry in future administrative decisions concerning the area.

BE IT FURTHER RESOLVED, that copies of this resolution be forwarded by the Secretary of State to Senators Lee Metcalf and John Melcher, Representatives Max Baucus and Ron Marlenee, and the Director of the United States Fish and Wildlife Service.

Approved April 1, 1977.

SENATE JOINT RESOLUTION NO. 42

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING RESEARCH OF THE ECONOMIC FEASIBILITY OF THE CONVERSION OF WHEAT AND BARLEY INTO ALCOHOL, CREATING BOTH A NEW USE FOR MONTANA WHEAT AND BARLEY AND A VIABLE ALTERNATIVE ENERGY SOURCE.

WHEREAS, there exists a surplus of wheat in the United States and in the world; and

WHEREAS, Montana is a major wheat producing state, suffering economic stress through depressed wheat prices because of such surplus; and

WHEREAS, there is and will continue to be a widespread energy shortage both in Montana and in the United States; and

WHEREAS, other states, primarily Nebraska, have conducted research concerning the conversion of wheat and other grains into alcohol as an alternative energy source, both for heating and transportation purposes, and are proceeding to construct conversion plants and encouraging the private construction of such plants; and

WHEREAS, their research has shown the conversion to be economically feasible and profitable; and

WHEREAS, by-products of the conversion process are suitable for use as livestock feed.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, the Montana Agricultural Experiment Station is directed to conduct studies to determine the economic feasibility in Montana of the conversion of wheat and barley into alcohol. A report concerning the conclusions reached, the proposed action, if any, to be taken by the State of Montana, and the alternative methods of funding such action, if any, shall be made to the 46th Legislature. The report shall specifically address the desirability of a producer check-off tax as a method of funding any proposed conversion facility.

HeinOnline -- 1977 vol. II 2061 1977

BE IT FURTHER RESOLVED, that the governor of the state of Montana, through the Old West Regional Commission and similar cooperative efforts between wheat producing states, work with such other states in research and development of facilities, if feasible, for the conversion of wheat and other grains into alcohol.

BE IT FURTHER RESOLVED, that the Secretary of State shall send a copy of this resolution to the United States Secretary of Agriculture, the Montana congressional delegation, the Governor, the Administrator of the Wheat Research and Marketing Committee, the Director of the Agricultural Experiment Station, the President of Montana State University, and the Director of the Department of Agriculture of the State of Montana.

Approved April 18, 1977.

SENATE JOINT RESOLUTION NO. 43

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN AN APPROPRIATE COMMITTEE TO STUDY ALL OF MONTANA'S LAWS RELATING TO SUBDIVISIONS FOR THE PURPOSE OF GENERALLY CLARIFYING, UPDATING, SUPPLEMENTING, AND REVISING SUCH LAWS.

WHEREAS, the social, economic, and environmental conditions presently existing in Montana make it imperative that Montana's citizens be provided with adequate housing in an economic, efficient, and environmentally sound manner; and

WHEREAS, Montana's laws presently relating to subdivisions are not fully successful in achieving this goal; and

WHEREAS, certain areas of Montana are presently experiencing rapid urbanization and population growth with subsequent reduction of agricultural land; and

WHEREAS, Montana is faced with the possibility of a large population influx in the future; and

WHEREAS, Montana's laws presently relating to subdivisions need to be studied in order to insure that they are adequate to meet the challenge of present and future rapid urbanization and population growth in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign an appropriate committee, consisting of equal representation of both houses and both parties, to study all of Montana's laws relating to subdivisions for the purpose of generally clarifying, updating, supplementing, and revising

HeinOnline -- 1977 vol. II 2062 1977

such laws and to report its findings and recommendations to the regular session of the 46th Legislature.

Approved April 18, 1977.

SENATE JOINT RESOLUTION NO. 44

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO EXPAND THE SCOPE OF THE INTERIM STUDY ON COAL TAX TRUST FUND INVESTMENTS TO INCLUDE AN INVESTIGATION OF THE FEASIBILITY OF USING SUCH FUNDS, THROUGH LOANS OR OTHERWISE, TO HELP PEOPLE GET A START IN AGRICULTURE OR BUSINESS.

WHEREAS, the 45th Montana Legislature recognizes the value of and need for family farms in the state; and

WHEREAS, the high initial capital requirement bars many younger persons from entering into farming or ranching; and

WHEREAS, many younger persons born and raised on Montana farms and ranches are leaving the agricultural sector due to the high cost of obtaining land; and

WHEREAS, after 1979, one-half of the coal severance tax must be invested in a trust fund established in the Montana Constitution; and

WHEREAS, investment of this fund in out-of-state assets would accentuate the export of money and jobs for Montana citizens, while in-state investment would more benefit the people of Montana; and

WHEREAS, land is a commodity constantly increasing in value and is the sort of asset in which a prudent trustee would invest.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to further assign the subcommittee appointed under Senate Joint Resolution 2 to study certain possibilities for coal tax trust fund investments to also study the feasibility of making funds available, through bank loans or otherwise or through other programs, that will enable young farmers to get a start in agriculture on a basis which safeguards the property tax base of local governments and that will enable other young people to get a start in business.

Approved April 18, 1977.

SENATE JOINT RESOLUTION NO. 45

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA FOR A STUDY

HeinOnline -- 1977 vol. II 2063 1977

BY A SELECT INTERIM COMMITTEE OF THE FEASIBILITY OF CONTROLLING THE INTRODUCTION OF BILLS IN LEGISLATIVE SESSIONS.

WHEREAS, this 45th Legislature has been presented with many more proposals for legislation than the session can efficiently consider within its constitutional limitations; and

WHEREAS, other legislative bodies have developed procedures or institutions whereby they hold the numbers of bills and resolutions they consider down to a level conducive to thoughtful consideration; and

WHEREAS, improvement of the Montana Legislature should result from the adoption of appropriate procedures or institutions to control the number of bills and resolutions requested or introduced or required to be acted upon.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Committees in the Senate appoint a select bipartisan committee of four members and the Speaker of the House of Representatives appoint a select bipartisan committee of four members, the two committees to meet jointly in the interim between the 45th and 46th Legislatures to study and evaluate methods used by other legislative bodies to contain the flow of legislation within manageable proportions, and with supporting services as assigned by the Committee on Priorities, to report with recommendations to the 46th Legislature prior to the convening thereof.

Approved April 16, 1977.

SENATE JOINT RESOLUTION NO. 46

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO DESIGNATE THE APPROPRIATE STANDING COMMITTEE TO STUDY THE MAKEUP OF THE AGENCIES DELIVERING SERVICES TO AND PROTECTING THROUGH ADVOCACY AND APPEAL PROCESSES THE RIGHTS OF PERSONS AND RECOMMEND ALTERNATIVES STRUCTURED TO ALLEVIATE THE DEFICIENCIES FOUND.

WHEREAS, several state departments and agencies, including the Department of Social and Rehabilitation Services, the Adaptive Services Division of the Department of Institutions, and the Health Services Division of the Department of Health and Environmental Sciences, deliver human services to the citizens of Montana; and

WHEREAS, there is a great deal of competition between and overlapping of jurisdiction among those departments and agencies delivering human services; and

HeinOnline -- 1977 vol. II 2064 1977

WHEREAS, the integration of the delivery of human services or certain functions thereof would make the executive agencies more responsive to policy direction from the Governor and the Legislature; and

WHEREAS, there is no common program tie to the Adaptive Services and Corrections Division of the Department of Institutions or to various programs and institutions within those divisions; and

WHEREAS, a number of advocacy and appeal agencies, including the Merit System Council, State Tax Appeal Board, Indian Affairs Unit and Volunteer Bureau of the Department of Community Affairs, Office of Citizen's Advocate, Mental Health Advisory Council, Human Rights Division and Women's Bureau of Department of Labor and Industry, Board of Personnel Appeals, Mental Disabilities Board of Visitors, Developmental Disabilities Advisory Council, Consumer Affairs Division of Department of Business Regulation, Board of Institutions, Status of Women Advisory Council, State Coordinator of Indian Affairs, and Patient Advocate, do not properly fit under any existing department, and harm may result by an attempt of existing departments to interfere with their functions.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is required to designate the appropriate standing committee to study the makeup of the agencies, including all of the agencies named above, delivering services to and protecting, through advocacy and appeal processes, the rights of persons; to determine suitable groupings of those functions that best avoid the conflicts and overlapping inherent in the present systems; and to report their findings, recommendations, and proposed legislation to the 46th Legislature.

BE IT FURTHER RESOLVED, that the committee consider the following actions:

(1) placing the Adaptive Services Division and the Corrections Division, and their respective institutions, of the Department of Institutions and the Hospital and Medical Facilities Division of the Department of Health and Environmental Sciences in other appropriate department or departments;

(2) combining the Health Services Division of the Department of Health and Environmental Sciences and the Department of Social and Rehabilitation Services into a department or departments delivering human services;

(3) combining the advocacy and appeal agencies named above, possibly as set forth in House Bill No. 798, 45th Legislative Session;

(4) combining the Environmental Sciences Division of Department of Health and Environmental Sciences with the appropriate department.

Approved April 19, 1977.

HeinOnline -- 1977 vol. II 2065 1977

SENATE JOINT RESOLUTION NO. 48

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO DO EVERYTHING POSSIBLE ADMINISTRATIVELY TO SPEED UP THE INITIAL COMPILATION OF EXISTING WATER RIGHTS AND TO EXPEDITE THE ADJUDICATION OF WATER RIGHTS, PARTICULARLY AGRICULTURAL RIGHTS.

WHEREAS, there are currently great demands being placed on the use and flow of water occurring in the State of Montana, and these demands will intensify in future years; and

WHEREAS, it is imperative for the purpose of effectively planning and providing for the use of surface- and groundwater occurring in the State of Montana to make an up-to-date inventory of existing rights of use and to make reservations of such water; and

WHEREAS, the present process of adjudicating water rights in the State of Montana under the 1973 Water Use Act is proceeding at an extremely slow pace, and it has been projected that completion of the adjudication at the present rate will take more than 100 years; and

WHEREAS, the Legislature feels that additional direction from the Legislature to the Department of Natural Resources and Conservation would expedite the preliminary compilation of existing water rights in the state, while also recognizing and accepting the fact that such a preliminary compilation will necessarily contain a degree of inaccuracy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Natural Resources and Conservation is directed to use every administrative means possible to speed up the initial compilation of existing water rights in the State of Montana, particularly agricultural water rights, and to ensure that water is reserved for future use in Montana. Such action shall include but not be limited to:

(1) requesting that voluntary declarations of all existing rights and applications for reservations be filed with the department by each claimant of a right or potential applicant for a reservation. The declarations shall conform to the requirements of 89-872(2).

(2) conducting an educational campaign to alert water users of the requested filings and the need for obtaining and maintaining a central inventory of water rights within the State of Montana.

BE IT FURTHER RESOLVED, that the Department of Natural Resources and Conservation is directed to do everything possible administratively to expedite the adjudication of water rights, particularly agricultural rights, including the acceptance of claims of groundwater rights and water rights in small livestock reservoirs without extensive field investigation of such claims, and such other measures as the department considers feasible in expediting the adjudication proceeding in the courts.

BE IT FURTHER RESOLVED, that copies of this resolution be sent

HeinOnline -- 1977 vol. II 2066 1977

by the Secretary of the Senate to the Governor, the Director of the Department of Natural Resources and Conservation, and each District Judge in the State of Montana.

Approved April 19, 1977.

SENATE JOINT RESOLUTION NO. 49

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE RAISING OF THE FEDERAL LOAN PRICE OF WHEAT TO $3.50 PER BUSHEL UNDER CERTAIN CONDITIONS.

WHEREAS, the present federal loan price for wheat is lower than the cost of producing the wheat; and

WHEREAS, over-production has created the present surplus of wheat, with the consequent depression of wheat prices.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the United States Secretary of Agriculture be urged to adopt a federal loan price of $3.50 per bushel, provided:

(1) that the producer, to be eligible, must take out of production at least 10% of all land used for the production of wheat in 1976;

(2) that persons not taking 10% of their land out of production shall receive the present federal loan price of $2.25.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to President Jimmy Carter, Secretary of Agriculture Bob Bergland, Montana's Congressional Delegation, and Governor Thomas L. Judge.

Approved April 19, 1977.

SENATE JOINT RESOLUTION NO. 50

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING ACADEMIC EXCELLENCE ACHIEVED BY STUDENTS IN THE UNIVERSITY SYSTEM.

WHEREAS, excellence in any field of endeavor should be commended; and

WHEREAS, excellence in academics is particularly commendable because well-trained and educated minds are Montana's greatest resource; and

WHEREAS, education is state government's most important function since "the foundation of every state is the education of its youth"; and

HeinOnline -- 1977 vol. II 2067 1977

WHEREAS, national scholarships are one means of honoring academic excellence achieved by Montana students as well as indicating how the education offered by the Montana university system compares with that of other colleges and universities throughout the nation; and

WHEREAS, five Montana students have been awarded the coveted Fulbright scholarship in the past 5 years, competing for this honor with the brightest and best-educated students in the country; and

WHEREAS, one Montanan won the prized Marshall scholarship in 1973, the first ever awarded to a native of this state; and

WHEREAS, twenty Montana youth have been chosen as Rhodes scholars since 1904, four in the past 10 years; and

WHEREAS, Montana ranks 18th among all the states for the number of Rhodes scholars selected and the University of Montana has educated more Rhodes scholars than the University of Chicago, the University of California at Berkeley, Duke University, and other prestigious colleges and universities; and

WHEREAS, many students at all six units of the university system have achieved other types of recognition for academic excellence.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, the 45th Legislature joins in honoring all those Montana students who have achieved academic excellence and national awards recognizing those achievements; and

BE IT FURTHER RESOLVED, that the Legislature commends the university units' staff who aided and encouraged these students; and

BE IT FURTHER RESOLVED, that the Legislature urges the Office of the Commissioner of Higher Education and the staff at all the university units to encourage academic effort and excellence in all its forms and to recognize education as their primary reason for existence.

Approved April 19, 1977.

HOUSE JOINT RESOLUTION NO. 3

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING A REQUEST THAT THE USE OF LAW CLERK AND SECRETARIAL ASSISTANCE TO DISTRICT JUDGES BE EXPLORED BEFORE BILLS CREATING ADDITIONAL JUDGESHIPS ARE INTRODUCED AND ENACTED IN SUBSEQUENT LEGISLATIVE SESSIONS.

WHEREAS, a Subcommittee on Judiciary studied the district courts during the 1975-1976 interim; and

WHEREAS, after extensive study this subcommittee recommended the creation of three new judgeships to the district court system; and

HeinOnline -- 1977 vol. II 2068 1977

WHEREAS, in the past new judgeships have been created without extensive study of the needs of the judiciary; and

WHEREAS, bills are usually introduced in each session to create new judgeships; and

WHEREAS, the Subcommittee on Judiciary received indications that in some judicial districts the addition of a law clerk and a secretary might be more advantageous to the state than the creation of a new judgeship; and

WHEREAS, the Supreme Court and its administrator could more fully explore the uses of law clerks and secretarial assistance for district judges.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That it is the hope of this Legislature that before any subsequent Legislature creates additional judgeships, the Supreme Court fully explore the use of law clerks and secretaries in the district courts.

Approved March 31, 1977.

HOUSE JOINT RESOLUTION NO. 5

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE ATTORNEY GENERAL TO REVISE AND UPDATE THE MODEL RULES OF ADMINISTRATIVE PRACTICE AND PROCEDURE.

WHEREAS, the Attorney General is directed by the Montana Administrative Procedure Act to prepare model rules of practice for state agencies to use as a guide in conducting administrative proceedings and to revise or amend such model rules from time to time as he considers necessary for the proper guidance of agencies; and

WHEREAS, the Attorney General adopted these model rules in 1972 and has made no revision or amendment to such rules since that time, with the exception of two minor changes proposed by the Administrative Code Committee; and

WHEREAS, experience under the Montana Administrative Procedure Act has indicated numerous aspects of administrative practice not covered by the model rules; and

WHEREAS, the model rules have not been amended to reflect amendments to the Montana Administrative Procedure Act enacted by previous legislatures, and many more amendments to the act are pending before this legislature.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That following adjournment of this legislative session, the Attorney

HeinOnline -- 1977 vol. II 2069 1977

General is requested to review the form and content of the model rules of administrative practice and to adopt such revisions to the rules as appear to be necessary for the guidance of state agencies and the orderly conduct of administrative proceedings.

Approved March 9, 1977.

HOUSE JOINT RESOLUTION NO. 6

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PLACING LEGISLATIVE EMPLOYEES AND ATTACHES UNDER THE DIRECTION OF THE RESPECTIVE LEGISLATIVE ADMINISTRATION COMMITTEES USING THE STATEWIDE PAY PLAN AS A GUIDE.

WHEREAS, it is necessary to establish an orderly pay plan for legislative employees and attaches which recognizes the need to compensate those employees on a similar basis to other state employees.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the following positions are classified in the grades indicated:

Grade 19
Secretary of the Senate
Chief Clerk of the House

Grade 17
Sergeant at Arms

Grade 14
Chaplain

Grade 12
Assistant to Secretary of Senate
Assistant to Chief Clerk of House
Researcher II

Grade 11
Chief Stenographer
Bills Clerk
Journal Clerk
Assistant Sergeant at Arms

Grade 10
Bills Coordinator
Assistant Chief Stenographer
Assistant Journal Clerk
Assistant Bills Clerk
Secretary
Bills Distributor
Amendments Coordinator

HeinOnline -- 1977 vol. II 2070 1977

Grade 9
Assistant Bills Coordinator
Researcher I

Grade 8
Assistant Bills Distributor
Reading Clerk

Grade 7
Stenographer
Supply Clerk
Posting Clerk

Grade 6
Typist
Proofreader
Clerk-Typist
Status Clerk

Grade 5
Parking Attendant
Watchman
Doorkeeper

Grade 1 - Step 6
Page

(2) That the personal aide to Representative Gould shall be paid a salary of $800 per month;

(3) That the chief clerk of the house, secretary of the senate and sergeants at arms shall develop job descriptions for the positions listed which shall contain the minimum qualifications for each position. The descriptions shall be approved by the respective legislative administration committees;

(4) That the grades, steps and salaries authorized thereto are those contained in the fiscal year 1977 pay schedule approved by the 1975 legislature in House Joint Resolution 37;

(5) That all positions classified below grade 17 shall receive compensation for time worked beyond 40 hours per week at the rate of time and a half. Such overtime shall be approved by the respective legislative administration committees or their designated representatives before the overtime is worked;

(6) That positions classified at grade 17 and above shall receive a salary for 40 hours per week regardless of the number of hours worked;

(7) That the respective legislative administration committees shall determine, using the statewide pay plan as a guide, the appropriate compensation for each employee based on previous experience;

(8) That no additional benefits such as sick pay, vacation pay, state retirement contribution, state health insurance contribution or longevity allowances are authorized;

HeinOnline -- 1977 vol. II 2071 1977

(9) That the distinction between researcher I and II is that the higher position requires a college degree and one year of research experience;

(10) That the chaplains shall be paid for two hours per legislative day served.

Approved January 13, 1977.

HOUSE JOINT RESOLUTION NO. 7

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING AN AMENDMENT TO RULE 16-2.14(1)-S1490 OF THE MONTANA ADMINISTRATIVE CODE, TO PROVIDE THAT NO PERMIT SHALL BE ISSUED FOR AN OPEN FIRE OR OPEN BURNING WITHOUT THE PRIOR NOTIFICATION OF A FIRE CHIEF OR OTHER APPROPRIATE OFFICIAL.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Health and Environmental Sciences is directed to proceed within 90 days to amend Rule 16-2.14(1)-S1490 of the Montana Administrative Code, to provide that no permit shall be issued for an open fire or open burning without the express prior notification of the fire chief or other head of the agency, if any, having charge of or responsibility for fire protection in the area which includes the location where such open fire or open burning is proposed to occur. Persons in fire districts created under 11-2008 shall be exempt from the reporting requirements.

Approved April 18, 1977.

HOUSE JOINT RESOLUTION NO. 8

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE CONSTRUCTION AND MAINTENANCE DIVISION OF THE DEPARTMENT OF ADMINISTRATION TO PREPARE A PLAN FOR CREATING PERMANENT, ADEQUATE FACILITIES FOR HEARING ROOMS AND OFFICES OF THE LEGISLATURE.

WHEREAS, the development of policy by the Legislature requires adequate hearing rooms that allow for ample room for witnesses, observers, and legislators; and

WHEREAS, present facilities are inadequate in many cases and serve to exclude many who are interested in the proceedings; and

WHEREAS, space formerly occupied by the State Treasurer's office is being made available to the Legislature on a 1-year-only basis by the Executive Branch.

HeinOnline -- 1977 vol. II 2072 1977

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Administrator of the Construction and Maintenance Division of the Department of Administration is directed to prepare and present to the Legislature, no later than the 60th legislative day, a plan for remodeling the entire space heretofore occupied by the offices of the State Treasurer and State Auditor on the second floor of the State Capitol. The plan shall provide for hearing rooms that have adequate space for an audience of at least 50 and for committees of at least 18 members with adequate working space for each member and for adequate office space. The plan shall be accompanied by a budget which shall include the cost of all remodeling and furnishings.

BE IT FURTHER RESOLVED, that the Administrator of the Construction and Maintenance Division consult with the legislative leadership and the chairmen of appropriate committees in developing the plan.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Administrator of the Construction and Maintenance Division of the Department of Administration.

Approved March 16, 1977.

HOUSE JOINT RESOLUTION NO. 9

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF ADMINISTRATION TO PUBLICIZE AND ENCOURAGE THE USE AND MAINTENANCE OF SMOKE DETECTORS IN BUILDINGS CONSTRUCTED IN MONTANA.

WHEREAS, every year in Montana an average of 30 persons die in fires and fires cause an estimated amount of $15 million of property damage; and

WHEREAS, the smoke detector has proven to be one of the most successful means of preventing loss of life and property by fire; and

WHEREAS, Montana requires smoke detectors in new residences within the jurisdiction of municipalities but not in outlying areas; and

WHEREAS, residences far removed from neighbors and community firefighting services stand in the highest need of early detection of fire.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the department of administration be directed to publicize and encourage the proper use and maintenance of effective smoke detectors in all residences, apartments, motor homes, and public buildings in Montana.

Approved March 10, 1977.

HeinOnline -- 1977 vol. II 2073 1977

HOUSE JOINT RESOLUTION NO. 10

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF HIGHWAYS TO RECOGNIZE THE IMPORTANCE OF CONSTRUCTION OF A SUITABLE U.S. HIGHWAY 93 FROM ITS INTERSECTION WITH INTERSTATE 90 WEST OF MISSOULA TO ITS INTERSECTION WITH FLATHEAD COUNTY LINE NORTH OF POLSON.

WHEREAS, U.S. Highway 93 between Missoula and Polson has the third highest average daily traffic count among all rural primaries in Montana, carrying 2,365 vehicles daily; and

WHEREAS, U.S. Highway 93 carries 9% of all rural vehicle miles driven on primary routes in the state making it second among all state primary routes in rural miles driven; and

WHEREAS, U.S. Highway 93 carries 7% of all rural commercial vehicle miles driven on primary routes in the state making it second among all state primary routes in rural commercial vehicle miles driven; and

WHEREAS, U.S. Highway 93 carries the fourth highest volume of out-of-state vehicle traffic in the state carrying our touring guests into prime recreation areas; and

WHEREAS, use of this route has grown extremely in the recent past increasing 60% in the 10 years from 1965 to 1975; and

WHEREAS, controlling the heavy traffic on a route not suitably contructed for it has required extraordinarily heavy coverage by the highway patrol consuming up to one-third of the highway patrol's special enforcement team; and

WHEREAS, in spite of extreme enforcement efforts U.S. Highway 93 has a fatality rate 46% higher than the statewide average.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Highways is requested to recognize the importance of the construction of a suitable highway along U.S. Highway 93 from its intersection with Interstate 90 west of Missoula to its intersection with the Flathead County line north of Polson.

BE IT FURTHER RESOLVED, that the Legislature desires to call attention to the problem that exists in this area in order that the problem may be appropriately addressed and prioritized, but the overall program in the financial district should not be interrupted.

Approved April 4, 1977.

HeinOnline -- 1977 vol. II 2074 1977

HOUSE JOINT RESOLUTION NO. 11

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO ALLOW A MAXIMUM SPEED OF SIXTY-FIVE MILES PER HOUR IN CERTAIN CASES.

WHEREAS, many states contain large geographical areas with sparse population and low traffic density; and

WHEREAS, most travel in these states is undertaken on a local basis with no highway travel involved; and

WHEREAS, when highway travel is undertaken, it is often necessary to travel long distances through sparsely settled country with little traffic; and

WHEREAS, a slightly higher maximum speed in these areas would facilitate travel, counteract boredom, and not significantly affect total fuel consumption in the nation as a whole.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is urged to amend 23 U.S.C. section 154 to allow a maximum speed of 65 miles per hour in areas with large geographical areas that are sparsely populated.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to each member of the Montana Congressional Delegation.

Approved March 11, 1977.

HOUSE JOINT RESOLUTION NO. 13

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING THE FIRM OPPOSITION OF THE LEGISLATURE OF MONTANA TO THE PROPOSED CLOSING OF THE BUREAU OF HEARINGS AND APPEALS, SOCIAL SECURITY ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE, BILLINGS, MONTANA, SOCIAL SECURITY OFFICE AND REQUESTING REVERSAL OF ANY DECISION TO CLOSE THAT OFFICE.

WHEREAS, there are more than 100,000 Montanans receiving some form of monthly Social Security payments at this time; and

WHEREAS, many recipients have been forced to appeal to the Social Security Administration for adjustment of benefits; and

WHEREAS, these appeals are very complex and take much time; and

WHEREAS, in the past, these cases were handled from Denver, Colorado, with entirely unsatisfactory results and delays up to 3 years in duration; and

HeinOnline -- 1977 vol. II 2075 1977

WHEREAS, the Montana Aging Services Bureau and the Montana Congressional Delegation were able to prevail upon the Social Security Administration to move an Administrative Judge to Billings, Montana, so that cases could be heard on a current basis; and

WHEREAS, the Billings office has done an outstanding job in the past 2 years; and

WHEREAS, the Social Security Administration is now considering closing this office and again servicing Montana from Denver, Spokane, or North Dakota; and

WHEREAS, this would once again make it virtually impossible for the average Montanan to have a hearing within a reasonable time.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature expresses its firm opposition to the closing of the Montana office of the Bureau of Hearings and Appeals, Social Security Administration, Department of Health, Education, and Welfare, and to the servicing of Montana from outside the state of Montana, and requests reversal of any decision that may have heretofore been made to close said office and the entry of a final decision to retain said office.

BE IT FURTHER RESOLVED, that copies of this resolution be sent immediately upon passage to the following: the President of the United States, Jimmy Carter; each member of the Montana Congressional Delegation; Senator Frank Church; the Secretary of the Department of Health, Education, and Welfare; the Director of the Social Security Administration; the Regional Commissioner of Social Security, Denver, Colorado.

Approved February 16, 1977.

HOUSE JOINT RESOLUTION NO. 14

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE COMMITTEE ON PRIORITIES GIVE HIGH PRIORITY TO A STUDY AND REVISION BY THE LEGISLATIVE COUNCIL OF THE LAWS RELATING TO ELECTIONS IN THE STATE OF MONTANA.

WHEREAS, except for the recodification by the 41st Legislative Assembly of Montana, the election laws of Montana have not undergone substantial revision since 1921; and

WHEREAS, the state of the election process has changed considerably and many new questions concerning the election process have arisen since 1921; and

WHEREAS, lacking a substantial revision and faced with the need to answer questions concerning the election process, a piecemeal approach towards election legislation has resulted; and

HeinOnline -- 1977 vol. II 2076 1977

WHEREAS, the piecemeal approach has not satisfactorily answered all questions and further has directly contributed to the greater confusion of the election process; and

WHEREAS, there now exists a system of election law not sufficient or totally lacking in the provision of uniform control over elections; and

WHEREAS, there is a need for a state law creating a uniform system for all elections in Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is hereby requested to give high priority to a study by the Legislative Council of all laws pertaining to elections in the State of Montana and to the preparation of a revised code of election law.

BE IT FURTHER RESOLVED that the study committee request the assistance of state and local election officials in conducting its study.

Approved March 22, 1977.

HOUSE JOINT RESOLUTION NO. 15

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DIRECTOR AND THE STATE FISH AND GAME COMMISSION TO TAKE INTO CONSIDERATION THE INPUT OF THE LOCAL ROD AND GUN CLUBS AND ALLIED ORGANIZATIONS AND LANDOWNERS AS WELL AS THE RECOMMENDATIONS OF THE LOCAL GAME WARDENS IN SETTING SEASONS AND LIMITS OF FISH AND GAME HARVEST.

WHEREAS, the director works in an advisory capacity and the state Fish and Game Commission sets the seasons and game and fish harvest limits; and

WHEREAS, the local rod and gun clubs, landowners, and local game wardens have a great fund of knowledge of local fishing and hunting conditions; and

WHEREAS, with our dwindling game population and a lowered creel census it behooves the department and the director to take into consideration all available authentic input as to game and fish population.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That it is the desire of the legislators that the director of the Fish and Game Department and the Fish and Game Commission take into consideration the input and knowledge in addition to the desires of the local rod and gun clubs and affiliated organizations and landowners as well as the thinking and input of the local game wardens of their respective areas.

Approved March 16, 1977.

HeinOnline -- 1977 vol. II 2077 1977 .

HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CREATION OF A COMMITTEE TO STUDY THE COLLECTION, PRESERVATION, AND DISSEMINATION OF MONTANA'S HISTORICAL AND CULTURAL RECORD.

WHEREAS, the history of Montana, while short in duration, is rich in substance; and

WHEREAS, that history provides the citizen of Montana both a sense of time and a sense of place; and

WHEREAS, it is this historical continuum, this historical heritage, which most accurately defines the modern Montanan; and

WHEREAS, the history and culture of Montana will be lost to the current and future citizens of the state if it is not properly collected, preserved, and disseminated; and

WHEREAS, the Montana Historical Society, the oldest legislatively-created department in Montana and a major repository of the state's historical experience, is severely restricted in its efforts to collect, preserve, and disseminate Montana's historical heritage; and

WHEREAS, the manner in which state and local records of historical importance are collected and preserved is inadequate and a hardship to the preservation of Montana's historical and cultural experience; and

WHEREAS, the collection of records and artifacts of historical and cultural significance is scattered among several public agencies; and

WHEREAS, many of Montana's priceless heirlooms have been removed from the state to be prized and exhibited in other regions of the country; and

WHEREAS, the problem of the preservation of Montana's historic and archaeological sites has never been seriously addressed; and

WHEREAS, Montana's State Antiquities Act is an inadequate guideline for the identification and preservation of Montana's historical and cultural past; and

WHEREAS, many of Montana's museums are severely constrained in their capacity to preserve and display objects of Montana's cultural tradition; and

WHEREAS, all of Montana's citizens have a vital interest in the preservation of their past.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HeinOnline -- 1977 vol. II 2078 1977

That the Committee on Priorities is hereby requested to give high priority to the appointment of a committee to study the collection, preservation, and dissemination of Montana's historical and cultural heritage.

BE IT FURTHER RESOLVED, that the committee investigate alternative methods of financing and coordinating a state archival system for the collection and maintenance of state and local records.

BE IT FURTHER RESOLVED, that the committee study the state system of the acquisition, preservation, and development of historic and archaeologic sites; the legal status of the Veterans and Pioneers Memorial Building; the activities, requirements, and financial position of the Montana Historical Society; any relevant statutes including the State Antiquities Act, and whatever other related topics the committee considers appropriate.

Approved March 22, 1977.

HOUSE JOINT RESOLUTION NO. 19

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE UNITED STATES DEPARTMENT OF INTERIOR TO ALLOCATE ANY NEW POWER GENERATED ON DAMS IN MONTANA TO MONTANANS FIRST.

WHEREAS, several existing dams on Montana's rivers are capable of generating additional electrical power through the installation of new generators; and

WHEREAS, if Montanans are to bear the environmental and social costs of installing these new generators, they should also be first to receive the benefits of additional electrical power.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Department of Interior is urged to allocate any new electrical power generated from dams on Montana's rivers to fill Montana's needs first and foremost and only secondarily to meet the energy demands of other states.

(2) That copies of this resolution be sent to the Montana Congressional Delegation and to the United States Secretary of the Interior.

Approved March 11, 1977.

HOUSE JOINT RESOLUTION NO. 21

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE BUREAU OF RECLAMATION AND THE ENERGY RESEARCH

HeinOnline -- 1977 vol. II 2079 1977

AND DEVELOPMENT ADMINISTRATION TO STUDY THE SUN-TETON UNIT OF THE MISSOURI RIVER BASIN PROJECT IN LIGHT OF PRESENT ECONOMIC, SOCIAL, AND TECHNOLOGICAL CONDITIONS.

WHEREAS, the need for flood control and irrigation development is critical for the continued growth of urban community and agriculture in Montana and has been revealed by severe spring floods and summer droughts; and

WHEREAS, the climatic and soil conditions of Cascade and Teton counties are such that irrigated land produces a high proportion of the total value of the crops; and

WHEREAS, the previous plans for the Sun-Teton unit would provide water to bring several thousand acres of new land into irrigated production and provide a more dependable water supply to lands with adjudicated water rights, land claiming an existing right since adjudication of the Sun River, and land receiving water under permits issued under "Montana Water Use Act", of land presently irrigated but with inadequate water supplies; and

WHEREAS, the economy of Montana is enhanced by a more stable farm income, and the stable farm income resulting from this Sun-Teton unit would provide more predictable investment conditions in the towns of Simms, Fort Shaw, Sun River, Vaughn, Manchester, and Lower Sun River as well as flood control for urban development; and

WHEREAS, the need exists for increased control of riverflows during periods of heavy spring runoff which flood the Sun River and its tributaries and have continuously caused damage to farm land, irrigation, communication and transportation facilities, urban communities, and other improvements along the streams; recorded costs are over 24 million dollars to date and damages caused by the floods would be much greater now than at the time of occurrence because of increased development and higher property values; and

WHEREAS, the Sun River is considered by many people to be among the finest fishing streams in Montana, and in many years very low flows during late summer months and high turbid flows during spring months have limited fishing; and

WHEREAS, the construction of a dam and reservoir on the Sun River as an element of the Sun-Teton unit will result in excellent lake and stream fishing, and the proposed development would enhance the overall fishery value of the area by greatly improving the streamflow patterns in the Sun River; and

WHEREAS, the water stored as a result of the Sun-Teton unit could be made available for industrial development, and such development would be beneficial to the growth and economy of Montana; and

WHEREAS, the hydroelectric potential of a dam on the main stem of the Sun River could be utilized to help alleviate the energy crisis faced by the United States and to help defray the costs of the Sun-Teton unit; and

HeinOnline -- 1977 vol. II 2080 1977

WHEREAS, a dependable supply of stored water would be beneficial to the research and development associated with the magnetohydrodynamic project being conducted in Montana; and

WHEREAS, it is becoming apparent that if Montanans do not plan to use Montana water for their own benefit, they will lose the water rights to the demands of downstream users in other states where water is appropriated to a beneficial use, prior in time; and

WHEREAS, the Sun-Teton unit would benefit the people of Montana and was considered by the Bureau of Reclamation and Department of the Interior prior to the development of the energy crisis and the present depressed economy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and House of Representatives of the State of Montana request the Bureau of Reclamation and the Energy Research and Development Administration to make an immediate update study on the Sun-Teton unit of the Missouri River Basin Project in light of present economic, social, and technological conditions.

BE IT FURTHER RESOLVED, that the Secretary of State is instructed to send a copy of this resolution to each member of the Montana Congressional Delegation, the Secretary of the Interior, the Assistant Secretary of the Interior for Land and Water Resources, the Director of the Bureau of Reclamation, the Regional Director of the Upper Missouri Regional Field Office of the Bureau of Reclamation, the Administrator of the Energy Research and Development Administration, and the County Commissioners of Cascade and Teton counties.

Approved April 15, 1977.

HOUSE JOINT RESOLUTION NO. 22

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO DISCUSS WITH THE STATE OF WYOMING AND THE CROW AND NORTHERN CHEYENNE INDIANS THE POSSIBILITY OF JOINT STUDIES OF WATER SUPPLY PROJECTS IN THE TONGUE AND POWDER RIVER BASINS, TO INVESTIGATE WATER MARKETING POSSIBILITIES IN THOSE BASINS AND TO CONDUCT A SPECIAL STUDY ON WATER QUALITY AND SALINE SEEP POTENTIAL AS A RESULT OF INCREASED STORAGE AND IRRIGATION IN THE TWO RIVER BASINS, AND, SHOULD IT BE DETERMINED THAT THE PROJECTS BE BENEFICIAL TO MONTANA, TO PURSUE A FEASIBILITY (LEVEL C) STUDY ON THE RECOMMENDED PROJECT(S).

WHEREAS, water availability is a problem in the Tongue and Powder River basins with periodic shortages existing under the current development pattern; and

HeinOnline -- 1977 vol. II 2081 1977

WHEREAS, the potential demands from both the industrial and agricultural sectors for firm water supplies exceed the available supply in those basins; and

WHEREAS, the waters of the Tongue and Powder Rivers have been allocated between Montana and Wyoming according to a formula set forth in the Yellowstone River Compact and between the Crow and Northern Cheyenne Indians.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the department of Natural Resources and Conservation is directed to:

(1) enter into discussions with the State of Wyoming and the Crow and Northern Cheyenne Indians on the possibility of initiating joint studies on proposals for augmenting water supplies in the Powder and Tongue River basins;

(2) investigate with potential users water marketing possibilities in those basins;

(3) conduct special studies on water quality and saline seep potential in those basins, on the effects of increased storage and irrigation on those factors, and on aqueduct system alternatives to storage, and should the foregoing indicate compatibility, desirability, and need for water storage or delivery systems, to pursue feasibility (level C) studies on storage or aqueduct projects that would most benefit the citizens of the State of Montana.

Approved March 22, 1977.

HOUSE JOINT RESOLUTION NO. 24

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMENDING THE GREAT FALLS GAS COMPANY FOR HELPING HOMEOWNERS TO INSULATE THEIR HOMES TO CONSERVE ENERGY; ENCOURAGING OTHER UTILITIES TO EMULATE THIS EXAMPLE.

WHEREAS, the 1975 Legislature enacted Section 84-7405, R.C.M. 1947, which allows but does not require a gas or electric utility to make low interest loans for home insulation improvements and other energy conservation measures, and to recover the subsidized portion of the interest through tax incentives; and

WHEREAS, the maximum feasible conservation of energy is an important policy of the state of Montana, and the voluntary implementation of Section 84-7405, R.C.M. 1947, by the gas and electric utilities operating in Montana would make a material contribution toward achievement of energy conservation goals; and

HeinOnline -- 1977 vol. II 2082 1977

WHEREAS, the Great Falls Gas Company, a smaller gas utility, has begun to implement Section 84-7405, R.C.M. 1947, in the city of Great Falls and deserves the highest commendation of the people and legislature of Montana for taking the initiative in an area where larger utilities with stronger capital positions have thus far declined to venture.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Great Falls Gas Company is given a vote of thanks for doing more than just talking about energy conservation in the household.

BE IT FURTHER RESOLVED: that the other gas and electric utilities of Montana are emphatically encouraged to emulate The Great Falls Gas Company, and the Public Service Commission is emphatically encouraged to expedite such efforts as these utilities may make to implement Section 84-7405 prior to the next legislative session.

BE IT FURTHER RESOLVED: that the Secretary of State send copies of this resolution to the presidents of the Great Falls Gas Company, the Montana Power Company, the Montana-Dakota Utilities Company, the Pacific Power and Light Company, and the chairman of the Public Service Commission.

Approved March 9, 1977.

HOUSE JOINT RESOLUTION NO. 25

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING CONGRESS TO REVIEW OSHA.

WHEREAS, the procedures outlined by OSHA for its administrators are without authorization by the Congress; and

WHEREAS, better, less harmful methods of administering the purposes of the act are readily available; and

WHEREAS, Title 29, USC Chapter 15, Section 651, is an unconstitutional delegation by the Congress to the Secretary of Labor, without setting out guidelines or delineating limits upon the administrator and therefore is void; and

WHEREAS, Section 659 of the act gives an unfair advantage to the Federal Government in severely limiting the time for an appeal and foreclosing the grounds for additional remedies; and

WHEREAS, OSHA threatens the existence of business enterprises because if a firm lacks the resources to institute the changes required by OSHA, there is no alternative but to close down; and

WHEREAS, undue delegation of authority is granted to the OSHA inspectors; and

WHEREAS, regulations under OSHA contained in more than 800 pages

HeinOnline -- 1977 vol. II 2083 1977

with more than 4,400 sections are complex, the language is convoluted beyond recognition except by a scientist or lawyer, and businessmen who have no legal or scientific training are unable to understand OSHA regulations; and

WHEREAS, a Cornell Law School Professor has said perhaps the statute should be declared void for rampant complexity because citizens must understand what they are not permitted to do; and

WHEREAS, in the first 33 businesses obtaining small business loans for the purpose of OSHA compliance averaged loans of $200,000 apiece, so it is obvious that OSHA regulations are remaking the daily practices of the business world in a major way; and

WHEREAS, according to Robert Stewart Smith, formerly in charge of safety and health evaluation for the Department of Labor, OSHA has done nothing to improve the industrial accident record and injury rates were higher, not lower, in industries with good compliance ratings; and

WHEREAS, the OSHA normal practice of fining an employer, even if a worker willfully violates a rule, is grossly unfair to businessmen.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Congress is urged to review the Occupational Safety and Health Act of 1970 to eliminate those practices and procedures which violate the Constitution of the United States.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the Assistant Secretary for Occupational Safety and Health, Morton Corn; the Montana Congressional Delegation; and to each of the other State Legislatures; and to the Montana Attorney General.

Approved April 18, 1977.

HOUSE JOINT RESOLUTION NO. 26

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE CONGRESS OF THE UNITED STATES TAKE INTO CONSIDERATION CLIMATIC AND SOIL CONDITIONS AND RAISE THE GENERAL 160-ACRE LIMITATION ON LANDS UNDER SINGLE OWNERSHIP WHICH MAY BE IRRIGATED FROM FEDERAL RECLAMATION PROJECTS TO REFLECT VARYING CLIMATIC AND SOIL CONDITIONS.

WHEREAS, the Reclamation Act of 1902 generally provides that no water may be sold for lands in excess of 160 acres in single ownership; and

WHEREAS, the Omnibus Adjustment Act of 1926 provides in effect that the owners of irrigable lands in excess of 160 acres must dispose of this excess before they can receive water from a federal project; and

HeinOnline -- 1977 vol. II 2084 1977

WHEREAS, due to the climatic and soil conditions of a great portion of Montana and of the other Northwestern States a 160-acre parcel is not an economic agricultural production unit; and

WHEREAS, the climatic and soil conditions of a great portion of Montana and of the other Northwestern States require a farm or ranch unit containing in excess of 160 irrigable acres in order to achieve a viable agricultural production unit which can support a family; and

WHEREAS, the State of Montana owns substantial acreages of potentially irrigable land within irrigation districts; and

WHEREAS, Congress has seen fit to grant exemptions from the 160-acre limitation to the Northern Colorado Water Conservancy District; and

WHEREAS, the Small Reclamation Projects Act of 1956 has been construed to grant an exemption from the 160-acre limitation.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That, the Congress of the United States is requested to take into consideration climatic and soil conditions and raise the general 160-acre limitation on lands under single ownership, and provide special provisions allowing additional acreage to lessees of state land, which may be irrigated from Federal Reclamation Projects to reflect varying climatic and soil conditions and state ownership.

BE IT FURTHER RESOLVED:

That, the Secretary of state shall send a copy of this resolution to the President of the Senate of the United States, the Speaker of the House of Representatives of the United States, the Montana Congressional delegation, the Secretary of the Interior, the Commissioner of the Bureau of Reclamation, and the Legislatures of the several states.

Approved March 16, 1977.

HOUSE JOINT RESOLUTION NO. 27

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DECLARING THE MONTANA STATE LEGISLATURE'S UNALTERABLE OPPOSITION TO REGISTRATION AND CONFISCATION OF FIREARMS.

WHEREAS, the right of an individual to keep and bear arms is fundamental to the preservation of freedom and is guaranteed by the Constitution of the United States; and

WHEREAS, firearms are, always have been, and always will be very much a part of the way of life in the great State of Montana; and

WHEREAS, the private ownership of firearms, including handguns, is the last line of defense against the criminal element; and

HeinOnline -- 1977 vol. II 2085 1977

WHEREAS, the report of the National Advisory Commission on Criminal Justice Standards and Goals, issued in August, 1973, advocates, among other things, the confiscation of all privately owned handguns; and

WHEREAS, the people of Montana having seen that federal firearm registration is leading us closer to federal confiscation of firearms.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature of the State of Montana go on record as being unalterably opposed to registration and confiscation of firearms.

BE IT FURTHER RESOLVED, that a copy of this joint resolution be sent to the President of the United States, to the Vice-President of the United States, and to Montana's Senators and Representatives in Congress.

Approved March 24, 1977.

HOUSE JOINT RESOLUTION NO. 29

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CONGRESS OF THE UNITED STATES AND THE SECRETARY OF DEFENSE TO PROVIDE FOR THE CONDUCT OF POLITICAL CAMPAIGNS ON THE GROUNDS OF MALMSTROM AIR FORCE BASE.

WHEREAS, voting precinct 28A in Cascade County, Montana, is predominantly composed of Malmstrom Air Force Base; and

WHEREAS, the Commander of Malmstrom Air Force Base has forbidden the conduct of political campaigns by candidates and their supporters on the base grounds; and

WHEREAS, this ban on political campaigns deprives the residents and workers of Malmstrom Air Force Base of a significant opportunity to participate in the very democratic process they are constantly defending; and

WHEREAS, the Legislature of Montana desires that all of its citizens be afforded an opportunity to participate equally in elections.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and the House of Representatives request the Congress of the United States and the Secretary of Defense to exercise their lawful authority and provide for the conduct of political campaigns on Malmstrom Air Force Base by candidates for public office.

BE IT FURTHER RESOLVED that the Secretary of State of Montana shall send a copy of this resolution to the President of the Senate of the United States, the Speaker of the House of Representatives of the United States, the Montana Congressional Delegation, the Secretary of Defense,

HeinOnline -- 1977 vol. II 2086 1977

the Commander of Malmstrom Air Force Base, and the County Commissioners of Cascade County.

Approved March 24, 1977.

HOUSE JOINT RESOLUTION NO. 32

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO PRESERVE AND PERPETUATE INDIAN CULTURE AND TRADITIONS IN MONTANA AND TO RECOGNIZE THE FREEDOM OF INDIAN RELIGIOUS PRACTICES AS A BONA FIDE RELIGION.

WHEREAS, the State of Montana has been established in a territory that was once the exclusive homeland of the Indian people; and

WHEREAS, over the centuries these Indian people had developed a rich and unique culture which was precious and meaningful to every Indian; and

WHEREAS, the sacred traditions of the original residents of Montana are in danger of being forgotten and lost to posterity; and

WHEREAS, the dominant culture has taken much from the Indians and has misused or destroyed many of the Indians' most valued religious resources; and

WHEREAS, Montanans can learn much from the historical beliefs and the traditional way of life practiced by the various Indian tribes; and

WHEREAS, both Indian and white societies will lose many potential benefits and enjoyments if traditional Indian culture is forever lost.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That Indian religious practices be considered in the same legal class as any other orthodox religion or sect in Montana.

BE IT FURTHER RESOLVED, that the Legislature of Montana recognizes and declares its respect for the sacred religious practices of Indian tribes as they have been legitimized by historical tribal sanction.

BE IT FURTHER RESOLVED, that, whenever possible, traditional Indians will be appointed to serve on committees whose deliberations and actions affect the life-style and traditional practices of Indians.

BE IT FURTHER RESOLVED, that the Senate and the House of Representatives of Montana recognize and encourage the preservation and perpetuation of Indian culture and traditions among all persons for whom these traditions may have meaning.

BE IT FURTHER RESOLVED, that the Senate and the House of Representatives of Montana, in all future deliberations which affect Indian tribal customs, will take into consideration the requirements of those customs and will endeavor to protect them from unnecessary curtailment or limitation.

HeinOnline -- 1977 vol. II 2087 1977

BE IT FURTHER RESOLVED, that the Secretary of State is requested to send copies of this resolution to all Tribal Councils in the State of Montana.

Approved April 13, 1977.

HOUSE JOINT RESOLUTION NO. 36

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING ALL MONTANA ELECTED OFFICIALS AND OTHERS WITH APPOINTIVE AUTHORITY TO INCREASE THE REPRESENTATION OF AMERICAN INDIANS IN MONTANA ON BOARDS AND IN AGENCIES WHICH AFFECT INDIAN PEOPLE.

WHEREAS, the State of Montana recognizes the need and importance of providing equal opportunity to all citizens of Montana to participate in the decisions which affect their lives; and

WHEREAS, The Constitution of the State of Montana recognizes the heritage of the American Indian; and

WHEREAS, the American Indian constitutes a large minority population in the State of Montana; and

WHEREAS, the American Indian has had little, if any, representation on the various boards and in the various agencies whose decisions have a great impact upon the life of the American Indian in Montana; and

WHEREAS, the American Indians of Montana will not be able to achieve equality until this lack of representation is corrected; and

WHEREAS, increased representation of the American Indians of Montana on such boards and in such agencies will promote goodwill and better relations between the Indian and non-Indian populations of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and the House of Representatives urge all Montana elected officials and others with appointive authority to increase the representation of American Indians of Montana on the boards and in the agencies which affect Indian people.

BE IT FURTHER RESOLVED, that the Secretary of State shall send a copy of this resolution to the Governor of Montana, the Lieutenant Governor of Montana, the Attorney General of Montana, the State Auditor of Montana, the State Superintendent of Public Instruction of Montana, the heads of all executive departments, the Montana Association of Counties for distribution to county officials, and the Montana League of Cities and Towns for distribution to municipal officials.

Approved March 29, 1977.

HeinOnline -- 1977 vol. II 2088 1977

HOUSE JOINT RESOLUTION NO. 38

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMENDING HOUSEWIVES AND MOTHERS AND EXPRESSING THE LEGISLATURE'S INTENTION TO SUPPORT LEGISLATION REAFFIRMING AND STRENGTHENING THE SOLIDARITY OF THE HOME.

WHEREAS, housewives and mothers make an immeasurable contribution to the stability of our society; and

WHEREAS, these women serve faithfully and often without recognition, thanks, or financial remuneration; and

WHEREAS, housewives and mothers are a vital part of our state's and country's economy despite the fact that they are not paid for their work.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature recognize the importance of the role of housewife and mother and urges other legislative bodies to join it in supporting legislation that would reaffirm and strengthen the solidarity of the home.

Approved March 18, 1977.

HOUSE JOINT RESOLUTION NO. 40

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA SUPPORTING FEDERAL COAL STRIP MINE RECLAMATION LEGISLATION UPON CERTAIN CONDITIONS.

WHEREAS, the State of Montana has enacted comprehensive legislation to control reclamation of lands disturbed by surface mining for coal within the state; and

WHEREAS, Montana has previously enforced its laws on state, private, and federal lands within the state; and

WHEREAS, there is currently pending before Congress federal coal strip mine reclamation legislation; and

WHEREAS, such legislation could have the effect of preempting the state's control over the reclamation of lands disturbed by surface mining for coal; and

WHEREAS, the State of Montana desires to continue to administer and enforce its reclamation program on lands disturbed for coal mining within Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State of Montana supports the enactment of federal coal strip mine reclamation legislation if such legislation:

HeinOnline -- 1977 vol. II 2089 1977

(1) provides that, where a state's reclamation law is as stringent as the federal reclamation law, the state law will be applied to all private, state, and federal lands within the state, and will be administered by and enforced by state personnel; and

(2) provides for federal funds to be made available to the state for administration and enforcement of a reclamation program on federal lands within the state.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Governor, the Attorney General, members of Montana's Congressional Delegation, the United States Secretary of the Interior, and to the President of the United States.

Approved March 18, 1977.

HOUSE JOINT RESOLUTION NO. 41

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA COMMENDING THE EFFORTS OF THE AMERICAN COUNCIL OF SPOTTED ASSES.

WHEREAS, a Spotted Ass is a donkey, ass, burro, or mule of more than one color with well defined lines dividing the colors and is also the only breed of stock ever developed in Montana; and

WHEREAS, breeders and owners of Spotted Asses established the American Council of Spotted Asses in 1969, an organization headquartered in Fishtail, Montana, and dedicated to the registration and promotion of the Spotted Ass in the United States and other nations; and

WHEREAS, the officers and members of the American Council of Spotted Asses have labored with diligence to promote the virtues of the Spotted Ass, such as being outstanding pack animals and excellent pets for children, and have increased general awareness of this Montana breed. NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the American Council of Spotted Asses is hereby commended for its promotional efforts on behalf of the Spotted Ass and is encouraged to continue the same.

BE IT FURTHER RESOLVED, that the Secretary of State mail an official copy of this resolution to the American Council of Spotted Asses in Fishtail, Montana.

Approved March 24, 1977.

HOUSE JOINT RESOLUTION NO. 43

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF

HeinOnline -- 1977 vol. II 2090 1977

REPRESENTATIVES OF THE STATE OF MONTANA URGING REPEAL OF SECTION 404 OF THE FEDERAL WATER POLLUTION CONTROL ACT.

WHEREAS, Section 404 of the Federal Water Pollution Control Act (Public Law 92-500) is an unconstitutional delegation of legislative authority to the military; and

WHEREAS, Section 404 violates the traditional separation of military and civilian departments, unreasonably conferring civilian authority on the United States Army; and

WHEREAS, the United States Army is not a suitable or practicable body for conferral of executive regulatory agency powers; regulatory powers are traditionally conferred on nonmilitary executive agencies, except for specific military functions; and

WHEREAS, Section 404 unconstitutionally confers jurisdiction upon the Army for all waters of the United States, not merely navigable waters, thus violating the traditional constitutional doctrine of state's rights because nonnavigable waters are outside the area of interstate commerce and within the area of state jurisdiction; and

WHEREAS, Section 404 would cover residential property, and through exceptions, even cover titularly exempted farmlands, which is a gross violation of the police and public health and safety jurisdiction of the states.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the U.S. Congress is urged to repeal Section 404 of the Federal Water Pollution Control Amendments of 1972 as an unconstitutional delegation of authority.

(2) That the Attorney General of Montana is also directed to file an action, in the name of the people of the State of Montana, in Federal District Court, to have that section of the act declared unconstitutional. The Attorney General is also directed to contact the Attorneys General of each of the states and to use his best efforts to enlist their support for a joint suit by the several states against the United States Army Corps of Engineers and the United States Government for Section 404's violation of "state's rights".

Approved March 10, 1977.

HOUSE JOINT RESOLUTION NO. 45

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE MONTANA ARTS COUNCIL TO UNDERTAKE A CULTURAL RESOURCES STUDY WITHIN THE STATE AND TO REPORT THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, the cultural resources of Montana vitally contribute to the physical and mental health and welfare of the people of the state; and

HeinOnline -- 1977 vol. II 2091 1977

WHEREAS, cultural resources contribute to Montana's commercial and industrial growth, attract visitors to the state, generate tax and other revenues in and for the state, and otherwise contribute to the economy of the state; and

WHEREAS, a lack of data-based information has hampered efforts of the Montana Arts Council, community arts organizations, and the Legislature in making decisions that adequately serve the artistic and intellectual needs of the people; and

WHEREAS, initial and continuing responsibility for studying the capabilities of cultural institutions, the public needs and desire for their services, and the role of the public and private sector in supporting and assisting such institutions and services rests with the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That for the purpose of this resolution, "cultural resources" means things, events, or individuals which function to the advantage of the intellectual, creative, artistic, or esthetic needs or desires of the people of the state of Montana.

BE IT FURTHER RESOLVED, that, pursuant to Article IX, section 4, of The Constitution of the State of Montana, the Legislature directs the Montana Arts Council, a state agency, to undertake a cultural resources development study. This study will include research and investigation into the following concerns and issues:

(1) the economic and operational status of local cultural institutions and services existing in communities throughout the state;

(2) cooperative and coordinative efforts and activities which involve local, state, federal, or private resources in the conservation, stimulation, and diffusion of cultural resources;

(3) identification of cultural resources within the state;

(4) definition of state and local government and private alternatives for roles in supporting and assisting the conservation, stimulation, and diffusion of cultural resources;

(5) development of a data base related to the cultural resources of the state of Montana;

(6) identification of the needs of individual artists and scholars and the concomitant artistic and intellectual needs of the people of the state;

(7) the need for acquisition and maintenance of facilities and capital assets which conserve, stimulate, or diffuse cultural resources; and

(8) development of a state policy with regard to cultural resources.

BE IT FURTHER RESOLVED, that the Legislature directs the Montana Arts Council to periodically report its findings and recommendations to the Legislative Interim Committee on Education as required by that committee. These findings and recommendations shall include but not necessarily be limited to articulation of the following:

HeinOnline -- 1977 vol. II 2092 1977

(1) state level organization and structure for focus on the conservation, stimulation, and diffusion of cultural resources;

(2) roles of federal, state, and local governments of the private sector in the conservation, stimulation, and diffusion of cultural resources; and

(3) state cultural resources policy.

BE IT FURTHER RESOLVED, that the Legislative Interim Committee on Education shall assume the following responsibilities with respect to the study and its findings and recommendations:

(1) monitoring of the ongoing processes of the study;

(2) approval of the final report emanating from the study; and

(3) proposal of recommendations to the Legislature.

BE IT FURTHER RESOLVED, that the directive of this resolution shall terminate June 30, 1979.

Approved March 31, 1977.

HOUSE JOINT RESOLUTION NO. 47

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE GOVERNOR'S OFFICE AND THE DEPARTMENT OF LABOR AND INDUSTRY TO INVESTIGATE METHODS OF PUTTING MORE UNEMPLOYED MONTANANS TO WORK IMPROVING THE CONDITION OF OUR AGRICULTURAL AND FORESTLAND RESOURCES.

WHEREAS, population and economic growth will cause increasing demands for outputs from Montana's agricultural and forestland resources; and

WHEREAS, renewable outputs from these lands contribute over one-half of the state's economic activity; and

WHEREAS, these land resources, if properly managed, are capable of producing outputs indefinitely; and

WHEREAS, about 32 million acres of agricultural land are in need of conservation treatment; almost 6 million acres of commercial forestland need either thinning or stocking; about 1.5 million acres of irrigated croplands need improved systems or proper water management; and

WHEREAS, a significant correlation exists between the condition of these land resources and the quantity and quality of our surface water resources; and

WHEREAS, the Congress of the United States is currently considering additional appropriations for public works projects, and Montana annually receives federal money for subsidized employment; and

HeinOnline -- 1977 vol. II 2093 1977

WHEREAS, legislative intent has been expressed through passage of House Bill 700 in the 1975 legislative session which appropriated general fund moneys to match federal funds to provide employment for Montanans in forestland conservation projects.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature wishes to explore all possible means of using federal or state funds to reduce this existing backlog of land treatment needs and therefore urges the Governor's Office and the Department of Labor and Industry to investigate the feasibility of implementing state actions that would put more unemployed Montanans to work on projects for the maintenance, conservation, and improvement of Montana's land resources.

BE IT FURTHER RESOLVED, that the investigation consider both using any appropriate federal funds and supplementing these funds with state funds to provide needed labor.

BE IT FURTHER RESOLVED, that existing statutory and administrative constraints to these types of projects be determined.

BE IT FURTHER RESOLVED, that the study emphasize the potential for utilizing unemployed young Montanans for these projects.

BE IT FURTHER RESOLVED, that the parties responsible for the investigation shall receive the cooperation of other relevant state executive and legislative agencies and that the federal agencies responsible for related federal programs should cooperate to the fullest extent feasible.

BE IT FURTHER RESOLVED, that the findings of the study and recommendations be made public by June 1, 1978.

Approved March 26, 1977.

HOUSE JOINT RESOLUTION NO. 48

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ESTABLISHING A POSITION ON THE PROVINCE OF SASKATCHEWAN'S COAL-FIRED POWER PLANT COMPLEX NOW UNDER CONSTRUCTION 4 MILES NORTH OF THE MONTANA BORDER.

WHEREAS, the Canadian Province of Saskatchewan is presently constructing a coal-fired power plant complex 4 miles north of the Montana border and has already dammed the East Fork of the Poplar River; and

WHEREAS, the Province of Saskatchewan's long-range, post-1985 plans for energy development in the Poplar River Basin could include an energy complex seven times the size of the combined Colstrip Generating Units 1-4; and

WHEREAS, considerable adverse environmental and economic effects are imminent as a result of the operation of the power plant and the adja-

HeinOnline -- 1977 vol. II 2094 1977

cent strip mine, including air pollution, water depletion and degradation, and potential damage to rangeland and crop production; and

WHEREAS, the prevailing northwesterly winds will blow the air pollution from the plants into northeastern Montana and thus may preclude future development options now available for northeastern Montana by filling the Federal Class II air pollution quota; and

WHEREAS, it is crucial that the State of Montana and the United States adhere to a clear and coherent position on the Poplar River Power Project that will adequately safeguard the people, land, air and water of Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That it is the position of the State of Montana that:

(1) the Poplar River power plants and associated facilities should not violate Montana or United States pollution standards;

(2) the Saskatchewan Government should equip the power plants with the best pollution control technology available so as to mitigate adverse impacts to Montana; and

(3) all transboundary impacts of the Poplar River development, including surface and subsurface water quality and quantity and air quality, should be formally referred in a term of reference to the International Joint Commission.

BE IT FURTHER RESOLVED, that the State of Montana fully recognizes the right of the Province of Saskatchewan to develop its resources but believes that this can be accomplished with minimal transboundary impacts to Montana and that a concurrence by the Saskatchewan Government to this position will enhance our continuing friendly relationship with our Canadian neighbor.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the secretary of state of the United States and Montana's congressional delegation.

Approved March 18, 1977.

HOUSE JOINT RESOLUTION NO. 49

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PROTESTING THE FEDERAL GRAIN INSPECTION SUPERVISORY FEE.

WHEREAS, the United States Grain Standards Act, as amended, requires any agency providing official inspections to pay a fee of 80 cents per 1,000 bushels to the Federal Grain Inspection Service for supervisory costs; and

WHEREAS, the Montana Department of Agriculture presently provides

HeinOnline -- 1977 vol. II 2095 1977

official inspection services and must continue to provide inspection services for the State of Montana; and

WHEREAS, based on 1976 fiscal year inspection activities, the supervision fee of 80 cents per 1,000 bushels will amount to approximately $35,000 annually; and

WHEREAS, the projected fee expense of $35,000 is equivalent to 22% of the Department of Agriculture Grain Laboratory's present personal services expenditures; and

WHEREAS, the projected fee expense of $35,000 is equivalent to funding necessary to maintain 2.8 state laboratory employees; and

WHEREAS, the supervision fee of 80 cents per 1,000 bushels necessitates increasing the laboratory fee schedule, placing a greater burden on the producer.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That a protest be lodged with the appropriate federal officials against the Federal Grain Inspection Services supervisory fee.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the United States Secretary of Agriculture and to each member of Montana's Congressional Delegation.

Approved March 29, 1977.

HOUSE JOINT RESOLUTION NO. 51

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING MONTANA'S CONGRESSIONAL DELEGATION TO VOTE FUNDING FOR WELL STOCKED AND MAINTAINED CIVIL DEFENSE SHELTERS AND TRAINED INDIVIDUALS TO HANDLE NATIONAL EMERGENCIES, WHETHER NUCLEAR OR NATURAL DISASTER.

WHEREAS, the Soviet Union has quietly and at extra expense taken measures to assure that the essential civilian military leadership, the fighting capability, and production capacity can continue to function under conditions of war; and

WHEREAS, the Soviet Union has constructed enough mass shelters located with principal manufacturing plants to protect more than 60 million workers from nuclear attack; and

WHEREAS, Soviet factory workers are in training programs preparing them for civil defense leadership roles; and

WHEREAS, the Soviet Union has designed and engineered several large food storage depots; and

WHEREAS, the United States' civil defense shelters, stockpiles, and programs have been allowed to deteriorate and stagnate; and

HeinOnline -- 1977 vol. II 2096 1977

WHEREAS, because of the civil defense measures in the Soviet Union, the buildup of Soviet military capability, and the lag in similar civil defense measures being taken by the United States, the United States' capability of carrying out its assigned wartime retaliatory tasks of crippling the Soviet Union while surviving itself, would appear to be in grave question.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Defense Civil Preparedness Agency be funded so as to enable them to develop massive relocation plans for residents of heavily populated areas and areas near strategic military installations.

(2) That the Defense Civil Preparedness Agency be funded so as to train 25% of the population in civil defense procedures.

(3) That the Defense Civil Preparedness Agency be funded so as to permit continuation of mass shelter living experiments.

(4) That the Defense Civil Preparedness Agency be funded so as to ensure well maintained shelters, with stock rotation systems such as will ensure potable provisions.

(5) That the Defense Civil Preparedness Agency be funded so as to permit development and implementation of a plan for dispersing alternate defense and defense-related manufacturing facilities in areas beyond major industrial concentrations.

(6) That copies of this resolution be sent by the Secretary of State to Montana's Congressional Delegation.

Approved April 14, 1977.

HOUSE JOINT RESOLUTION NO. 52

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE APPRENTICESHIP BUREAU, JOINT APPRENTICESHIP TRAINING COMMITTEES, AND INDIVIDUAL EMPLOYERS TO TRAIN MORE APPRENTICES.

WHEREAS, apprenticeship programs are very valuable in training young persons for skilled trades much in demand in the business world; and

WHEREAS, apprenticeship programs have been more effective in preparing young persons for employment than many other types of vocational programs; and

WHEREAS, apprenticeship programs can be of particular benefit in teaching persons with no marketable skills a trade that will greatly increase their employment opportunities; and

WHEREAS, employers gain loyal and well-trained employees through apprenticeship programs; and

HeinOnline -- 1977 vol. II 2097 1977

WHEREAS, all citizens of Montana are benefitted when young persons learn trades and crafts necessary to society; and

WHEREAS, despite the advantages of apprenticeship programs, there are only 1699 apprentices currently being trained in Montana in a state labor force of nearly 300,000; and

WHEREAS, there are very few openings in apprenticeship programs each year and many young persons who apply for apprenticeship programs are turned away.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the federal Bureau of Apprenticeship and Training and the state Apprenticeship Bureau are urged to reexamine their programs and find new ways to encourage all employers to train apprentices.

That the state Apprenticeship Bureau is particularly urged to expend more time and effort in encouraging small businesses and businesses in Montana's less populated areas to train apprentices, where there is a proven need for skilled craftsmen.

That joint apprenticeship training committees and employers are urged to initiate new and expand existing apprenticeship programs to those trades and crafts which have a shortage of skilled craftsmen and encourage registration of apprentices with the state Apprenticeship Bureau and the federal Bureau of Apprenticeship and Training.

That copies of this resolution be forwarded to the federal Bureau of Apprenticeship and Training and the state Bureau of Apprenticeship.

Approved March 10, 1977.

HOUSE JOINT RESOLUTION NO. 53

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE NATIONAL RAIL PASSENGER CORPORATION TO INAUGURATE AN EXPERIMENTAL TRAIN TO CONNECT FROM HELENA THROUGH BUTTE TO POCATELLO AND ALL POINTS SERVED BY THE TRAIN KNOWN AS THE PORTLAND ROSE.

WHEREAS, the National Rail Passenger Corporation (AMTRAK) has inaugurated a 2-year experimental train from Salt Lake City through Pocatello and Boise to Portland, which will be known as the Portland Rose; and

WHEREAS, Montana now has no passenger rail service connecting directly with Salt Lake City or other Rocky Mountain points; and

WHEREAS, passenger rail service will be extremely important in the future and ought to be promoted in connection with the national effort to reduce fuel consumption; and

HeinOnline -- 1977 vol. II 2098 1977

WHEREAS, rail passenger service can hardly be promoted unless ample convenient routes are available to the traveling public; and

WHEREAS, a connection from the heartland of Montana to important regional business and government areas such as Salt Lake City, Denver, and Portland would provide an important service for those who desire rail transportation service.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That AMTRAK is encouraged to establish an experimental train connecting from Helena through Garrison, Butte, and Dillon to Pocatello and all points on the Portland Rose as soon as the Portland Rose is reestablished.

BE IT FURTHER RESOLVED, that the Secretary of State send copies of this resolution to the members of the Montana Congressional Delegation, the Secretary of the Department of Transportation, Senator Frank Church and the other members of the Idaho Congressional Delegation, and to the Governor of the great State of Idaho.

Approved March 11, 1977.

HOUSE JOINT RESOLUTION NO. 54

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA EXPRESSING RECOGNITION AND SUPPORT FOR THE NATIONAL HIGH SCHOOL RODEO FINALS TO BE HELD AUGUST 15-21, 1977, AT THE LEWIS AND CLARK COUNTY FAIRGROUNDS IN HELENA.

WHEREAS, 12,000 contestants from throughout the United States compete annually in one of the most thrilling spectator sports of all time, high school rodeo; and

WHEREAS, more than 800 Montana youth are involved in high school rodeo and over 18,000 watched high school rodeo in action in Montana last year; and

WHEREAS, in 1976, over 85,000 people watched a week of rodeo in Sulphur, Louisiana, during the national finals; and

WHEREAS, the contestants traveled an average of 2,781 miles to and from the finals, brought an average of three other persons with them to the finals, spent an average of six nights in a motel room, and spent approximately $388 each while at the finals; and

WHEREAS, those traveling with them spent an average of $145 or $435 for every three persons, resulting in a total economic impact in a host community and state of $4.3 million; and

WHEREAS, there will be 1,643 top-notch rodeo competitors under 20 years of age; and

HeinOnline -- 1977 vol. II 2099 1977

WHEREAS, these competitors from across the United States and even Canada will gather in Helena to compete in the national high school rodeo finals to be held at the Lewis and Clark County Fairgrounds, August 15-21, 1977.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature welcomes our high school rodeo guests to Montana and hopes they have a productive and enjoyable stay in our great western state.

BE IT FURTHER RESOLVED, that the Legislature urges all Montanans to show our guests some real western hospitality.

BE IT FURTHER RESOLVED, that the Legislature wishes best of luck to 1977 High School Rodeo Finals Committee and the Helena '77 Rodeo Association in conducting this exciting event.

BE IT FURTHER RESOLVED, that the Legislature commends the Helena '77 Rodeo Association and other organizations for a job well done in organizing the 1977 national high school rodeo finals.

Approved March 26, 1977.

HOUSE JOINT RESOLUTION NO. 55

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE VALUE OF AMERICA'S SYSTEM OF FREE ENTERPRISE AND ENCOURAGING THE VIGOROUS SUPPORT OF BUSINESS BY THE PEOPLE, THE PUBLIC SCHOOL SYSTEM, AND THE GOVERNMENT OF THE GREAT STATE OF MONTANA.

WHEREAS, the American system of private enterprise has been the cornerstone of this nation's democratic form of government, has fortified individual personal freedoms, and has propelled the nation to a position of prosperity and equal opportunity; and

WHEREAS, the United States of America has experienced two centuries of progress achieving freedom, liberty, and equality and has achieved abundance for her people who enjoy a standard of living unequaled in the world; and

WHEREAS, small business and free enterprise are the corner stones of this progress and stand as a symbol of American character and spirit; and

WHEREAS, in this the beginning of our third century as a nation, it is fitting that we reflect upon those virtues and ideals that have preserved us as a nation, that have brought us to our present state, wherein the individual and individual opportunity count most with our countrymen; and

HeinOnline -- 1977 vol. II 2100 1977

WHEREAS, if this nation is to preserve and maintain these freedoms and this heritage for the people, their children and future generations, we must assure that government does not become an impediment to the survival of the private enterprise system that America has worked so long and hard to achieve.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That we, the people of the great State of Montana, must sustain and continually improve a climate in which business can flourish, in order that this nation and state continue to flourish;

BE IT FURTHER RESOLVED that it is the sense of the people of the State of Montana that private enterprise and small business entrepreneurship are essential to the preservation of individual liberty and freedom for all our citizens;

BE IT FURTHER RESOLVED that a healthy and prosperous business community is essential to the economic and social well-being of the state, now and in the future;

BE IT FURTHER RESOLVED that it shall be the declared policy of the people and the Legislature to preserve, protect, and foster the creation, development, and balanced growth of business in the state;

BE IT FURTHER RESOLVED that it shall be the policy of the Legislature that courses in economics and the private enterprise system shall be vigorously encouraged in Montana's public school system at all levels to insure the continued understanding, support, and improvement of this system for future generations;

BE IT FURTHER RESOLVED that it shall be the policy of the Legislature that all agencies, departments, and bureaus of the state government shall take all possible measures to foster and assist the business community, to help create favorable conditions for small businesses, and to take such other measures as may be appropriate to the interests of all business.

Approved March 19, 1977.

HOUSE JOINT RESOLUTION NO. 58

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING STATE EXECUTIVE DEPARTMENTS TO DIVERT AS MUCH STATE WORK AS POSSIBLE TO THE PRIVATE SECTOR IN ORDER TO AVOID UNWARRANTED GROWTH OF STATE GOVERNMENT.

WHEREAS, the number of state government employees has increased more rapidly than the employment rate in the private sector; and

WHEREAS, in many cases the cost of a project conducted by the state is comparable to or exceeds the amount which the same project would have cost had it been conducted by the private sector; and

HeinOnline -- 1977 vol. II 2101 1977

WHEREAS, interagency contracting with no consideration given to contracting with private firms perpetuates government growth to the detriment of the private sector; and

WHEREAS, the Legislature does not wish this unbalanced situation to continue.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) that it is the policy of state government to promote the use of private resources wherever it is found that private enterprise can provide the same service and add to the taxable base of the state;

(2) that all state executive departments shall re-examine their departments and cooperate with the economic advisors to the governor to determine those services that should be vested with the private sector in particularly those areas where the state tends to compete with the private sector;

(3) that the Secretary of State shall send a copy of this resolution to the head of each state executive department;

(4) that each department head is directed to follow the intent of this resolution and to that end shall prepare a plan for the adoption of the policy contained herein and submit it to the Legislative Auditor for review by July 1, 1977;

(5) that this resolution is not intended to displace persons currently employed by state government, but to move toward greater use of private resources and to reduce the growth rate of government employment.

Approved March 22, 1977.

HOUSE JOINT RESOLUTION NO. 59

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA FOR AN INTERIM STUDY OF THE ORGANIZATION OF LEGAL SERVICES WITHIN THE EXECUTIVE BRANCH OF THE STATE GOVERNMENT.

WHEREAS, the various departments, boards, and commissions of the state executive branch employ or retain a large number of attorneys; and

WHEREAS, it is a principle of courtroom law that a party to litigation should speak with one consistent position; and

WHEREAS, the agencies of the state of Montana do not appear before state or federal courts in a consistent position; and

WHEREAS, staff budgets are approved on an agency-by-agency basis, which results in smaller agencies either functioning without legal services or using retained counsel at more expensive rates, while larger agencies employing several attorneys may not have enough legal work to keep all their attorneys busy in all seasons of the year; and

HeinOnline -- 1977 vol. II 2102 1977

WHEREAS, many state agency attorneys do not have enough courtroom work to develop skills in trial or appellate litigation, with the result that their agencies either forego effective representation in court or retain outside counsel for litigation at greater cost; and

WHEREAS, many of the foregoing problems are not present to the same degree in states having a unified legal service for all state agencies under the state's chief legal officer.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committee to study the organization of legal services within the executive branch of state government, examining alternatives as used in other states, and to recommend such changes in the present system in Montana as would supply effective legal services to state agencies with more coordination, efficiency, and economy without interfering with the rightful prerogatives and program responsibilities of the governor and other elected officials.

Approved April 14, 1977.

HOUSE JOINT RESOLUTION NO. 60

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE DEPARTMENT OF ADMINISTRATION TO MAKE ENERGY EFFICIENCY A PRIMARY CONSIDERATION IN PROCURING VEHICLES FOR THE STATE.

WHEREAS, Montana and the rest of the nation are faced with an ever-worsening energy shortage; and

WHEREAS, many Montana state employees must often travel considerable distances over this vast state to conduct state business; and

WHEREAS, such trips use a considerable amount of gasoline; and

WHEREAS, state employees should set a good example to the rest of the citizens of this state by utilizing energy efficient vehicles.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Department of Administration is directed to make energy efficiency a primary consideration in specifications for bids on vehicles for the state.

(2) That energy efficiency considerations shall include but not be limited to such factors as a high number of miles per gallon of gasoline, manual transmission; manual steering, brakes, and windows; avoidance of air conditioning; vehicle weight; and overall durability.

Approved March 29, 1977.

HeinOnline -- 1977 vol. II 2103 1977

HOUSE JOINT RESOLUTION NO. 61

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE BUTTE TECHNICAL ADVISORY COUNCIL AND THE MONTANA HIGHWAY COMMISSION TO TAKE IMMEDIATE STEPS TO COOPERATE TO CORRECT HAZARDOUS CONDITIONS AT THE HARRISON AVENUE INTERCHANGE ON INTERSTATE HIGHWAY 15-90 IN BUTTE, SILVER BOW COUNTY, MONTANA.

WHEREAS, there were constructed entry and exit ways at the intersection of Harrison Avenue with Interstate Highway 15-90 in Butte, Silver Bow County, Montana; and

WHEREAS, some of these entry and exit ways were from the moment of their design and construction dangerous and hazardous to safety and life and obstructed and impeded the full and easy flow of traffic; and

WHEREAS, the dangers and obstructions consist of requiring traffic moving south on Harrison Avenue to make a left turn in the face of heavy oncoming traffic in order to enter the interstate highway to go north or east; requiring traffic leaving the interstate from the north or east and desiring to go south on Harrison Avenue to drive directly across two lanes of traffic coming from the left and then to make a left turn in the southbound lanes by breaking into the traffic pattern as best it may; requiring traffic moving south on Harrison Avenue and wishing to go west or south on the interstate to make an abrupt, poorly defined right turn; and of requiring traffic leaving the interstate from west and south to go south on Harrison Avenue to be jammed and blocked because the exit route is too short and too abrupt; and

WHEREAS, the dangers noted in this resolution are severe for local residents in and around Butte but are even greater for people unfamiliar with the area who visit Butte from all over the state; and

WHEREAS, the local Technical Advisory Council and the Highway Commission must take notice that this is more than a local problem and cooperate to solve it; and

WHEREAS, these conditions will not get any better but will steadily deteriorate and get worse as time passes, and these conditions can be corrected today at the least cost and with the least disruption in traffic flow.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Highway Commission and the Butte Technical Advisory Council are requested to take immediate steps and cooperate to rebuild and revamp the entry and exit ways at the Harrison Avenue-Interstate 15-90 interchange in Butte, Silver Bow County, Montana, so that traffic may enter and leave this interchange with safe and easy right turns by eliminating the two left turn crossovers and the abrupt entry or exit on or from Harrison Avenue.

Approved March 18, 1977.

HeinOnline -- 1977 vol. II 2104 1977

HOUSE JOINT RESOLUTION NO. 64

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ENCOURAGE THE CONGRESS TO TAKE NECESSARY STEPS TO RELEASE FUNDS FOR IMPROVING THE SAFETY OF RAIL-HIGHWAY GRADE CROSSINGS FOR OFF-SYSTEM ROADS.

WHEREAS, the Congress, in passing the Highway Act of 1973 and expanding upon it in the act of 1976, has responded to the need to improve rail-highway grade crossings both on and off the federal-aid highway system by providing important new sources of funding; and

WHEREAS, the Montana Highway Commission and the Department of Highways have responded to the existence of the federal programs by producing a rail-highway grade crossing inventory and list of priorities for improvement based on a hazard index that rates the need for grade improvements; and

WHEREAS, the State of Montana can and will program the improvements on a 90:10 funding basis if the funds are released with a sufficient opportunity to obligate them; and

WHEREAS, it is important for the Congress to know that state and local officials in Montana are enthusiastic about the program to improve the safety of rail-highway grade crossings.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislature urges Congress to take whatever action is required to assure the timely release of authorized funds aimed for rail-highway grade-crossing improvements.

BE IT FURTHER RESOLVED, that the Legislature recognizes the efforts the Highway Commission and Highway Department have made to enable Montana to participate in this federal program by preparing inventories and priorities and authorizing state level funding.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to members of the Montana Congressional Delegation to be brought to the attention of appropriate congressional and executive branch leaders.

Approved March 18, 1977.

HOUSE JOINT RESOLUTION NO. 65

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE BOARD OF LAND COMMISSIONERS TO TRANSFER THE OLD PRISON SITE TO THE CITY OF DEER LODGE.

HeinOnline -- 1977 vol. II 2105 1977

WHEREAS, a new prison has been built at Deer Lodge, Montana; and

WHEREAS, the old prison, built in 1870, is soon to be vacated; and

WHEREAS, the state of Montana and the Department of Institutions have no plans to use the old prison as an institutional facility; and

WHEREAS, the old prison has immense cultural, educational, and recreational value to all Montanans and to all out-of-state visitors; and

WHEREAS, the City of Deer Lodge, Montana, is willing and eager to establish, maintain, and preserve the cultural and historical value of the old prison; and

WHEREAS, the City of Deer Lodge has many grants pending the outcome of the transfer of the old prison site to the city; and

WHEREAS, the City of Deer Lodge and the Powell County Museum and Arts Foundation are, pending the transfer of the old prison site, prepared to acquire and lease numerous exhibits of historical and cultural value; and

WHEREAS, a bill has been introduced in the United States Congress to waive the appropriate section of the Enabling Act and to thereby permit the transfer of the old prison to the City of Deer Lodge, Montana.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the State Board of Land Commissioners may, under appropriate conditions in the interest of the state which conditions shall include a provision that a reasonable provision for nonassignability and assumption of maintenance and insurance costs by the City of Deer Lodge; and for indemnifying the State of Montana for all claims for damages and other liability arising out of the use and possession by the City of Deer Lodge and under its authority prescribed in Section 81-803, R.C.M. 1947, grant the City of Deer Lodge an easement for the old prison site, specifically Blocks 52, 53, 62, 63, 66, and 67 of the original townsite to the City of Deer Lodge according to the official map adopted on February 26, 1912. The transfer is subject to the old prison being no longer needed by the state of Montana.

BE IT FURTHER RESOLVED, that the State Board of Land Commissioners establish the conditions of the easement in consultation with representatives of the City of Deer Lodge.

BE IT FURTHER RESOLVED, that the Secretary of State send a copy of this resolution to each member of the Montana Congressional Delegation and to each member of the State Board of Land Commissioners.

BE IT FURTHER RESOLVED, that the State Board of Land Commissioners consider executing an easement for the old prison site to the City of Deer Lodge as soon as possible following the vacating of the old prison by the Department of Institutions.

Approved April 18, 1977.

HeinOnline -- 1977 vol. II 2106 1977

HOUSE JOINT RESOLUTION NO. 66

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THAT ALL POSSIBLE ASSISTANCE UNDER EXISTING LAW BE PROVIDED TO VICTIMS OF CATASTROPHIC ILLNESS AND THAT THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES STUDY THE FEASIBILITY OF A MONTANA CATASTROPHIC ILLNESS INSURANCE PROGRAM.

WHEREAS, severe medical illness or disability strikes without regard to the economic status of the persons stricken or their families; and

WHEREAS, some persons are not eligible for or covered by private or public health insurance programs; and

WHEREAS, public and private health insurance programs generally impose limitations on coverage; and

WHEREAS, persons stricken with severe medical illness or disability often face financial disaster because of the lack of or the limitations on comprehensive health insurance.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Department of Social and Rehabilitation Services shall vigorously explore and provide all possible assistance authorized by existing law and available within existing appropriations for families stricken with catastrophic illness in an effort to alleviate the financial and medical burdens of those families;

(2) That the Department of Social and Rehabilitation Services shall study the feasibility of a catastrophic illness insurance program for all citizens of the State of Montana and report the findings of the study to the 46th Legislature.

Approved April 7, 1977.

HOUSE JOINT RESOLUTION NO. 67

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE DEPARTMENT OF HIGHWAYS TO AVOID INADVERTENTLY DISCRIMINATING AGAINST ANY LOCALITY IN THE OPERATION OF STATIONARY WEIGH SCALES.

WHEREAS, there are only 37 stationary weigh stations monitoring the gross vehicle weight of trucks on over 12,500 miles of Montana highways; and

WHEREAS, the placement of these stationary weigh stations directly

HeinOnline -- 1977 vol. II 2107 1977

outside a city or town can discourage commerce and trade from reaching that city or town; and

WHEREAS, the flexibility provided by mobile weigh stations would provide better enforcement of the gross vehicle weight and dimension laws of this state through spot checks.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Highways is requested to review the placement of its stationary weigh stations to assure the operation of the scale does not distort the natural flow of commerce in an area with a resulting discrimination against the business in any community, and to make greater use of mobile weigh stations to balance coverage in an area.

BE IT FURTHER RESOLVED, that the Secretary of State shall forward a copy of this resolution to the Director of the Department of Highways.

Approved March 22, 1977.

HOUSE JOINT RESOLUTION NO. 68

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE FEDERAL FISH AND WILDLIFE SERVICE NOT DESIGNATE CERTAIN NEW AREAS IN MONTANA AS GRIZZLY BEAR HABITAT.

WHEREAS, testimony from grizzly bear management experts has indicated that it is questionable whether the grizzly bear should be placed on the endangered species list; and

WHEREAS, there is strong indication that legislative protection mandates could lead to an increasing, uncontrolled grizzly bear population; and

WHEREAS, the grizzly bear has the ability to compete with man for food, space, resources, and other possessions; and

WHEREAS, suggested habitat now includes currently existing roads, highways, and in some instances, towns in Montana; and

WHEREAS, such a permanent designation could include areas of productive activity such as livestock grazing, timber recovery, and energy resource exploration; and

WHEREAS, that productive activity could be effectively stopped through lawsuit by overly zealous environmental concerns.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and House of Representatives of the State of Montana support a program for the management of the grizzly bear on a state level.

BE IT FURTHER RESOLVED, that the Senate and the House of Repre-

HeinOnline -- 1977 vol. II 2108 1977

sentatives of the State of Montana request that the Federal Fish and Wildlife Service confine its designation of critical grizzly bear habitat in Montana to the Bob Marshall Wilderness, Glacier National Park, and Yellowstone National Park.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to Montana's Congressional Delegation, the Federal Fish and Wildlife Service, and the Secretary of the Interior.

Approved April 14, 1977.

HOUSE JOINT RESOLUTION NO. 70

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE UNITED STATES CONGRESS AND THE PRESIDENT OF THE UNITED STATES TO INITIATE NEGOTIATIONS WITH CANADA FOR A BOUNDARY TREATY FOR AIR QUALITY PROTECTION.

WHEREAS, it is essential to quality environment that clean air be protected; and

WHEREAS, potential air quality degradation could occur as a result of industrial projects in Canada and the United States close to their respective borders, over which a joint control does not exist; and

WHEREAS, there exists a successful mechanism in the Boundary Waters Treaty of 1909 to alleviate similar problems relating to water quality; and

WHEREAS, the International Joint Commission created by that treaty has authority over international boundary water pollution situations; and

WHEREAS, that Commission or one similar to it should have jurisdiction over international air quality problems but presently only has limited authority under the "air reference" provision.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the United States Congress and the President of the United States are urged to instruct the United States Department of State to begin negotiations with the Canadian government to eventually adopt a treaty between the two countries to mutually protect with best available technologies the airsheds of both countries.

(2) That the governments of the United States and Canada are urged to establish and send delegations to an international commission, similar in scope to the International Joint Commission now in existence to protect boundary waters, to ensure the health and welfare of their citizens through nondegradation of air quality by projects on either side of the border.

(3) That the Secretary of State send a copy of this resolution to the President of the United States, the Montana Congressional Delegation, and the United States Department of State.

Approved April 7, 1977.

HeinOnline -- 1977 vol. II 2109 1977

HOUSE JOINT RESOLUTION NO. 71

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE BUREAU OF MINES TO CONDUCT A STUDY ON THE REGULATION OF SOLUTION MINING OF PRINCIPALLY POTASH AND TO PRESENT RECOMMENDATIONS AND LEGISLATION FOR SUCH REGULATION TO THE 46TH LEGISLATURE.

WHEREAS, the solution mining of principally potash is a strong possibility in Montana; and

WHEREAS, such mining poses a potential hazard, if not properly regulated, to the water quality and other environmental factors of the state; and

WHEREAS, there is presently no clear authority within state government for the regulation of the solution mining of potash.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Bureau of Mines is directed to undertake a study of the regulation of the solution mining of potash to determine the proper regulating authority and standards for such regulation.

(2) That the Bureau of Mines shall coordinate its study with the Department of Natural Resources and Conservation, Department of State Lands, and the Department of Health and Environmental Sciences and solicit information from these agencies and from the industry.

(3) That the Bureau of Mines shall submit its study, together with recommendations and necessary legislation, to the 46th Legislature.

(4) That copies of this resolution be sent to the agencies enumerated above.

Approved April 14, 1977.

HOUSE JOINT RESOLUTION NO. 72

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THAT THE GOVERNOR AND THE SUPERINTENDENT OF PUBLIC INSTRUCTION PROVIDE LEADERSHIP TO OBTAIN THE INTERAGENCY COOPERATION AND COORDINATION NECESSARY TO ADEQUATELY MEET THE NEEDS OF CHILDREN WHO BY REASON OF PHYSICAL, MENTAL, EMOTIONAL, OR SOCIAL HANDICAP REQUIRE SPECIAL CARE AND SERVICES.

WHEREAS, there are in Montana a number of children who by reason

HeinOnline -- 1977 vol. II 2110 1977

of physical, mental, emotional, or social handicap require special care and services; and

WHEREAS, there is no one agency that is responsible for all of the services for these children; and

WHEREAS, there has not been the interagency coordination required to assure that all children with special needs are receiving adequate services; and

WHEREAS, the lack of interagency coordination and cooperation has resulted in duplication of services for these children and a wasteful use of the state's fiscal and human resources.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor and the Superintendent of Public Instruction are requested to provide leadership to obtain the interagency cooperation and coordination necessary to adequately meet the needs of children who by reason of physical, mental, emotional, or social handicap require special care and services.

Approved March 31, 1977.

HOUSE JOINT RESOLUTION NO. 73

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA CENSURING THEATER OWNERS WHO DISPLAY OFFENSIVE PREVIEWS WHEN MINORS ARE PERMITTED TO ATTEND THE THEN-FEATURED MOTION PICTURE, URGING THEATER OWNERS TO USE DECENCY AND CARE TO AVOID SUCH DISPLAYS, AND URGING COUNTY ATTORNEYS TO PROSECUTE UNDER THE APPLICABLE STATUTE.

WHEREAS, certain theater owners have either knowingly or recklessly displayed offensive sexual or violent previews when minors were permitted to attend the motion picture then being featured; and

WHEREAS, children and parents in attendance have been justifiably shocked and appalled by such displays; and

WHEREAS, these displays can do irreparable harm to children of tender years; and

WHEREAS, this practice on the part of theater owners, whether knowing or reckless, is totally inexcusable.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That this body is thoroughly appalled and disgusted by these offensive displays in the presence of children;

(2) That this body hereby censures and condemns this practice by certain theater owners, whether knowing or reckless;

HeinOnline -- 1977 vol. II 2111 1977

(3) That theater owners are strongly and most emphatically urged to employ decency and great care in avoiding any such display when children may be in attendance; and

(4) That county attorneys are strongly and most emphatically urged to prosecute violations of 94-8-110.1(2) to the maximum extent of their abilities whenever a violation comes to their attention.

Approved March 31, 1977.

HOUSE JOINT RESOLUTION NO. 74

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CONGRESS AND DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE TO TAKE NECESSARY STEPS TO ESTABLISH A MEDICAID SYSTEM MORE RESPONSIVE TO INDIVIDUAL NEEDS.

WHEREAS, the state administers the Medicaid program within guidelines established by federal law and rules to provide needed health care assistance to older Montanans; and

WHEREAS, these guidelines are excessively rigid in that only medical needs are considered with regard to the prohibition of a Medicaid recipient to be hospitalized in a private room; and

WHEREAS, instances may arise where the intensive care needed by a person is such that a private room would be better for the patient and the patient's family; and

WHEREAS, in such instances there would be no adverse impact upon the Medicaid system if the patient could be assisted up to the allowable limit for a semiprivate room with the family providing the balance of the cost.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress and Department of Health, Education, and Welfare are requested to adjust the Medicaid guidelines to allow for assistance to patients for whom a private room is needed, at no higher level than they are otherwise allowed.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the members of the Montana Congressional Delegation and to the Secretary of the Department of Health, Education, and Welfare.

Approved April 4, 1977.

HOUSE JOINT RESOLUTION NO. 75

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF

HeinOnline -- 1977 vol. II 2112 1977

REPRESENTATIVES OF THE STATE OF MONTANA URGING LOCAL SCHOOL DISTRICTS TO IMPLEMENT ENERGY CONSERVATION PROGRAMS TO BETTER EDUCATE STUDENTS IN THE CLASSROOM TO THE RELATIONSHIP OF DIMINISHING NONRENEWABLE ENERGY SUPPLIES TO MAN'S PRESENT LIFESTYLE, TO ENFORCE ENERGY-SAVING MEASURES IN PUBLIC SCHOOL TRANSPORTATION, AND TO CONSTRUCT AND MAINTAIN BUILDINGS IN SUCH A MANNER THAT A MINIMUM AMOUNT OF ENERGY IS CONSUMED DURING THE LIFETIME OF THE BUILDINGS.

WHEREAS, our state's and our nation's natural resources are finite and in danger of serious depletion; and

WHEREAS, the future availability of natural resources for the production of goods, materials, and energy and the preservation of the natural beauty of our state and nation depend upon citizen awareness of the need for and the methods which may be employed in natural resource conservation; and

WHEREAS, the tremendous expense of government regulation in the areas of natural resource conservation and environmental protection is due in great part to the private individual's lack of understanding and appreciation of natural resource and environmental problems and solutions; and

WHEREAS, conservation education programs within the public school system would, if thoughtfully and diligently established and administered, instill in our youth an awareness and appreciation of the need for natural resource conservation, methods of achieving effective conservation, and man's relationship to his natural environment and his need to be integrated and reconciled with it; and

WHEREAS, such awareness and appreciation would have the long-term effect of reducing the depletion of natural resources and the need for ever more expansive and expensive government regulation and would augment individual well-being through integration and reconciliation with the natural environment; and

WHEREAS, local school districts could have a primary role, not only in instituting energy conservation programs in the classrooms, but in setting an example to their communities by instituting energy conservation programs in student transportation and in efficient use of energy in their school district's buildings; and

WHEREAS, such programs would not only conserve vital energy but would save the local taxpayers' dollars over the long term.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That local school districts are emphatically urged to implement energy conservation programs to:

(1) utilize multidisciplinary approaches in classroom curricula to instill in the youth of the state an awareness and appreciation of the need

HeinOnline -- 1977 vol. II 2113 1977

for energy conservation, methods of achieving energy conservation, and the relationship of man's present lifestyle to diminishing nonrenewable energy supplies and his need to integrate and reconcile energy conservation into that lifestyle;

(2) enforce energy-saving measures in public school transportation; and

(3) construct and maintain their public buildings in such a manner that a minimum amount of energy is consumed during the lifetime of the buildings.

BE IT FURTHER RESOLVED, that the Superintendent of Public Instruction shall monitor the progress of the conservation education program and report to the 1979 Legislature.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to all the public school districts in the state.

Approved April 14, 1977.

HOUSE JOINT RESOLUTION NO. 76

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING THE SIGNIFICANCE OF THE PROBLEM CREATED BECAUSE THE ROAD BETWEEN EKALAKA AND ALZADA IS NOT PAVED AND REQUESTING THE DEPARTMENT OF HIGHWAYS TO EXPLORE THE MEANS AVAILABLE TO ASSURE COMPLETION OF PAVING ON THAT ROAD AT AS EARLY A DATE AS POSSIBLE WITHOUT UNDUE DISRUPTION OF EXISTING PROGRAMS.

WHEREAS, House Bill No. 336 was introduced to direct the State Highway Commission to reclassify State Secondary Route 323 as a primary route; and

WHEREAS, the bill received an adverse committee report from the House Committee on Highways and Transportation; and

WHEREAS, the committee and the Legislature do not want this adverse report to be taken to mean a lack of concern regarding the condition of the road between Ekalaka and Alzada; and

WHEREAS, within the complexities of the established highway funding mechanism there may be means that can be found to slightly reorient long-range plans to recognize such problem areas without severely disrupting the total program.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Highways is requested to recognize the concern the Legislature has with the fact that the condition of the road between Ekalaka and Alzada badly needs to be improved and that other projects

HeinOnline -- 1977 vol. II 2114 1977

in Carter County and the financial district should not be unduly interrupted.

BE IT FURTHER RESOLVED, that the Legislature urges the Department of Highways to consider means by which the Ekalaka-Alzada route might be paved at a more rapid rate than is now scheduled without unduly disrupting the other programs in the financial district.

Approved March 18, 1977.

HOUSE JOINT RESOLUTION NO. 78

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE FEDERAL TIMBER AGENCIES TO INCREASE THE TIMBER SALES ON OVER-MATURE STANDS OF TIMBER WITHIN THE STATE OF MONTANA, THEREBY IMPROVING THE TIMBER GROWING POTENTIAL ON SUCH STANDS, AND REQUESTING THE CONGRESS OF THE UNITED STATES TO HOLD FIELD HEARINGS ON WILDERNESS PROPOSALS.

WHEREAS, the timber sales in the Northern Region have been decreasing since 1970 and have reached a level which is approximately one-half of the annual allowable cut; and

WHEREAS, the number of United States housing starts is projected to increase from 1.6 million in 1976 to a level of 1.8 to 1.9 million in 1977; and

WHEREAS, there are 5,800,000 acres of sawtimber in Montana which is over-mature and is not being managed properly; and

WHEREAS, in order to meet the future demands for fiber, the harvest of over-mature, decadent stands must be accelerated so that they may be returned to a vigorous condition where growth exceeds mortality; and

WHEREAS, proposed federal wilderness legislation can have a serious and detrimental effect on the state's economy; and

WHEREAS, the commercial forest land base is being reduced because of proposed federal land withdrawal legislation; and

WHEREAS, the stability of the forest products industry and the economy of many communities which are dependent upon the forest products industry are directly related to the volume of timber harvest and the future well-being and prosperity of Montana depends on sound and proper management of its renewable resources.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature requests all federal timber sales agencies and Congress to explore all means to increase the harvest of over-mature timber to reduce the difference between the volume sold and the annual allowable cut, thereby preserving the stability of the forest products industry and the economy of several communities in Western Montana.

HeinOnline -- 1977 vol. II 2115 1977

BE IT FURTHER RESOLVED, that field hearings be held in Montana on all pending land withdrawal legislation.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the Montana Congressional Delegation and to the United States Secretaries of Agriculture and Interior.

Approved March 29, 1977.

HOUSE JOINT RESOLUTION NO. 79

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE COMMISSIONER OF CAMPAIGN FINANCES AND PRACTICES TO PROVIDE A SIMPLIFIED REPORTING FORM TO CANDIDATES FOR PUBLIC OFFICE.

WHEREAS, the 1975 Campaign Finance and Practices Act generated a host of complicated forms upon which candidates are required to report contributions and expenditures; and

WHEREAS, the law does not require that the forms be complicated; and

WHEREAS, many candidates have expressed dissatisfaction and frustration with the complicated reporting forms.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Commissioner of Campaign Finances and Practices is directed to provide candidates with a simplified campaign finance reporting form, a facsimile of which is attached.

BE IT FURTHER RESOLVED, that the form be 8 ½ inches x 11 inches in size, and that it be for reporting contributions and expenditures.

BE IT FURTHER RESOLVED, that it is the intent of the Legislature that most candidates should be able to list their contributions and expenditures on the simplified form.

BE IT FURTHER RESOLVED, that the Secretary of State forward a copy of this resolution to the Commissioner of Campaign Finances and Practices.

BE IT FURTHER RESOLVED, that a suggested simplified campaign reporting form is attached.

Approved April 14, 1977.

HeinOnline -- 1977 vol. II 2116 1977

Combined Summary and Report of Receipts and Expenditures	FILING FORM—	To be filed by: CANDIDATES AND POLITICAL COMMITTEES

Return to:
Commissioner of
Campaign Finances and Practices
P. O. Box 39, Capitol Station
Helena, Montana 59601
(Phone: 406-449-2942)

This Space for Office Use

Number	Date Received

Please Type or Print Clearly—Read Instructions on separate sheet first.

Name and Address of Candidate OR Committee	Date of Report: _____ Reporting Period From_____ TO_____	Check Appropriate Block: ☐ Initial Report ☐ Periodic Report ☐ Final Report

RECEIPTS (Including Debts and Obligations)

List Name, address, occupation, principal place of business, if any, as required—see instructions.	PURPOSE—see instructions	Amount This Period	Total To Date
CANDIDATE'S PERSONAL FUNDS			
SMALL CONTRIBUTIONS under $25 not itemized			

SUMMARY OF RECEIPTS

Contributions _____

In-kind contributions _____

Loans Received _____

Receipts on debts and loans _____

Misc. Receipts & Fund raising _____

TOTALS (Do not include In-kind)

EXPENDITURES AND DEBTS AND OBLIGATIONS

List Name, address, occupation, principal place of business, if any, as required—see instructions.	PURPOSE—see instructions	Amount This Period	Total To Date
SUMMARY OF EXPENDITURES			
Expenditures _____	TOTALS		
In-Kind Expenditures _____	(Do not include In-Kind)		

Owed to Campaign fund _____

Owed by Campaign fund _____

Cash in Bank (balance last report) _____

Add receipts _____

Subtract expenditures _____

Cash in Bank (balance this report) _____

I, _____,

_____ verify that the foregoing report and summary of campaign finances and expenditures and all attachments are complete, true and correct to the best of my knowledge, in accordance with 23-4780, R.C.M. 1947.

_____

Signature

SUBSCRIBED AND SWORN BEFORE ME THIS _____

DAY OF _____, 19_____

_____

Notary Public

Residing _____

Expires _____

HOUSE JOINT RESOLUTION NO. 80

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION TO STUDY THE FEASIBILITY OF OFF-STREAM STORAGE ON THE UPPER BIG HOLE RIVER.

WHEREAS, the need for watershed and irrigation development is critical for the continued growth of agriculture in Montana and has been revealed by severe summer droughts; and

WHEREAS, the climatic and soil conditions of Broadwater, Jefferson, and Madison Counties are such that irrigated land produces a high proportion of the total value of the crops; and

WHEREAS, the economy of Montana is enhanced by a more stable farm income, and a stable farm income is in part related to a reliable water supply; and

WHEREAS, the Big Hole and Jefferson Rivers are considered by many people to be among the finest fishing streams in Montana, and in many years very low flows during late summer months and high turbid flows during spring months have limited fishing on both streams; and

WHEREAS, the need exists for increased control of river flows during periods of heavy spring runoff which flood the Jefferson River and its tributaries and have frequently caused damage to farmland, irrigation, communication and transportation facilities, and other improvements along the streams; and

WHEREAS, the potential for control of the destructive spring flows and for enhancing late summer flows exists in off-stream storage of the upper Big Hole; and

WHEREAS, it is becoming apparent that if Montanans do not plan to use Montana water for their own benefit, they will lose the water rights to the demands of downstream users in other states where water is appropriated to a beneficial use, prior in time.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Senate and the House of Representatives of the State of Montana request the Department of Natural Resources and Conservation to study the feasibility of off-stream storage on the upper Big Hole River and report to the 46th Legislature on the results of that study including therein:

(1) a description of each unit considered;

(2) the benefits and costs associated with each unit; and

(3) a recommendation as to the best practical unit to construct and the potential sources of funding for the construction of that unit.

HeinOnline -- 1977 vol. II 2119 1977

BE IT FURTHER RESOLVED, that this project be funded through the water works project feasibility study program.

Approved March 22, 1977.

HOUSE JOINT RESOLUTION NO. 81

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN TO THE APPROPRIATE COMMITTEE A STUDY OF THE METHODS AND PROGRESS IN THE DETERMINATION OF EXISTING WATER RIGHTS IN MONTANA.

WHEREAS, establishing a centralized record of all water rights is essential for the documentation, protection, and future beneficial use and development of Montana's water for the state and its citizens and for the continued development and completion of the comprehensive state water plan; and

WHEREAS, according to the report submitted by the Department of Natural Resources and Conservation, "The Future of the Yellowstone River.....?", the actual amount of water available in the Yellowstone Basin for industrial or agricultural development or the provisions of instream flows cannot be positively quantified. The determination of existing water rights in the Yellowstone as well as other areas of the state is a necessary prerequisite to the quantification of available water for new uses and the effects of the new uses on water rights; and

WHEREAS, at the present budget allocation of $180,000 per year, the determination of existing water rights has been projected to take over 100 years to complete the entire state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Committee on Priorities assign to the appropriate interim committee a study of methods for and progress in the determination of existing water rights in Montana.

(2) That the Committee consult with the Department of Natural Resources and Conservation and other appropriate agencies and persons during the course of the study.

(3) That the Committee study the methods for determination of existing water rights of other Western States.

(4) That the Committee report its findings and recommendations to the 46th Legislature.

Approved April 2, 1977.

HeinOnline -- 1977 vol. II 2120 1977

HOUSE JOINT RESOLUTION NO. 82

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA ENDORSING THE REDUCTION OF COYOTES BY AERIAL HUNTING ON FORT PECK RESERVOIR.

WHEREAS, the increase in the coyote population on and near the Charles M. Russell National Wildlife Range near Fort Peck Reservoir threatens big game and livestock, and in fact has resulted in losses to ranchers grazing livestock on and near the range; and

WHEREAS, due to the rugged terrain in the Missouri River Breaks Area near Fort Peck Reservoir, aerial hunting of coyotes is most efficient during the winter while the coyotes are on the ice; and

WHEREAS, the U.S. Fish and Wildlife Service has responded to objections by environmental groups concerning the reduction of coyotes on Fort Peck Reservoir by aerial hunting, in a manner the Legislature feels is adverse to this state and its livestock and game population.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the U.S. Fish and Wildlife Service record the Montana Legislature as favoring the reduction of the coyote population by means of aerial hunting of coyotes on Fort Peck Reservoir to protect the game and livestock in the area.

BE IT FURTHER RESOLVED, that the Montana Legislature opposes the position of the Defenders of Wildlife, the Environmental Defense Fund, the Wilderness Society, and the Sierra Club which position amounts to protection of coyotes to the detriment of livestock and game.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to Larry Calvert, the Manager of the Charles M. Russell National Wildlife Range, Cecil Andrus, Secretary of the Interior, James Pulliam, Deputy Associate Director for Wildlife of the U.S. Fish and Wildlife Service, the Montana Congressional Delegation, and the Governor.

Approved March 22, 1977.

HOUSE JOINT RESOLUTION NO. 83

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CONGRESS OF THE UNITED STATES TO APPROPRIATE MONEYS FOR THE COMPLETE RECONSTRUCTION OF FORT UNION TRADING POST.

WHEREAS, there are very few national parks in Eastern Montana; and

WHEREAS, the National Park Service has designated Fort Union Trading Post as a national historic site with plans to completely reconstruct the fort; and

HeinOnline -- 1977 vol. II 2121 1977

WHEREAS, the reconstruction of Fort Union Trading Post will increase the tourism attractiveness of Eastern Montana and improve the economy of the area; and

WHEREAS, United States Senators Quentin Burdick of North Dakota and Lee Metcalf and John Melcher of Montana have introduced S. 491 in the United States Senate, calling for an appropriation of $8.5 million to completely reconstruct Fort Union Trading Post National Historic Site.

WHEREAS, United States Representatives Ron Marlenee of Montana and Mark Andrews of North Dakota have introduced a similar bill, H.R. 3471, in the United States House of Representatives, calling for an appropriation of $8.5 million to completely reconstruct the Fort Union Trading Post National Historic Site.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Congress of the United States is requested to appropriate $8.5 million to the National Park Service to completely reconstruct Fort Union Trading Post;

BE IT FURTHER RESOLVED, that the Secretary of State is directed to send a copy of this resolution to the members of the North Dakota and Montana Congressional Delegations, the Chairman of the United States Senate Energy and Natural Resources Committee, the Chairman of the United States House of Representatives Interior and Insular Affairs Committee, and to the Leadership of the United States Senate and the United States House of Representatives.

Approved April 12, 1977.

HOUSE JOINT RESOLUTION NO. 84

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN THE APPROPRIATE STANDING COMMITTEE TO STUDY THE FEASIBILITY OF ESTABLISHING AN INTERMEDIATE SCHOOL DISTRICT STRUCTURE FOR THE STATE OF MONTANA.

WHEREAS, there are 579 operating school districts in the State of Montana most of which operate with a minimal administrative and support staff; and

WHEREAS, this diversity results in duplication of administrative and supportive services; and

WHEREAS, in the smaller districts supplementary services cannot be efficiently and effectively provided; and

WHEREAS, all students in Montana are guaranteed by the Montana Constitution both equality of educational opportunity and a system of education which will develop the full educational potential of each person; and

HeinOnline -- 1977 vol. II 2122 1977

WHEREAS, other rural states have successfully implemented intermediate school district structures while maintaining local elected control of both the local districts and the intermediate units; and

WHEREAS, intermediate school districts can efficiently and effectively provide services such as guidance and counseling, remedial instruction, health services, adult education, and special education services as well as enable districts to expand their instructional programs in basic programs and the arts and humanities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committee to study the feasibility of establishing an intermediate school district structure for the State of Montana and to report its findings and recommendations to the regular session of the 46th Legislature.

Approved April 12, 1977.

HOUSE JOINT RESOLUTION NO. 85

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING A STUDY OF ECONOMY AND REFORM MEASURES RELATING TO LEGISLATIVE BUDGETING AND SPENDING.

WHEREAS, state government actions have produced a substantial increase in numbers of agencies, growth of programs, and proliferation of rules, thus raising questions of duplication of services and responsibilities in state government; and

WHEREAS, it would benefit Montana government if a thorough review process were instituted in both the legislative and executive branches which would require agencies to state publicly what the impact would be if entire or partial agencies, programs, or rules were eliminated; and

WHEREAS, such a review process should be thoroughly studied for adaptation to Montana's government; and

WHEREAS, state and local spending has been the fastest growing element of the increase of the gross national product rising from 8.2% to 14.7% over the period from 1955 to 1975; and

WHEREAS, Montanans are disturbed generally by the rapid growth of the state bureaucracy and by the apparent lack of control over elements of this growth and question whether they are getting their money's worth out of the tax dollars they pay; and

WHEREAS, the Legislature seeks constructive, responsible measures for responding to this complaint, for ensuring control over the state budget and the services the budget is intended to buy, and for ensuring that taxation and appropriation committees have a means to develop consistent expenditure and tax policies.

HeinOnline -- 1977 vol. II 2123 1977

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Committee on Priorities is requested to appoint the appropriate standing committee to study alternative budget and management techniques by which the Legislature might improve the manner in which it establishes fiscal policy, coordinates expenditure and taxation policies, monitors program effectiveness, incorporates the information gathered into the budgeting process, and generally retains control over expenditures and to evaluate the alternatives and compare them with the budget and management techniques currently being used.

BE IT FURTHER RESOLVED, that the committee conducting the study prepare and present to the 46th Legislature a report which analyzes the possible alternatives, compares them with the present system, and makes recommendations together with a draft of proposed legislation, if necessary, to carry out such recommendations.

Approved April 7, 1977.

HOUSE JOINT RESOLUTION NO. 88

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO APPOINT A SELECT COMMITTEE TO STUDY THE CURRENT HUMAN SERVICES DELIVERY SYSTEM AND THE POSSIBILITY OF IMPLEMENTING AN INTEGRATED SYSTEM FOR THE DELIVERY OF HUMAN SERVICES.

WHEREAS, several state departments and agencies deliver human services to the citizens of Montana; and

WHEREAS, the delivery of human services now contains much duplication of effort in some areas and a deficiency of effort in other areas; and

WHEREAS, there is a great deal of competition and overlapping of jurisdictions in the delivery of human services; and

WHEREAS, the question of integrating the delivery of human services has not been adequately addressed in Montana; and

WHEREAS, the integration of the delivery of human services or certain functions thereof would make the executive agencies more responsive to policy direction from the Governor and the Legislature; and

WHEREAS, the present duplication of effort and overlapping of jurisdictions in the delivery of human services call into question the efficiency and effectiveness of services provided to citizens of Montana; and

WHEREAS, the state has a responsibility to deliver effective and responsive human services.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HeinOnline -- 1977 vol. II 2124 1977

That the Legislative Committee on Priorities is requested to appoint a select legislative committee to study the delivery of human services in Montana state government and to design where possible an integrated system of the delivery of human services at the state and regional level; and

BE IT FURTHER RESOLVED, that the Legislative Council provide staff to assist the select legislative committee subject to the passage of an appropriations bill for this study; and

BE IT FURTHER RESOLVED, that the select legislative committee report its findings, recommendations, and any proposed legislation to the 46th Legislature.

Approved April 14, 1977.

HOUSE JOINT RESOLUTION NO. 90

A JOINT RESOLUTION OF THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATURE AND EXECUTIVE DEPARTMENT OF THE STATE OF WASHINGTON TO ENCOURAGE AND PERMIT THE CONSTRUCTION OF APPROPRIATE PORT FACILITIES FOR UNLOADING CRUDE OIL FOR SHIPMENT BY PIPELINE TO THE NORTHERN STATES, INCLUDING THE STATE OF MONTANA.

WHEREAS, the State of Montana has for many years provided petroleum products to the State of Washington through its Billings and Laurel refineries, which products are transported through pipelines to Washington; and

WHEREAS, the majority of the crude oil used by petroleum refineries in Billings and Laurel, Montana, has originated in the Dominion of Canada, but the government of Canada has recently announced sharp curtailment in the supply of crude oil to the United States and in particular the Northern states, including the State of Montana; and

WHEREAS, the government of Canada has recently announced eventual, complete denial of international transportation of Canadian natural gas from Canada to the United States, including the State of Montana, and then has allowed importation of such fuel only at greatly increased cost to distributors and consumers in the United States; and

WHEREAS, agriculture, labor, industry, and the entire economy of the Northern states are thereby imperiled, and this peril is demonstrated by the following facts:

(1) that the United States has become dependent for almost 50% of its petroleum requirements upon imports of foreign crude oil;

(2) that the lack of energy supplies during the winter of 1976-1977 has caused the closing of schools and industries with resulting unemployment in the northern portions of the United States;

HeinOnline -- 1977 vol. II 2125 1977

(3) that the Northwestern states are faced with a serious drought condition which will result in a shortage of hydroelectric power and a further worsening of the general energy shortage;

(4) that the Governor of Montana has taken steps within his administration to develop contingency plans for this expected calamity; and

WHEREAS, port and pipeline facilities from the West Coast will provide a crude oil supply system for the Northern states that is completely within the boundaries of the United States and therefore not subject to interruption, burdens, or regulation by foreign governments; and

WHEREAS, crude oil from Alaska will become available to the Northern states beginning in the fall of 1977, and this crude oil or products produced therefrom could be utilized in the States of Washington, Idaho, Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Indiana, Ohio, and Illinois if port and transportation facilities are available; and

WHEREAS, it is feasible at this time to build port facilities to deliver crude oil to the Northern states, which construction would be compatible with environmental safety and could help avoid the severe shortage condition; and

WHEREAS, the State of Montana has recently authorized the construction, through its Board of Natural Resources, of Colstrip Electric Generating Units 3 and 4 which will provide power to electric utilities operating in the Pacific Northwest, including the State of Washington.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

(1) That the Legislature and Executive Department of the State of Washington use their good offices to encourage, facilitate, and permit the construction of appropriate port facilities for unloading crude oil for shipment by pipeline to the Northern states, including the State of Montana.

(2) That the Governor of the State of Montana consult with the Governor of the State of Washington as to the manner and methods whereby this encouragement and construction may be accomplished.

(3) That the Secretary of State be authorized and directed to transmit copies of this resolution to Honorable John Cherberg, President of the Senate of the State of Washington; to the members of the Senate of the State of Washington; to Honorable John Bagnariol, Speaker of the House of Representatives of the State of Washington; to the members of the House of Representatives of the State of Washington; to the Honorable Dixie Lee Ray, Governor of the State of Washington; and to each member of the Montana Congressional Delegation.

Approved April 12, 1977.

HOUSE JOINT RESOLUTION NO. 91

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF

HeinOnline -- 1977 vol. II 2126 1977

REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE APPOINTMENT OF A COMMITTEE OF LIVESTOCK INDUSTRY PEOPLE TO MAKE AN INTERIM STUDY OF LAWS AFFECTING THE MOVEMENT AND MARKETING OF LIVESTOCK AND TO MAKE RECOMMENDATIONS FOR CHANGE TO THE 46TH SESSION OF THE LEGISLATURE.

WHEREAS, the production and marketing of livestock is a major Montana industry; and

WHEREAS, the laws governing the livestock industry have been, in the main, formulated many years ago; and

WHEREAS, there have been significant changes in the manner in which livestock is moved and marketed since the inception of these laws.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Governor be requested to appoint a 10-person committee consisting of the Chairman of the Board of Livestock, a licensed Montana livestock dealer, an owner or operator of a Montana Livestock Market, an experienced employee of the Department of Livestock, and six other individuals who are livestock producers or directly connected with livestock-oriented state organizations or associations, including at least one legislator, to serve as a committee to review all of the laws of Montana affecting the movement or marketing of livestock and to make recommendations to the 46th session of the Legislature for the changes in the laws. The committee shall review the laws for the purpose of proposing amendments which promote efficiency, economy, and protection to the livestock industry. The Chairman of the Board of Livestock shall chair the committee which shall serve without pay or remuneration for travel expenses. The committee may appoint subcommittees to assist in this review, which shall also serve without pay or remuneration for travel expenses.

BE IT FURTHER RESOLVED, that the Department of Livestock be requested to provide all necessary staff assistance to the committee.

Approved April 18, 1977.

HOUSE JOINT RESOLUTION NO. 92

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA PROTESTING THE FOOD AND DRUG ADMINISTRATION'S ANNOUNCED BAN ON THE SALE OF SACCHARIN AND PRODUCTS CONTAINING SACCHARIN.

WHEREAS, the United States Food and Drug Administration has recently announced that it intends to ban the sale of saccharin or products containing saccharin as a potential cause of cancer; and

HeinOnline -- 1977 vol. II 2127 1977

WHEREAS, the tests used in making this determination consisted of force-feeding animals a diet of 5% saccharin, a concentration which is unrealistic and which makes the results highly suspect; and

WHEREAS, there is absolutely no proof that any person has died of cancer contracted as a result of consuming saccharin; and

WHEREAS, the use of saccharin by diabetics is of inestimable benefit, in that it allows them to consume sweetened food and thus make palatable the strict diet requirements necessary; and

WHEREAS, there are 5 million diagnosed cases of diabetes in this country and 11,000 such cases in Montana and an estimated 5 million undiagnosed cases of diabetes in this country; and

WHEREAS, diabetes is the leading cause of blindness in the United States and the third leading cause of death; and

WHEREAS, there are many weight-conscious persons who have depended on the use of artificial sweeteners; and

WHEREAS, similar test results with tobacco resulted not in a ban on the sale of tobacco but rather in a warning printed on the containers.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature protests the announced ban by the Food and Drug Administration on the sale of saccharin and saccharin products and urges the Food and Drug Administration to reconsider the ban.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to President Jimmy Carter, Montana's Congressional Delegation, Congressman James Martin of North Carolina, the Secretary of the Department of Health, Education, and Welfare, and the Commissioner of the Food and Drug Administration.

Approved April 14, 1977.

HOUSE JOINT RESOLUTION NO. 93

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA RECOGNIZING LAW DAY.

WHEREAS, Montanans are dedicated to the principles of the democratic form of government; and

WHEREAS, our government is one of law, not of men; and

WHEREAS, it is the wish of the Legislature to further the philosophy that the welfare of the people shall be the Supreme law; and

WHEREAS, May 1 has been proclaimed as Law Day U.S.A.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HeinOnline -- 1977 vol. II 2128 1977

That the Legislature pays tribute to Law Day U.S.A.

BE IT FURTHER RESOLVED, that Law Day U.S.A. be a day for rededication by the citizens of Montana to the principles of democracy, a respect for the law and lawmakers who are so vital to our democratic way of life, and to the support of our state and federal courts of law which uphold and safeguard our individual rights and liberties.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the American Bar Association, to the Montana Supreme Court, and to the State Bar of Montana.

Approved April 11, 1977.

HOUSE JOINT RESOLUTION NO. 94

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING FEDERAL FUNDING IN THE AMOUNT OF $86 MILLION FOR THE NATIONAL MAGNETOHYDRODYNAMIC ENERGY EXTRACTION PROGRAM.

WHEREAS, the magnetohydrodynamic method of extracting energy from coal is more efficient than methods currently in use; and

WHEREAS, it is less harmful to the environment than current methods, creating less air pollution and entailing the use of significantly lesser amounts of water; and

WHEREAS, Montana is currently participating in the national MHD program.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That federal funding in the amount of $86 million is requested for the development of the national magnetohydrodynamic energy extraction program.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to Walter Mondale, Vice-President of the United States, and to Montana's Congressional Delegation.

Approved April 14, 1977.

HOUSE JOINT RESOLUTION NO. 95

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM LEGISLATIVE STUDY OF REQUIRING A CERTIFICATE OF NEED FOR NEW OR EXPANDED MENTAL HEALTH FACILITIES.

HeinOnline -- 1977 vol. II 2129 1977

WHEREAS, several mental health regions have been organized as nonprofit Montana corporations under the provisions of section 80-2804, R.C.M. 1947; and

WHEREAS, these regions are embarking upon physical plant construction programs; and

WHEREAS, the construction of new facilities in the public health sector often poses the risks of duplication of services and inefficient allocation of available funds; and

WHEREAS, the certificate of need requirement has been enacted by the Legislature to control the expansion of facilities for the delivery of physical health services, but no such requirement applies in the mental health area; and

WHEREAS, the feasibility of expanding certificate of need requirements warrants an interim legislative study.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign the appropriate standing committees to study the feasibility of extending certificate of need requirements to new or expanded mental health facilities; the subcommittee so appointed shall report its findings and recommendations by October 1, 1978, for the consideration of the 46th Legislature.

Approved April 18, 1977.

HOUSE JOINT RESOLUTION NO. 96

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION REQUIRING THE LABELING OF ALL BEEF AS EITHER "DOMESTIC BEEF" OR "IMPORTED BEEF".

WHEREAS, it has come to the attention of the American public that billions of pounds of beef are imported into this country annually for domestic consumption; and

WHEREAS, such beef imports are compounding the problems that are facing the beef producers of this country; and

WHEREAS, such competition has forced many cattle producers out of the beef business; and

WHEREAS, we believe that the American consumer has the right to know whether or not the beef that he or she is purchasing is domestic beef or imported beef; and

WHEREAS, presently the American consumer has no way of knowing whether the beef that he or she buys is domestic beef or imported beef; and

HeinOnline -- 1977 vol. II 2130 1977

WHEREAS, we believe that the passage of legislation which would require the labeling of beef as either "domestic beef" or "imported beef" would speak directly to this pressing situation and would alleviate somewhat the overall financial problems now facing the beef producers of this country.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That we do urge the Congress of the United States to take immediate action toward the passage of S. 297 and H.R. 3130 which would require the labeling of all beef as either "domestic beef" or "imported beef" and insure that imported beef is subject to the same inspection requirements as domestic beef and meat products.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the President of the United States Senate, the Speaker of the United States House of Representatives, the Chairman of the United States Senate Agriculture and Forestry Committee, and to each member of Montana's Congressional Delegation.

Approved April 15, 1977.

HOUSE JOINT RESOLUTION NO. 97

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA URGING THE FEDERAL POWER COMMISSION TO WITHDRAW ITS LIMITATION ON THE NUMBER OF NEW NATURAL GAS CONNECTIONS WHICH CAN BE MADE IN 1977 BY MONTANA-DAKOTA UTILITIES.

WHEREAS, the Federal Power Commission, in approving a curtailment of natural gas delivery to industrial users by Montana-Dakota Utilities, has limited to 1220 the total number of new natural gas customers the Montana-Dakota Utilities can connect in Montana in 1977, as compared with an average of 1655 new connections made each year in 1973 to 1975 when there were no restrictions; and

WHEREAS, the cost of heating with natural gas is and will remain for several years much lower than the cost of heating with electricity, the primary alternative; and

WHEREAS, all available natural gas connection permits for 1977 in the Billings area have already been issued; and

WHEREAS, the restriction on new connections will primarily serve to restrict residential and small business construction, thereby restricting growth and adversely affecting the entire economy within the four-state area served by Montana-Dakota Utilities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HeinOnline -- 1977 vol. II 2131 1977

That the Federal Power Commission is requested to reconsider and withdraw or modify its limitation on the number of new natural gas connections which can be made in 1977 by Montana-Dakota Utilities.

BE IT FURTHER RESOLVED, that copies of this resolution be sent by the Secretary of State to the Chairman of the Federal Power Commission, to each member of Montana's Congressional Delegation, to the Governor, and to the Montana Energy Advisory Council.

Approved April 19, 1977.

HOUSE JOINT RESOLUTION NO. 98

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COMMITTEE ON PRIORITIES TO APPOINT A JOINT COMMITTEE TO CONDUCT AN INTERIM STUDY OF THE PROPERTY TAX CLASSIFICATION SYSTEM AND TO PRESENT RECOMMENDATIONS AND PROPOSED LEGISLATION TO THE 46TH LEGISLATURE.

WHEREAS, Montana's property tax classification system, although often studied, has not been reorganized since 1918; and

WHEREAS, changes in the classification system made in each successive Legislature since 1918 and changes in the types and uses of property have diluted the internal logic of each class, making several classes a collection of unrelated types of property; and

WHEREAS, past assessment practices have varied so markedly that the effective tax rate for similar types of property is different; and

WHEREAS, many bills introduced in the 45th Legislature questioned the equity of the existing classifications and tax rates for various types of property; and

WHEREAS, the equity of lowering taxes for one type of property cannot be considered in isolation because the tax burden is simply shifted to another type of property; and

WHEREAS, the new assessments produced by the cyclical reappraisal program can substantially raise taxes on real property, causing concern among many Montana citizens; and

WHEREAS, the study of property tax assessment laws and rules completed during the last legislative interim has provided the details necessary for a study of the classes and their tax rates.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Committee on Priorities is requested to appoint a joint committee to conduct an interim study of the property tax classification system as a whole, with special emphasis on the reasons for classing certain property together and the equity of taxing each type of

HeinOnline -- 1977 vol. II 2132 1977

property at its current rate. The committee shall use HB 45, introduced in the 45th Legislature, as a starting point and prepare proposed legislation embodying its recommendations to the 46th Legislature.

Approved April 19, 1977.

HOUSE JOINT RESOLUTION NO. 99

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN A JOINT COMMITTEE TO UNDERTAKE A STUDY OF ALTERNATIVE METHODS OF TAXING FINANCIAL INSTITUTIONS.

WHEREAS, the moneyed capital tax is levied on the value of shares of bank stock and not on other financial institutions; and

WHEREAS, the moneyed capital tax is a significant part of the property tax base upon which local governments and schools depend; and

WHEREAS, the moneyed capital tax is the subject of litigation to determine if the tax is prohibited by federal statute.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is requested to assign a joint committee to undertake a comprehensive study of alternative methods of taxing financial institutions. The joint committee is urged to determine, among other things, the current methods and rates of state and local taxation of financial institutions and the methods of taxation which are permitted by federal statutes and regulations.

BE IT FURTHER RESOLVED, that the committee report its findings and recommendations together with appropriate implementing legislation to the 46th Legislature.

Approved April 19, 1977.

HOUSE JOINT RESOLUTION NO. 100

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COMMITTEE ON PRIORITIES TO APPOINT THE APPROPRIATE STANDING COMMITTEE TO CONDUCT AN INTERIM STUDY OF THE GOVERNANCE OF MONTANA'S VOCATIONAL EDUCATION PROGRAM.

WHEREAS, under current statute, Montana's vocational education programs are governed and administered by the Board of Public Education, the Superintendent of Public Instruction, and local school boards; and

HeinOnline -- 1977 vol. II 2133 1977

WHEREAS, the statutes delineating each body's authority contain many ambiguities; and

WHEREAS, statutes governing the control of vocational education moneys seem to conflict, allowing, variously, the Board of Public Education and the Superintendent of Public Instruction full control over these funds; and

WHEREAS, these several layers of authority governing vocational education and the ambiguities do not promote an efficient vocational education program; and

WHEREAS, a law designed to clarify the governance of Montana's vocational education system, passed by the 1975 Legislature, has been declared unconstitutional; and

WHEREAS, attempts to define the governance of vocational education introduced in the current legislative session have been unsuccessful.
NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Committee on Priorities is requested to appoint the appropriate standing committee to conduct an interim study and present recommendations and proposed legislation to the 46th Legislature concerning the governance of Montana's vocational educational programs in elementary schools, high schools, postsecondary vocational centers, and colleges and the changes in present statutes that would promote efficiency and effectiveness in the vocational programs. The study should determine what roles, if any, should be played by the Board of Public Education, Superintendent of Public Instruction, and local school boards.

Approved April 19, 1977.

HOUSE JOINT RESOLUTION NO. 103

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE COMMITTEE ON PRIORITIES TO ASSIGN TO THE APPROPRIATE STANDING COMMITTEE A STUDY OF THE PROBLEMS AND NEEDS OF BATTERED SPOUSES AND THEIR FAMILIES IN MONTANA AND TO HAVE THE COMMITTEE MAKE RECOMMENDATIONS TO MEET IDENTIFIED PROBLEMS AND NEEDS.

WHEREAS, problems of battered spouses and their families have not been adequately addressed in Montana; and

WHEREAS, a number of Montana communities have shown an interest in and have demonstrated a need for legal or social assistance, or both, for battered spouses and their families; and

WHEREAS, there is a critical lack of facilities, programs, and legal remedies for battered spouses and their families; and

HeinOnline -- 1977 vol. II 2134 1977

WHEREAS, state and local authorities and agencies encounter special problems and hazards in responding to situations arising from domestic disputes.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities assign to the appropriate standing committee a study of the problems and needs of battered spouses and their families in Montana and the role of public authorities and agencies in addressing these problems and needs.

BE IT FURTHER RESOLVED, that the Departments of Justice, Social and Rehabilitation Services, Institutions, and Community Affairs and such other agencies, nonprofit organizations, and persons as may be appropriate assist the standing committee in producing a report based on such research.

BE IT FURTHER RESOLVED, that the report be submitted, with recommendations for remedial legislation, to the Legislative Council 4 months prior to the convening of the 46th Legislature.

Approved April 19, 1977.

HOUSE JOINT RESOLUTION NO. 105

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE LEGISLATIVE AUDITOR TO CONDUCT AN ANNUAL AUDIT OF SELECTED SPECIAL EDUCATION PROGRAMS IN SCHOOL DISTRICTS THROUGHOUT MONTANA.

WHEREAS, special education in Montana is funded on an allowable cost basis which provides school districts with virtually a "blank check" for statutorily allowable costs; and

WHEREAS, in the current biennium the state of Montana is spending approximately $35 million on special education and will spend from $40 million to $45 million in the next biennium, which will amount to almost 10% of state general fund expenditures; and

WHEREAS, it is essential that special education moneys be used most efficiently and effectively to best serve the educational needs of Montana's handicapped citizens; and

WHEREAS, there is very little state fiscal control over the expenditure of state funds for special education; and

WHEREAS, there is at present no state level auditing of special education funds provided by the state; and

WHEREAS, the Montana Legislative Audit Act, Title 79, chapter 23, R.C.M. 1947, grants authority to the Legislative Auditor to audit expenditures of all state funds.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HeinOnline -- 1977 vol. II 2135 1977

That the Legislative Auditor is directed to perform an annual audit of selected special education programs in school districts throughout Montana; and that each annual audit of such programs be conducted according to all standards, objectives, and procedures established under the Montana Legislative Audit Act, Title 79, chapter 23, R.C.M. 1947.

Approved April 19, 1977.

HOUSE JOINT RESOLUTION NO. 106

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA HONORING FORMER GOVERNOR J. HUGO ARONSON.

WHEREAS, Hugo Aronson, nicknamed the "Galloping Swede", rose from humble immigrant origins to fame as an oilman-rancher-businessman; and

WHEREAS, Hugo Aronson served from 1939 to 1943 in Montana's House of Representatives and from 1945 to 1951 in the Senate; and

WHEREAS, Hugo Aronson, a hardworking and fair-minded legislator, was so well-respected by the House leadership that he was appointed chairman of the powerful House Oil and Gas Committee at a time when the Republican Party was in a minority in the House; and

WHEREAS, Hugo Aronson, as chairman of the Senate Roads and Highways Committee and member of the Airport Commission from its inception, foresaw Montana's transportation needs and helped create today's network of highways and airports; and

WHEREAS, Hugo Aronson, called the "most legislatively experienced governor in the history of the state", served two terms as Governor of Montana from 1953 to 1961; and

WHEREAS, Hugo Aronson was a very able and extremely popular Chief Executive; and

WHEREAS, the "Galloping Swede's" popularity stemmed in part from a jovial, down-to-earth manner and from his legendary physical strength, stories of which still abound in Montana; and

WHEREAS, Hugo Aronson has always reflected the courage, individualistic nature, friendliness of spirit, and devotion to duty and his fellow Montanans.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislature honors the Honorable J. Hugo Aronson for his many contributions to the well-being of all Montanans.

BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded by the Secretary of State to J. Hugo Aronson at the Columbia Falls Veterans' Home.

Approved April 19, 1977.

HeinOnline -- 1977 vol. II 2136 1977

SENATE RESOLUTION NO. 1

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO THE JOINT RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the following rules are adopted:

SENATE RULES

CHAPTER 1

Presiding Officer — Decorum, Order and Debate

S1-1. At the beginning of each biennium the senate shall choose a president from its membership who shall be the presiding officer. In case of the absence or disqualification of the president, the president pro tempore of the senate shall perform the duties of the president until the vacancy is filled or the disability removed.

S1-2. The senate shall, at the beginning of each regular session, and at such other times as may be necessary, elect one of its members president pro tempore. The senate shall choose its other officers, and shall judge of the elections, returns, and qualifications of its members.

S1-3. The president and president pro tempore, when acting as presiding officer of the senate, shall vote as any other member of the senate.

S1-4. The president may name a senator to perform the duties of the chair, when the president pro tempore is not present in the senate chamber. The senator who is so named is vested during such time with all the powers of the president; but he does not lose the right to vote on any question while presiding.

S1-5. No senator shall speak more than twice on any one motion or question without unanimous consent of the senate, unless he has introduced or proposed the motion or question under debate, in which case he may speak twice and also close the debate. However, a senator who has spoken shall not speak again on the same motion or question to the exclusion of a senator who has not spoken.

S1-6. On order of business No. 8—In addition to other methods a recorded vote may be made in the following manner: the chair may call for a voice vote to accept or reject a question. If the vote is other than unanimous, the chair may ask that the lesser number on the question indicate their vote by standing. The secretary will then record the vote of those standing. The chair may then rule that unless excused those not standing and present have voted on the prevailing side of the question

HeinOnline -- 1977 vol. II 2137 1977

and that their vote be recorded as such. If there was a unanimous voice vote, all those present will be recorded as having voted for the question.

S1-7. Only the following persons may be admitted to the floor of the senate during sessions: legislators, legislative officers and employees whose presence is necessary for the conduct of the business of the session, accredited members of the press, radio and television, former legislators. The rules committee shall be allowed to make exceptions for visiting dignitaries.

CHAPTER 4

Order of Business

S4-1. On order of business No. 2 (reports of standing committees), no debate shall be had on any report unless a minority report or a report without recommendation has been submitted. Any member seeking a reconsideration of the senate's action on the adoption of a committee report shall do so on order of business No. 6 by motion to reconsider. Any member may make such motion and need not have voted on the prevailing side. This rule shall apply notwithstanding any joint rule to the contrary.

A bill reported from committee without recommendation shall be considered with the committee reports against passage of a bill.

CHAPTER 5

Motions

S5-1. All proper motions on second reading are debatable. If a motion to reconsider third reading action on a bill or resolution is carried, there shall be no further action on that bill or resolution until the succeeding legislative day.

CHAPTER 6

Bills and Resolutions

S6-1. Any bill or resolution may be introduced during a special session, provided however, that the Rules Committee shall determine which bills or resolutions shall be considered during a special session, including bills or resolutions carried over from previous sessions. This rule shall apply to both house and senate bills or resolutions.

CHAPTER 7

Committees

S7-1. The senate shall elect a committee on committees consisting of 3 members, except when the senate is evenly divided between parties, when the committee on committees shall consist of 6 members, 3 from each party. The committee on committees, with the approval of the senate, shall appoint standing and select committees of the senate, and senate membership on joint committees except conference committees and special committees. The president shall appoint all conference committees and special committees with the advice of the majority and minority floor leaders. The senate may change the membership of any committee on one day's notice.

HeinOnline -- 1977 vol. II 2138 1977

The standing committees of the senate are as follows:

1. Agriculture, Livestock and Irrigation
2. Bills and Journal
3. Business and Industry
4. Education
5. Finance and Claims
6. Highways and Transportation
7. Judiciary
8. Labor and Employment Relations
9. Legislative Administration
10. Local Government
11. Natural Resources
12. Fish and Game
13. Public Health, Welfare and Safety
14. Rules
15. State Administration
16. Taxation

S7-2. The democratic floor leader shall be an ex officio member of all committees in order to establish a quorum.

S7-3. If any final vote on a bill in a standing committee results in a tie vote, the bill shall be reported out of committee without recommendation and considered as if the vote had been for against recommending passage of the bill.

S7-4. When a conference committee report is filed with the secretary, the same shall be read under order of business No. 3, Select Committees, and placed on the calendar the succeeding legislative day for consideration on second reading. If recommended favorably by the committee of the whole, it may be considered on third reading the same legislative day.

S7-5. Pairs in committee are prohibited.

CHAPTER 8

Rules and Journal

S8-1. (1) A motion to amend or adopt a rule of the senate shall be referred to the committee on rules without debate. A rule of the senate may only be amended or adopted with the concurrence of a majority of the senate and after one day's notice.

(2) A rule may be suspended temporarily by a two-thirds vote.

HeinOnline -- 1977 vol. II 2139 1977

S8-2. Mason's Manual of Legislative Procedure governs the proceedings of the senate in all cases not covered by these rules.

CHAPTER 10

Nominations from the Governor

S10-1. The governor shall nominate, and by and with the consent of the senate, appoint all officers whose offices are established by the constitution or which may be created by law, and whose appointment or election is not otherwise provided for. If during a recess of the senate a vacancy occurs in any such office, the governor shall appoint some fit person to discharge the duties thereof until the next meeting of the senate, when he shall nominate some person to fill such office.

S10-2. When nominations are sent by the governor to the senate for confirmation, they shall not be acted on before the next succeeding legislative day, except nominations sent by the governor on the last legislative day of the session, which shall be acted upon that day.

Approved January 10, 1977.

SENATE RESOLUTION NO. 2

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA AUTHORIZING PAY FOR CERTAIN LEGISLATIVE OFFICERS AND EMPLOYEES WHO PREPARED FOR THE BUSINESS OF THE FORTY-FIFTH LEGISLATURE.

WHEREAS, the preparation of business of a Legislative session requires the employment of certain officers and employees; and

WHEREAS, the Senate Legislative Administration Committee has recommended payment according to House Joint Resolution No. 1 of the Special Session of the 44th Legislature based upon a 5% increase for each year of legislative experience, not to exceed 2 years.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the officers and employees herein named are entitled to be paid for the number of hours and at the rate listed below for the time spent in preparing for the business of the 45th Legislature.

Name and Position	No. of Prior Sessions	Time	Rate
Aagenes, Nancy Secretary of the Senate	1	19 Days	$49/Day*
Alter, Pat Secretary to the Secretary	1	36 Hrs.	$4.37/Hr.
Cason, Doris Assistant Bills Clerk	1	7	3.86

HeinOnline -- 1977 vol. II 2140 1977

Celar, Harriet Assistant Bills Distributor	1	10.5	3.66
Dunbar, Helen Secretary to Officer	2	2	4.80
Fallan, Jean Assistant Secretary of Senate	13	16.5	5.15
Harrington, Cort Bills Distributor	1	11.5	4.37
Hill, Dorothy Bills Clerk	4	18	4.80
Jacobson, Garth Reading Clerk	0	16.5	3.32
Jakovac, Betty Chief Stenographer	13	94.25	4.47
Lester, Barbara Secretary to Officer	5	8	4.80
Meyer, Beth Posting Clerk	0	23.5	3.42
Owens, Jo Secretary to Officer	0	8.5	4.80
Pratt, Judy Journal Clerk	6	17	4.80
Rovig, Steve Reading Clerk	0	22.5	3.42
Tripp, Gloria Assistant Secretary to Secretary	0	24	4.37
Wunderlich, JoAnn Assistant Journal Clerk	0	6	3.86

*This includes $20 per diem for expenses.

Approved January 24, 1977.

SENATE RESOLUTION NO. 4

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE LEGISLATURE AND EXECUTIVE DEPARTMENT OF THE STATE OF WASHINGTON TO ENCOURAGE AND PERMIT THE CONSTRUCTION OF APPROPRIATE PORT FACILITIES FOR UNLOADING CRUDE OIL FOR SHIPMENT BY PIPELINE TO THE NORTHERN STATES, INCLUDING THE STATE OF MONTANA.

WHEREAS, the State of Montana has for many years provided petro-

HeinOnline -- 1977 vol. II 2141 1977

leum products to the State of Washington through its Billings and Laurel refineries, which products are transported through pipelines to Washington; and

WHEREAS, the majority of the crude oil used by petroleum refineries in Billings and Laurel, Montana, has originated in the Dominion of Canada, but the government of Canada has recently announced sharp curtailment in the supply of crude oil to the United States and in particular the northern states, including the State of Montana; and

WHEREAS, the government of Canada has recently announced eventual, complete denial of international transportation of Canadian natural gas from Canada to the United States, including the State of Montana, and then has allowed importation of such fuel only at greatly increased cost to distributors and consumers in the United States; and

WHEREAS, agriculture, labor, industry, and the entire economy of the northern states are thereby imperiled and this peril is demonstrated by the following facts:

(1) that the United States has become dependent for almost 50% of its petroleum requirements upon imports of foreign crude oil;

(2) that the lack of energy supplies during the winter of 1976-1977 has caused the closing of schools and industries, with resulting unemployment in the northern portions of the United States;

(3) that the northwestern states are faced with a serious drought condition which will result in a shortage of hydroelectric power and a further worsening of the general energy shortage;

(4) that the Governor of Montana has taken steps within his administration to develop contingency plans for this expected calamity; and

WHEREAS, port and pipeline facilities from the west coast will provide a crude oil supply system for the northern states that is completely within the boundaries of the United States and, therefore, not subject to interruption, burdens or regulation by foreign governments; and

WHEREAS, crude oil from Alaska will become available to the northern states beginning in the fall of 1977, and this crude oil or products produced therefrom could be utilized in the States of Washington, Idaho, Montana, North Dakota, South Dakota, Minnesota, Wisconsin, Michigan, Indiana, Ohio, and Illinois, if port and transportation facilities are available; and

WHEREAS, it is feasible at this time to build port facilities to deliver crude oil to the northern states which construction would be compatible with environmental safety and which could help avoid the severe shortage condition; and

WHEREAS, the State of Montana has recently authorized the construction, through its Board of Natural Resources, of Colstrip Electric Generating Units 3 and 4 which will provide power to electric utilities operating in the Pacific Northwest, including the State of Washington.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

HeinOnline -- 1977 vol. II 2142 1977

(1) That the Legislature and Executive Department of the State of Washington use their good offices to encourage, facilitate, and permit the construction of appropriate port facilities for unloading crude oil for shipment by pipeline to the northern states, including the State of Montana.

(2) That the Governor of the State of Montana consult with the Governor of the State of Washington as to the manner and methods whereby this encouragement and construction may be accomplished.

(3) That the President of the Senate be authorized and directed to transmit copies of this resolution to Honorable John Cherberg, President of the Senate of the State of Washington; to the members of the Senate of the State of Washington; to Honorable John Bagnariol, Speaker of the House of Representatives of the State of Washington; to the members of the House of Representatives of the State of Washington; and to the Honorable Dixie Lee Ray, Governor of the State of Washington.

Approved March 31, 1977.

SENATE RESOLUTION NO. 5

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA URGING THE U.S. CONGRESS TO STOP TREATY NEGOTIATIONS TO TRANSFER CONTROL, ADMINISTRATION AND OWNERSHIP OF OUR CANAL TO THE PRESENT GOVERNMENT OF PANAMA.

WHEREAS, the Panama Canal Convention in 1903 stated, "The Republic of Panama grants to the United States in perpetuity the use, occupation and control of a zone of land and land under water for the construction, maintenance, operation, sanitation and protection of said canal..."; and

WHEREAS, the 1903 Treaty stated, "The Republic of Panama grants to the United States in perpetuity a monopoly for the construction, maintenance and operation of any system of communication by means of a canal or railroad across the territory between the Caribbean Sea and the Pacific Ocean."; and

WHEREAS, "Perpetuity" is defined as meaning, "perpetual existence, duration, validity; something perpetual or perpetually held or maintained; endless time"; and

WHEREAS, Article III of the 1903 Treaty says, "The Republic of Panama grants to the United States all the rights, power, and authority within the zone mentioned... which the United States would possess and exercise if it were the sovereign of the territory within which said lands and waters are located to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority"; and

WHEREAS, the Treaty states, "If the Republic of Panama shall hereafter enter as a constituent into any other government or into any union

HeinOnline -- 1977 vol. II 2143 1977

or confederation of states, so as to merge her sovereignty or independence in such government, union or confederation, the rights of the United States under this convention shall not be in any respect lessened or impaired,"; and

WHEREAS, in 1903 Panama was offered ten million dollars "in gold coin" plus "an annual payment" of a quarter of a million dollars "IN LIKE GOLD COIN" for 50 square miles; and

WHEREAS, the Panama Canal Convention was ratified on February 26, 1904; and

WHEREAS, the Panama Canal Treaty was updated and reaffirmed by all parties in 1936 and in 1955, and no further negotiations are either desired or necessary; and

WHEREAS, when acquired by the United States, the land that later became the Canal Zone was jungle covered, insect ridden, and disease infested. There was no canal on it. The United States of America cleared the jungle, eradicated the malaria problem, and built the Canal — at a huge cost in American lives, time, and money; and

WHEREAS, the Panama Canal is undeniably the most important waterway in the western hemisphere.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the United States of America should retain all of the right, title and interest of and to the Panama Canal.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the President of the United States, the United States Senate, and to the United States Secretary of State.

Approved April 12, 1977.

SENATE RESOLUTION NO. 6

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA URGING THAT PUBLIC LANDS NOT BE CLOSED BY ANY BLANKET EDICT BUT SHOULD BE OPEN TO ALL FORMS OF RECREATIONAL USE, INCLUDING SNOWMOBILES, UNLESS CLOSED FOR A SPECIFIC REASON ON AN INDIVIDUAL AREA BASIS.

WHEREAS, Executive Order 11644 directed public land managers to study the control of off-road vehicles and did not direct the closure of public lands; and

WHEREAS, snowmobiling is a healthy, outdoor family sport enjoyed during a season which has in the past been marked by a scarcity of recreational opportunities; and

WHEREAS, snowmobiling provides a significant economic stimulus during a season of traditionally high unemployment; and

HeinOnline -- 1977 vol. II 2144 1977

WHEREAS, snowmobiling is a legitimate use of our public lands, providing recreation for 7 million Americans; and

WHEREAS, snowmobiling is the third fastest growing sport in the land according to the A. C. Nielson & Co. Report; and

WHEREAS, snowmobilers have worked closely with public land managers for many years, identifying critical areas and establishing trails and use areas, and there is no longer an environmental problem.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Senate of the State of Montana believes that public lands should be open for all forms of recreational use, including snowmobiles, unless closed for a specific reason on an individual area basis. Public lands should not be closed by any "blanket edict".

BE IT FURTHER RESOLVED, that the Secretary of State of Montana shall send a copy of this resolution to the President of the United States, the Secretary of Interior, the Secretary of Agriculture, to Montana's Congressional Delegation, the State Director of the United States Fish and Wildlife Service, the State Director of the Bureau of Land Management, and the Regional Forester, Region 1 Office of the United States Forest Service.

Approved April 12, 1977.

SENATE RESOLUTION NO. 7

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA AUTHORIZING THE ESTABLISHMENT OF A BANK ACCOUNT FOR DONATIONS TO THE STATE TO PURCHASE THE CHARLES M. RUSSELL PAINTING, WHEN THE LAND BELONGED TO GOD.

WHEREAS, donations in sizeable amounts are being received by the Montana State Senate from citizens throughout the state wanting to keep the Russell painting, "When the Land Belonged to God", in Montana; and

WHEREAS, it is imperative that the collection and records involving such sums be efficiently administered.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

(1) That the President and President pro tempore of the Senate establish a bank account for holding contributions made to purchase the painting, "When the Land Belonged to God".

(2) That funds may be withdrawn from the account only upon signature of both the President and President pro tempore.

(3) That the Secretary of the Senate is authorized to receive such contributions and deposit them in the account and that this authority will be transferred to the Legislative Business Manager upon adjournment.

HeinOnline -- 1977 vol. II 2145 1977

(4) That all donations should be made payable to the "CMR Painting Fund".

(5) That if the painting is to be purchased by the state all funds in the account will be transferred to the Montana Historical Society for that purpose.

(6) That if the painting is not purchased by the state by January 1, 1978, the donations will be returned to the donors after deducting the costs of maintaining the account and of returning the donations.

Approved April 8, 1977.

SENATE RESOLUTION NO. 8

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THE CARTER ADMINISTRATION AND CONGRESS TO FULLY FUND FOREST FIRE PROTECTION ASSISTANCE.

WHEREAS, Montana's forested lands provide revenue and other direct benefits to the state and nation; and

WHEREAS, because of the existing drought situation, Montana faces the possibility of severe forest fire conditions in 1977; and

WHEREAS, there may be a possibility of obtaining supplemental federal funds for the 1977 fire season (federal fiscal year 1977); and

WHEREAS, the Carter Administration is proposing a reduction in the present federal level of financial support to state and local fire forces for the 1978 fire season (federal fiscal year 1978); and

WHEREAS, without sufficient financial support, the state is facing the possibility of massive forest closures to protect Montana's forested lands from fire, which will have a substantial negative impact on the state's economy.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Carter Administration and Congress are requested to support full federal funding of forest fire protection assistance at a level of $25,135,000 nationally for fiscal year 1978, as authorized under section II of the federal Clarke-McNary Act.

BE IT FURTHER RESOLVED, that the Carter Administration and Congress are urged to support supplemental financial support for forest fire protection assistance for federal fiscal year 1977.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the President of the United States and to Montana's Congressional Delegation.

Approved April 18, 1977.

HeinOnline -- 1977 vol. II 2146 1977

SENATE RESOLUTION NO. 9

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA WELCOMING THE WALLY BYAM CARAVAN CLUB INTERNATIONAL TO ITS JUNE 28TH THROUGH JULY 4TH RALLY TO BE HELD IN BOZEMAN, MONTANA; EXTENDING A CORDIAL INVITATION TO ALL OF ITS MEMBERS TO STAY AND ENJOY ALL OF THE RECREATIONAL OPPORTUNITIES TO BE FOUND THROUGHOUT MONTANA FOR AS LONG AS THEY LIKE; AND EXPRESSING THE HOPE THAT ALL OF ITS MEMBERS WILL FIND THEIR STAY IN MONTANA TO BE VERY ENJOYABLE.

WHEREAS, the Wally Byam Caravan Club International will hold a rally this summer in Bozeman, Montana, from June 28th through July 4th; and

WHEREAS, the rally will be comprised of approximately 5,000 Airstream trailers and 16,000 people; and

WHEREAS, the Wally Byam Caravan Club International which toured Montana during the summer of 1973 was extremely well-organized and was comprised of gracious and friendly people; and

WHEREAS, those people shared their enthusiasm and generosity with the people of Montana by inviting them to participate in their many forms of entertainment; and

WHEREAS, those people displayed their respect for the scenic beauty and clean environment of Montana by always leaving their campsites in perfect condition; and

WHEREAS, Montana appreciates and encourages tourists of this caliber to visit this state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Wally Byam Caravan Club International is welcome to its rally to be held this summer in Bozeman, Montana, from June 28th through July 4th.

BE IT FURTHER RESOLVED, that all of the members of the Wally Byam Caravan Club International are cordially invited to stay and enjoy all of the recreational opportunities to be found throughout Montana for as long as they like.

BE IT FURTHER RESOLVED, that it is hoped that all of the members of the Wally Byam Caravan Club International will find their stay in Montana to be very enjoyable.

BE IT FURTHER RESOLVED, that a copy of this resolution be sent by the Secretary of the Senate to the Wally Byam Caravan Club International, its president, Roy Schellhass, its other officers, and its board of directors.

HeinOnline -- 1977 vol. II 2147 1977

BE IT FURTHER RESOLVED, that a copy of this resolution be sent to the Governor so that he may, if he wishes, endorse the contents of this resolution by way of executive proclamation.

Approved April 19, 1977.

SENATE RESOLUTION NO. 11

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA AUTHORIZING THE PRESIDENT OF THE SENATE TO APPROVE THE EMPLOYMENT OF SENATE OFFICERS AND EMPLOYEES NECESSARY TO COMPLETE THE BUSINESS OF THE REGULAR SESSION OF THE 45TH LEGISLATURE AND TO PROVIDE COMPENSATION FOR EMPLOYEES TO PREPARE ANY BUSINESS OF ANY SPECIAL SESSION OF THE 45TH LEGISLATURE.

WHEREAS, the completion of business of the regular session of the 45th Legislature encompasses the employment of certain legislative officers and employees of the Senate; and

WHEREAS, the preparation of business of any special session of the 45th Legislature encompasses the employment of certain legislative officers and employees of the Senate.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the President of the Senate is authorized by the Senate Committee on Legislative Administration and the Senate of the 45th Legislature to employ and continue the employment of officers and employees necessary to complete all unfinished business incident to and consequent upon the 45th Legislature and any special session of the 45th Legislature.

BE IT FURTHER RESOLVED, that the payrolls covering each employment shall be authenticated by the President of the Senate and the Legislative Business Manager and payment of the same shall be made separate and out of funds appropriated for the regular session of the 45th Legislature at the rate specified in House Joint Resolution No. 6, effective January 13, 1977, or from any new funds appropriated for such purposes.

BE IT FURTHER RESOLVED, that legislative officers and employees for any special session of the 45th Legislature shall be employed and compensated at the same prescribed rate as defined in House Joint Resolution No. 6.

Approved April 19, 1977.

HOUSE RESOLUTION NO. 1

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO ADOPT RULES TO GOVERN ITS PROCEEDINGS IN ADDITION TO THE JOINT RULES.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

HeinOnline -- 1977 vol. II 2148 1977

THAT THE FOLLOWING RULES ARE ADOPTED:

HOUSE RULES

CHAPTER 1

Presiding Officer — Decorum, Order and Debate

H1-1. The house of representatives shall elect one of its members speaker. The house shall choose its other officers, and shall judge of the elections, returns, and qualifications of its members.

H1-2. The house shall elect one of its members speaker pro tempore who shall perform all of the duties of the speaker in the absence of that officer, and on such other occasions as the speaker may request.

H1-3. No member shall speak for longer than thirty minutes in debate on any one motion or question.

H1-4. No member shall speak more than once on the same question without the unanimous consent of the house, unless he has proposed or introduced the matter under debate, in which case he may speak in reply after all members choosing to speak have spoken.

CHAPTER 7

Committees

H7-1. The standing committees of the house are as follows:

1. Agriculture, Livestock and Irrigation
2. Appropriations
3. Business and Industry
4. Education
5. Fish and Game
6. Highways and Transportation
7. Judiciary
8. Labor and Employment Relations
9. Legislative Administration/Bills and Journal
10. Local Government
11. Natural Resources
12. Public Health, Welfare and Safety
13. Rules
14. State Administration
15. Taxation

The first named member of a committee is the chairman, and in his absence the next named member, and so on.

HeinOnline -- 1977 vol. II 2149 1977

H7-2. The committee on rules shall consist of the speaker, the majority leader, and three other members of the majority party appointed by the speaker, the minority leader, and three members of the minority party designated by the minority leader and appointed by the speaker. The speaker shall appoint other standing committees, select committees, and house membership on joint committees and conference committees.

H7-3. All bills having "Do Pass" committee recommendations shall be deemed adopted and shall be placed on second reading.

If the committee report is that the bill "Do Not Pass", the bill shall be posted by the chief clerk of the house and the members of the house have 24 hours in which to indicate in writing to the chief clerk that they wish to have the bill debated. If a member so indicates, the bill will be placed on second reading for debate. If no such indication is made, the committee report will be voted on order of business No. 2 without debate.

CHAPTER 8

Rules

H8-1. (1) A motion to amend or adopt a rule of the house shall be referred to the committee on rules, which shall report no later than the next legislative day. Unless recommended by the committee on rules, no house rule shall be amended or adopted except by a two-thirds vote.

(2) A house rule may be suspended temporarily for a specified purpose by unanimous consent.

H8-2. Mason's Manual of Legislative Procedure governs the proceedings of the house of representatives in all cases not covered by these rules.

Approved January 6, 1977.

HOUSE RESOLUTION NO. 3

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CARTER ADMINISTRATION AND CONGRESS TO FULLY FUND FOREST FIRE PROTECTION ASSISTANCE.

WHEREAS, Montana's forested lands provide revenue and other direct benefits to the state and nation; and

WHEREAS, because of the existing drought situation, Montana faces the possibility of severe forest fire conditions in 1977; and

WHEREAS, there may be a possibility of obtaining supplemental federal funds for the 1977 fire season (federal fiscal year 1977); and

WHEREAS, the Carter Administration is proposing a reduction in the present federal level of financial support to state and local fire forces for the 1978 fire season (federal fiscal year 1978); and

HeinOnline -- 1977 vol. II 2150 1977

WHEREAS, without sufficient financial support, the state is facing the possibility of massive forest closures to protect Montana's forested lands from fire, which will have a substantial negative impact on the state's economy.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Carter Administration and Congress are requested to support full federal funding of forest fire protection assistance at a level of $25,135,000 nationally for federal fiscal year 1978, as authorized under section II of the federal Clarke-McNary Act.

BE IT FURTHER RESOLVED, that the Carter Administration and Congress are urged to support supplemental financial support for forest fire protection assistance for federal fiscal year 1977.

BE IT FURTHER RESOLVED, that copies of this resolution be sent to the President of the United States and to Montana's Congressional Delegation.

Approved April 14, 1977.

HOUSE RESOLUTION NO. 5

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO AUTHORIZE CERTAIN LEGISLATIVE OFFICERS AND EMPLOYEES TO COMPLETE THE BUSINESS OF THE REGULAR SESSION OF THE FORTY-FIFTH LEGISLATURE AND TO PROVIDE COMPENSATION FOR EMPLOYEES TO PREPARE ANY BUSINESS OF ANY SPECIAL SESSION OF THE FORTY-FIFTH LEGISLATURE AND TO PREPARE THE BUSINESS OF THE FORTY-SIXTH LEGISLATURE.

WHEREAS, the completion of business of the regular session of the Forty-fifth Legislature encompasses the employment of certain legislative officers and employees of the House of Representatives; and

WHEREAS, the preparation of business of any special session of the Forty-fifth Legislature or of the Forty-sixth Legislature encompasses the employment of certain legislative officers and employees of the House of Representatives.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the officers and employees of the House of Representatives herein named, are hereby employed by the House of Representatives of the regular session of the Forty-fifth Legislature of the state of Montana to complete the business of that session:

1. John Driscoll, Speaker of the House
2. Mike Meloy, Majority Leader
3. Bob Marks, Minority Leader

HeinOnline -- 1977 vol. II 2151 1977

4. Martha B. McGee, Chief Clerk
5. Ed Smith, Asst. Chief Clerk
6. Bobbie Murphy, Sec./Speaker of the House
7. Charlene Boyer, Sec./Majority Leader
8. Martha Brass, Sec./Minority Leader
9. Zorka DaSilva, Sec./Chief Clerk
10. Mary Conway, Status Input Technician
11. Linda Barrett, Journal Clerk
12. Betty Haight, Asst. Journal Clerk
13. Pat Tyanich, Bills Clerk
14. Nadine McCurdy, Asst. Bills Clerk
15. Carol Williams, Bills Coordinator
16. Betty Erickson, Chief Stenographer—Close Pool
17. Vickie Kroll, Asst. Chief Stenographer—Close Pool
18. Laurie Levitan—Close Pool
19. Jerry Williams, Appropriations Secretary
20. Jo Lahti, Taxation Secretary
21. Gladys Carpenter, Proofreader
22. Sam Wolfe, Sgt.-at-Arms
23. Ken Robinson, Asst. Sgt.-at-Arms
24. Clyde Neu, Asst. Sgt.-at-Arms
25. Mary Ellen Connelly, Judiciary Committee Secretary
26. Joy McGrath, Asst. in Appropriations—steno, etc.
27. Alicia Pichette, Proofreader—copy secretaries' books
28. Lewis Smith, Proofreader—Journal
29. Claudia Bunn, Proofreader—Journal

BE IT FURTHER RESOLVED, that the payrolls covering each employment shall be authenticated by the Speaker of the House of Representatives and the Legislative Business Manager and payment of the same shall be made separate and out of funds appropriated for the regular session of the Forty-fifth Legislature at the rate specified in House Joint Resolution No. 6 effective January 13, 1977, or from any new funds appropriated for such purposes.

BE IT FURTHER RESOLVED, that legislative officers and employees for any special session of the Forty-fifth Legislature or the Forty-sixth

HeinOnline -- 1977 vol. II 2152 1977

Legislature shall be employed and compensated at the same prescribed rate as defined in House Joint Resolution No. 6 and the letter of authorization addressed to Ms. Monida Vaughn, dated January 14, 1977, and signed by Rep. Joe Quilici, Chairman of House Legislative Administration/Bills and Journal Committee, until such time as the rates are changed by the House of Representatives.

Approved April 19, 1977.

HeinOnline -- 1977 vol. II 2153 1977

HeinOnline -- 1977 vol. II 2154 1977

CHANGES IN NAMES DECREED IN 1975

Date of Judgment	Original Name	Name Decreed	Residence
Jan. 8, 1975	Gregory Bruce Jones	Gregory Bruce St. Clair	Billings
Jan. 8, 1975	Keven Lee Jones	Keven Lee St. Clair	Billings
Jan. 8, 1975	Emma Dell Smith	Delle Cooper Smith	Yellowstone Co.
Jan. 9, 1975	Arlina Jane Young	Arlina Jane Howell	Missoula Co.
Jan. 10, 1975	Matthew Lee Raglin	Matthew Lee LeCoure	Butte
Jan. 21, 1975	Stanley Kirk Ayers	Stanley Kirk Peterson	Kalispell
Jan. 23, 1975	Craig Allen Bruns	Craig Allen Fraser	Inverness
Jan. 23, 1975	Rex Lynn Bruns	Rex Lynn Fraser	Inverness
Jan. 28, 1975	Elizabeth Jean Salisbury	Elizabeth Jean Swope	Forsyth
Jan. 29, 1975	Harold Steel	Jack C. Steele	Anaconda
Jan. 30, 1975	Darlene J. Donathan	Darlene J. Hersey	Whitefish
Jan. 31, 1975	Barry Johnson Pickett	Barry Johnson Real Bird	Crow Agency
Jan. 31, 1975	Curtis Ross Pickett	Curtis Ross Real Bird	Crow Agency
Jan. 31, 1975	Mimi Karen Pickett	Mimi Karen Real Bird	Crow Agency
Feb. 3, 1975	Debra Katherine Anderson	Debra Katherine Walter	Glasgow
Feb. 6, 1975	Myrle Wade Boykin	Wade Boykin	Great Falls
Feb. 10, 1975	Randy Lee Tousley	Randall Lee Brian	Colstrip
Feb. 11, 1975	Harold James Hill	Harold James Murray	Lonepine
Feb. 18, 1975	Gary Brendon Ryan	Gary Brendon Lancaster	Big Sky
Feb. 18, 1975	Tara Colleen Ryan	Tara Colleen Lancaster	Big Sky
Feb. 19, 1975	Stephen Matthew Yricic	Stephen Matthew Yuric	Helena
Feb. 20, 1975	No-Name Pansy	Patsy Jean Distad	Great Falls
Feb. 24, 1975	Dennis D. Big Horn	Christopher Michael Big Horn	Roosevelt
Feb. 25, 1975	Donald Dale Peterson	Donald Dale Gingras	Miles City
Feb. 26, 1975	Roger Courtney Pederson	Roger Courtney Rapley	Great Falls
Feb. 28, 1975	Corrine Diann Iverson	Corrine Diann Killoy	Butte
Feb. 28, 1975	Grant Leroy Iverson	Grant Leroy Killoy	Butte
Feb. 28, 1975	John Matthew Iverson	John Matthew Killoy	Butte
Feb. 28, 1975	Laura Joan Nabb	Laura Joan Kasseth	Helena
March 2, 1975	Metta Jo Francis	Misty Jo Francia	Helena
March 3, 1975	Philip Thomas Etchart	Thomas Staunton Etchart	Billings
March 10, 1975	George Lafountain	George Norbit Wettlin, Jr.	Minneapolis
March 11, 1975	David Andrew Huppert	Andrew David Huppert	Livingston
March 13, 1975	Lincoln A. Stewart aka Robin Stewart	Lincoln A. Whiteshirt	Crow Agency
March 14, 1975	William James Robertson	Homer James Robertson	Libby
March 17, 1975	Deborah McReynolds	Deborah Spain	Belgrade
March 19, 1975	Mary Gentry Fisher	Mary Theresa Gentry	Great Falls
March 26, 1975	Robert Jerome Hurd	Robert Jerome McClean	Great Falls
March 28, 1975	Marie Genevieve Moore	Nellie Genevieve West	Yellowstone Co.
March 31, 1975	Esther Marlene Makowski	Marlene Makowski	Whitehall
April 2, 1975	Chris Leon Hodson	Griff Leon Hodson	Yellowstone Co.
April 2, 1975	Ricardo Slevira	Ricardo Cevera	Billings
April 4, 1975	Mary Lou Brown	Mary Lou Hoefler	Miles City
April 4, 1975	Jolene Gilmore	Jolene Nelson	Miles City
April 4, 1975	Laura Lue Klein	Laura Lue Becke	Billings
April 10, 1975	Robert Michael Salerno	Sean David London	Missoula Co.
April 11, 1975	Marvin Paul Huckleberry	Marnie Renee Bauer	Troy
April 11, 1975	Harold George McCune	Harold George Dietz	Grantsdale
April 14, 1975	Loran Dean Heman	Loran Dean	Great Falls
April 17, 1975	Henry Bratrsovky	Henry Joseph Bratsky	Bridger
April 17, 1975	Leo Charles Bratrsovky	Leo Charles Bratsky	Bridger
April 22, 1975	Michael Lee Swetish	Michael Lee Banning	Dillon
April 23, 1975	Kimberly Kay Butt	Kimberly Kay Hunter	Helena
April 23, 1975	Leanne Michelle Butt	Leanne Hunter	Helena
April 23, 1975	Noah Brown Butt IV	Noah Fountain Hunter	Helena
April 23, 1975	Rita Epperson Butt	Rita Epperson Hunter	Helena
April 23, 1975	Steven Noah Butt	Steven Noah Hunter	Helena
April 29, 1975	Michael K. Ritchie	Michael K. Frear	Great Falls
April 29, 1975	Stanislaw Rybarczyk	Stanley John Rybarczyk	Great Falls
April 30, 1975	Dannie Sue Black Dog	Dannie Sue Green	Roosevelt Co.
April 30, 1975	Duane James Black Dog	Duane James Green	Roosevelt Co.
May 1, 1975	Vicky Jo Nelson	Vicky Jo Thompson	Eureka
May 5, 1975	Daniel James Fischer	Daniel James Lewis	Missoula Co.
May 5, 1975	Donna Rae Fischer	Donna Rae Lewis	Missoula Co.
May 7, 1975	Kenneth Eugene Stradtman	Kenneth Eugene Zimmer	Sidney
May 9, 1975	Catherine Ann Hoffman	Catherine Ann Kimball	Miles City
May 13, 1975	Valri Phillips	Valri Hutchings	Alaska

HeinOnline -- 1977 vol. II 2155 1977

CHANGES IN NAMES DECREED IN 1975

Date of Judgment	Original Name	Name Decreed	Residence
May 21, 1975	Michael Eric Porter	Michael Eric Fuhriman	Helena
May 28, 1975	Carrie E. Hamel	Carrie Scott	Plains
May 28, 1975	Jennifer Jean Jacobsbn	Jennifer Jean Eby	Yellowstone Co.
May 29, 1975	Loretta Coral Mason	Loretta Coral Flint	Hill Co.
May 29, 1975	David Paul Shultz	David Paul Martin	Missoula Co.
June 2, 1975	Kay Lorraine Hardy	Kay Lorraine Carlson	Miles City
June 2, 1975	Therese Ann Verley	Therese Ann Stevens	Miles City
June 4, 1975	Elaine Marie Ear Rings	Mary Elaine After Buffalo	Browning
June 4, 1975	Allen Shane Morgan	Allen Shane Goss	Browning
June 4, 1975	Kathy Goss Morgan	Kathy Goss	Browning
June 4, 1975	Leslie Dean Morgan	Leslie Dean Goss	Browning
June 5, 1975	Eddalee J. Murray	Eddalee J. Esp	Big Timber
June 10, 1975	Merceda J. Curtis	Merceda J. Miller	unknown
June 11, 1975	Duane Anderson	Duane A. Kuande	Hill Co.
June 18, 1975	Baby Girl Mares	Tamara Ray Rehard	Yellowstone Co.
June 23, 1975	Margaret Lynn Roberts	Margaret Lynn Sparks	Butte
June 24, 1975	Cindy Marlene Hahn	Cindy Marlene Disney	Helena
June 24, 1975	Catherine M. Poff	Catherine M. Adler	Libby
June 25, 1975	Cheryl A. Kruger	Cheryl A. Hull	Miles City
June 30, 1975	Rhonda Lynn Grafft	Rhonda Lynn Kimble	Miles City
July 1, 1975	Lisa Ann Chapel	Lisa Ann Boyd	Livingston
July 1, 1975	Richard Wayne Chapel	Richard Wayne Boyd	Livingston
July 1, 1975	Frank Clayton Samuelson	Frank Clayton Pelletier	Columbia Falls
July 2, 1975	Verlin L. Boner	Verlin L. Bonner	Miles City
July 3, 1975	Helen Kurtz	Helen Eckart	Miles City
July 7, 1975	Daren Laurence Fuller	Daren Laurence Gray	Billings
July 8, 1975	Wesley Eugene Kubes, Jr.	Gene Wesley Kubes	Kalispell
July 8, 1975	Tara Lynn Mohr	Tara Lynn Coffman	Plentywood
July 14, 1975	Allen Clifford Fladland	Robert Joseph Hammond	Roosevelt Co.
July 16, 1975	Ricky Dean Norman	Ricky Dean Lewis	Lake Co.
July 16, 1975	Dianne Marie Olson	Dianne Marie Swanson	Sidney
July 16, 1975	Jason Dean Olson	Jason Dean Swanson	Sidney
July 24, 1975	Matthew Russell Hornburg	Matthew Russell McDowell	Missoula Co.
Aug. 7, 1975	Ardell Joseph Pendley	Ardell Joseph O'Meara	Lewistown
Aug. 7, 1975	Laura F. Pendley	Laura F. O'Meara	Lewistown
Aug. 8, 1975	Joy Lynn Bruns	Joy Lynn Long	Helena
Aug. 12, 1975	Daniel L. Loween	Daniel Lawrence Bolton	Kalispell
Aug. 19, 1975	Delmer Dean Praeker	Delmer Dean Fiscus	Philipsburg
Aug. 21, 1975	Jan Marie Wetterhus	Jan Marie Hendricksen	Kalispell
Aug. 22, 1975	Robyn Sue Hendricks	Robyn Sue Roberts	Miles City
Aug. 22, 1975	Rose Evelyn Latimer Self	Evelyn R. Latimer	Billings
Aug. 25, 1975	Danny Lee Hilfer	Danny Lee Allen	Missoula Co.
Aug. 26, 1975	Kim R. Ferguson	Kim R. Taylor	Thompson Falls
Aug. 27, 1975	David James Taylor	David Christopher Vera	Helena
Aug. 28, 1975	Jerry Lee Stuck	Jerry Lee Callisto	Missoula Co.
Sept. 2, 1975	Joan Ellen Endicott	Stephanie Joan Endicott	Missoula Co.
Sept. 4, 1975	Gertrude Elizabeth Gravelle	Gertrude Elizabeth Williams	Missoula Co.
Sept. 5, 1975	Jean Dartez	Jean Ehrle	Miles City
Sept. 8, 1975	Scott Allen Blaylock	Scott Allen Lawrenson	Missoula Co.
Sept. 8, 1975	Connie Lynn Kelly	Connie Lynn Krautter	Missoula Co.
Sept. 10, 1975	Amarylis J. Gilbert	Amarylis J. Davis	Great Falls
Sept. 10, 1975	Angela Lee Gilbert	Angela Lee Davis	Great Falls
Sept. 11, 1975	Richard Douglas Fitzgerald	Richard Kreitner Fitzgerald	Lewistown
Sept. 18, 1975	Susan Marie Mordan	Susan Marie Heafield-Mordan	Denton
Sept. 18, 1975	Thomas William Mordan	Thomas William Heafield-Mordan	Denton
Sept. 22, 1975	Agnes Lassle	Agnes Ganeff	Miles City
Sept. 22, 1975	Rita Perez	Rita Plenge	Miles City
Sept. 23, 1975	Marsha A. Alexander	Marsha A. Ross	Plains
Sept. 25, 1975	Charles Stephen Meyer	Stephen Charles Meyer	Hardin
Sept. 25, 1975	Allan Leroy Vietzke	Allan Leroy Minear	Hardin
Sept. 29, 1975	Colleen Ann Davis	Colleen Ann Hopper	Bozeman
Sept. 29, 1975	Karel Ann Ware Felix	Karel Ann Ware	Billings
Oct. 2, 1975	Dale Matthew Fischer	Dale Matthew Lewis	Missoula Co.
Oct. 6, 1975	Phillis Webster	Phillis Beeler	Miles City
Oct. 9, 1975	Elizabeth Jo Bishop	Elizabeth Shelby Miller	Missoula Co.
Oct. 9, 1975	Michael Ray Derrick	Michael Ray Saulter	Missoula Co.
Oct. 14, 1975	Laurie Ann Mecklenburg	Laurie Ann Cameron	Bozeman
Oct. 17, 1975	Shirley Rost	Shirley Stanton	Miles City

HeinOnline -- 1977 vol. II 2156 1977

CHANGES IN NAMES DECREED IN 1975

Date of Judgment	Original Name	Name Decreed	Residence
Oct. 20, 1975	Antoinette Marie Todd	Toni Marie Volk	Missoula
Oct. 22, 1975	Shawna Lynn Peters	Shawna Lynn Kamps	Yellowstone Co.
Oct. 27, 1975	Douglas Lee Gallant	Douglas Lee Hendrickson	Great Falls
Oct. 27, 1975	Douglas Edward Paul	Douglas Edward Clark	Billings
Oct. 27, 1975	Eleanor Helen Paul	Eleanor Hellen Clark	Billings
Oct. 27, 1975	Roberta Ann Paul	Roberta Ann Clark	Billings
Nov. 3, 1975	Norma J. Johnson	Norma J. Vaughn	Harlowton
Nov. 3, 1975	George Ann Thompson	George Ann Myers	unknown
Nov. 5, 1975	James Allen Watkins	James Alfred Watkins	Malta
Nov. 6, 1975	Mary Garnett Raney Johnson	Molly Garnett Raney Johnson	Missoula Co.
Nov. 6, 1975	Mildred I. Mitchell	Mildred I. Hicks	Missoula Co.
Nov. 6, 1975	Linda Lee Russell	Linda Lee Cory	Miles City
Nov. 6, 1975	Irene Wrede	Irene Bjerke	Miles City
Nov. 10, 1975	Stacy Elizabeth Sloane	Stacy Elizabeth Martin	Roosevelt Co.
Nov. 12, 1975	Stephen Eric Greenleaf	Stephen Eric Evans	Butte
Nov. 12, 1975	Wallace Andrew Newman	Wallace Andrew Miller	Great Falls
Nov. 17, 1975	Trina Suzette Enderlein	Trina Suzette Ambrose	Missoula Co.
Nov. 20, 1975	Dawn Hart	Dawn Dunn	Miles City
Nov. 20, 1975	Lola Honstain	Lola Smith	Miles City
Nov. 20, 1975	Mary Louise Mappes	Marisa Mappes	Deer Lodge
Nov. 20, 1975	Kathleen Shawn McCausland	Kathleen Shawn Zuconni	Missoula Co.
Nov. 20, 1975	Kristine Dawn McCausland	Kristine Dawn Zuconni	Missoula Co.
Nov. 20, 1975	Pauline Todd	Pauline Tickel	Miles City
Nov. 21, 1975	James Bisson	James Pierce	Great Falls
Nov. 25, 1975	Barbara J. Alexander	Barbara J. Sinclair	Thompson Falls
Nov. 25, 1975	Gerianne Reeves	Gerianne Fifield	Libby
Dec. 1, 1975	Daren Hines	Daren Dougherty	Columbia Falls
Dec. 1, 1975	Annette Patricia Mundt	Annette Patricia Dougherty	Columbia Falls
Dec. 1, 1975	Debra Dawn Smith Mann	Debra Dawn Smith Blaine	Missoula Co.
Dec. 8, 1975	Marnie Renee Bauer	Marvin Paul Huckelberry	Troy
Dec. 11, 1975	Tammy Denise Canfield	Tammy Denise Peck	Butte
Dec. 11, 1975	Edward Allen Lee	Edward Allen Peck	Butte
Dec. 11, 1975	Mark Emerson Lee	Mark Emerson Peck	Butte
Dec. 12, 1975	Walter Ross Lile	Eugene Walter Hammett	Billings
Dec. 12, 1975	Craig Edward Mowery	Craig Edward Douglas	Butte
Dec. 16, 1975	Robert Lloyd Styren	Robert Lloyd Bernier	Great Falls
Dec. 17, 1975	Mickey Allen Dagel	Mickey Allen Meismer	Great Falls
Dec. 22, 1975	Leonard Anthony Buck Elk	Leonard Anthony Recette	Roosevelt Co.
Dec. 22, 1975	William Raymond Ek	William Raymond McMurtrey	Rosebud Co.
Dec. 22, 1975	Douglas Roy Thompson	Douglas Roy Swart	Forsyth
Dec. 22, 1975	Gary Richard Thompson	Gary Richard Swart	Forsyth
Dec. 22, 1975	Jon Alden Thompson	Jon Alden Swart	Forsyth
Dec. 22, 1975	Sydelle Victoria Thompson	Sydelle Victoria Swart	Forsyth
Dec. 23, 1975	Douglas G. Bradley	Douglas G. Miller	Great Falls
Dec. 23, 1975	Deborah Marie Henthorn	Deborah Marie Sargent	Big Timber
Dec. 31, 1975	Kim Thomas Paul	Kim Thomas Nordstog	Billings
Dec. 31, 1975	Barbara Jean Rasmussen	Barbara Jean Burley	Miles City

HeinOnline -- 1977 vol. II 2157 1977

CHANGES IN NAMES DECREED IN 1976

Date of Judgment	Original Name	Name Decreed	Residence
Jan. 9, 1976	Bonnie Lou Oliver	Bonnie Lou Anton	Custer Co.
Jan. 12, 1976	Sandra Sue Erickson	Sandra Sue Saunders	Custer Co.
Jan. 13, 1976	Rosemarie Diane Bowerman	Rosemarie Diane Tyler	Columbia Falls
Jan. 16, 1976	Jane A. (Reilly) Dombo	Jane A. (Reilly) Harte	Anaconda
Jan. 16, 1976	Jean Marie Dombo	Jean Marie Harte	Helena
Jan. 16, 1976	Nancy Jane Dombo	Nancy Jane Harte	Helena
Jan. 16, 1976	Steve P. Dombo	Steve P. Harte	Deep Run, Ohio
Jan. 16, 1976	Evelyn J. McNett	Evelyn J. Santantonio	Custer Co.
Jan. 20, 1976	Kaoline Alicia Colbert	Kae Emerson	Helena
Jan. 26, 1976	Gail Ann Rotolo	Gail Ann Graham	Helena
Feb. 2, 1976	Jack Edward Larson	Jack Edward Wiseman	Libby
Feb. 6, 1976	Betty Jean Waddell	Betty Jean Krumenaker	Custer Co.
Feb. 13, 1976	Alberta L. Linn	Alberta L. Armstrong	Butte
Feb. 13, 1976	Henry Clyde Taylor, Jr.	Jim Henry Clyde Taylor	Yellowstone Co.
Feb. 16, 1976	Dorothy Eileen Fahrenbruch	Dorothy Eileen Phillips	Bozeman
Feb. 17, 1976	Dagny Suzanne Bauer	Dagny Suzanne Mason	Bozeman
Feb. 19, 1976	Ramona Irene Ling	Hazel Irene McDougal	Deer Lodge
Feb. 23, 1976	Robert Wayne Domek	Bobbi Tia Domeko	Billings
Feb. 26, 1976	Duane Gene Daniels aka Duane Gene Duby aka Duane Gene Anderson	Duane Gene Daniels	Havre
Feb. 26, 1976	Clintt Raymond Seaberg	Clintt Raymond Kennedy Dawson	Deer Lodge
March 2, 1976	Lucy Mae Spang Buckingham	Lucy Mae Spang	Ashland
March 3, 1976	Patricia A. Kaylor	Patricia A. Smith	Custer Co.
March 4, 1976	Tonya LaRee Fischer Kirkpatrick	Tonya LaRee Fischer	Missoula Co.
March 9, 1976	Lorraine Joye Moore	Lorraine Joye Turnbull	Thompson Falls
March 9, 1976	Charles J. Vincent	Charles J. Spencer	Roosevelt Co.
March 15, 1976	Denell Kay Newstrom	Denell Kay Warford	Custer Co.
March 15, 1976	Paula Rae Newstrom	Paula Rae Warford	Custer Co.
March 17, 1976	Donna Clare Leone	Donna Clare Bevacqua	Billings
March 17, 1976	Richard Joseph Leone	Richard Joseph Bevacqua	Billings
March 19, 1976	Jody A. Landa	Jody A. Toomer	Custer Co.
March 22, 1976	Donald Bruce Johnson	Robert Bruce Cody	Libby
March 22, 1976	Delores Renee Larson	Al Reta Larson	Billings
March 24, 1976	Jill Lynette Hodgkiss	Jill Lynette Isakson	Great Falls
March 25, 1976	Burnette Winans	Mark Bradford Winans	Hardin
March 26, 1976	Michael Vernon Olson	Michael Vernon Martinson	Billings
March 30, 1976	Loretta June French	Erika French	Hobson
April 5, 1976	Dorothy Lorene Dailey Schlosser	Dorothy Lorene Dailey	Missoula Co.
April 5, 1976	Rebekah Ann Schlosser	Rebekah Ann Dailey	Missoula Co.
April 5, 1976	Suzanna Lorene Schlosser	Suzanna Lorene Dailey	Missoula Co.
April 6, 1976	Traci Lyn Van Winkle	Traci Lyn Young	Absarokee
April 7, 1976	James Watts	Reginald Lucien Watts	Cascade Co.
April 8, 1976	Thomasine Schwab	Thomasine Nelson	Custer Co.
April 13, 1976	Judy Marie Crisafulli	Judy Marie Scott	Baker
April 16, 1976	Douglas Duane Thorson	Douglas Duane Ohren	Butte
April 19, 1976	Florence Burley	Florence Skates	Custer Co.
April 20, 1976	Kathleen F. Harbaugh	Kathleen F. Willems	Custer Co.
April 23, 1976	Linda Lee Hvamstad	Linda Lee Anderson	Choteau
April 23, 1976	Lorraine Gale Hvamstad	Lorraine Gale Anderson	Choteau
April 23, 1976	Leann Rae Logan	Leann Rae vanSon	Fairfield
April 23, 1976	Terri Lou Logan	Terri Lou vanSon	Fairfield
April 23, 1976	Frederik Seth Quinn	Frederik Seth vanSon	Fairfield
April 23, 1976	Holly Joan Quinn	Holly Joan vanSon	Fairfield
April 28, 1976	Linda M. Kuchynka	Linda M. Wolfe	Custer Co.
April 28, 1976	Orlando Morges	Orlando Morges Sanchez	Great Falls
April 29, 1976	Cecelia Sterhan	Cecelia Lemieux	Custer Co.
April 30, 1976	Richard Jack Bumgarner	Richard Jack Brown	Darby
May 3, 1976	Evelyn Ann Hale	JoAnn Evelyn Hartmenn	Bozeman
May 3, 1976	Jeannette L. Minder	Jeannette Mae Lind	White Sul. Springs
May 5, 1976	Ramona Fern Dumont	Ramona Fern Clark	Roosevelt Co.
May 5, 1976	Dora Lynette Eagle Speaker	Dora Lynette Little Plume	Glacier Co.
May 5, 1976	Duane Lloyd Eagle Speaker	Duane Lloyd Little Plume	Glacier Co.
May 5, 1976	Marcia Jean Eagle Speaker	Marcia Jean Little Plume	Glacier Co.
May 5, 1976	Thomas Wayne Eagle Speaker	Thomas Wayne Little Plume	Glacier Co.
May 7, 1976	James Gutierrez	James Lee Widner	Billings
May 13, 1976	Janet Claire Brown Hamm	Janet Claire Brown	Montana
May 13, 1976	Andrew Reese Larson	Andrew Reese Smith	Havre

HeinOnline -- 1977 vol. II 2158 1977

CHANGES IN NAMES DECREED IN 1976

Date of Judgment	Original Name	Name Decreed	Residence
May 13, 1976	Patricia Jeanne Larson	Patricia Jeanne Smith	Havre
May 14, 1976	Jack Duane Jacobs	Jack Duane Holzer	Billings
May 17, 1976	Robert Charles Aktepy	Robert Charles Mellor	Missoula Co.
May 17, 1976	Kevin Dean Ethen	Kevin Dean Kelly	Glendive
May 19, 1976	Jeffrey Dwight Olson	Jeffrey Dwight Martinson	Billings
May 20, 1976	Rainell C. Stewart aka Rainell Stewart aka Rainell Stewart Morton	Rainell C. Whiteshirt	Crow Agency
May 24, 1976	Brenda L. Sanddal	Brenda K. Lillie	Bozeman
May 25, 1976	Lezlie Elaine Martin	Lezlie Elaine Drugge	Zurich
May 25, 1976	Martha Orean Martin	Martha Orean Drugge	Zurich
May 28, 1976	Evelyn M. Hanks	Evelyn M. Boyles	Custer Co.
May 28, 1976	Mable L. Harris	Mable L. Davies	Custer Co.
June 1, 1976	Geraldine Fay Schuster	Geraldine Fay Kezar	Whitefish
June 3, 1976	Michael James McDonald	Michael James Carroll	Missoula Co.
June 3, 1976	William Joseph Modrzejewski	William Joseph Bartole	Scobey
June 3, 1976	Dolly Thomas	Dolly Seabolt	Custer Co.
June 8, 1976	Wanda Sanguins	Wanda Young	Malta
June 9, 1976	Joan Clem Murphy	Joan Clem Pellet	Great Falls
June 17, 1976	William George Koerber	William George Cuebere	Hardin
June 18, 1976	Sandra Kay Nelson	Sandra Kay Sattler	Forsyth
June 21, 1976	Julia Margaret Kennedy	Julia Margaret Saylor	Bozeman
June 21, 1976	James L. Strandberg	James Parker Shield	Great Falls
June 25, 1976	Tamara Linnea Soderberg	Tamara Linnea Windedahl	Havre
June 30, 1976	Linda Kay Taylor	Linda Kay Whitney	Custer Co.
July 1, 1976	Mariam Ahmad Mansour	Miriam Johanna Miller	Plentywood
July 2, 1976	Michale Allen Henningsen	Michael Allen Norberry	Hamilton
July 7, 1976	Janet Marie Gill	Janet Marie Hunt	Harlowton
July 7, 1976	Jackie Gail Johnstone	Jackie Gail Tinsely	Custer Co.
July 7, 1976	Brynn Michael Wood	Brynn Michael Schwarz	Cascade Co.
July 13, 1976	Constance Elaine Stermitz	Constance Elaine Peterson	Gardiner
July 13, 1976	Ronald Raymond Stermitz	Ronald Raymond Peterson	Gardiner
July 14, 1976	Linda Kaye Smith	Linda Kaye Augustine	Custer Co.
July 15, 1976	Danial Dale White Bear	Danial Dale Novark	Hardin
July 20, 1976	Nick Thomas Peccia	Nick Thomas Patch	Alberton
July 21, 1976	Steven Page Chernasek	Steven Page Law	Glasgow
July 23, 1976	Michael Gerald Rose	Michael Gerald Evans	Libby
July 23, 1976	Cheryl L. Soto	Cheryl L. Lowe	Billings
July 26, 1976	Troy William Amos	Troy Victor Wills	Bozeman
July 26, 1976	Courtney Elvis Mortensen aka Courtney Elvis Huff	Courtney Elvis Huff	Bozeman
July 28, 1976	Michael Joseph Barron	Michael Joseph Ramirez	Yellowstone Co.
Aug. 2, 1976	Leslie August Trankel	Gus Edward Trankel	Billings
Aug. 3, 1976	Beth Ann Martin	Beth Ann Mattfeldt	Helena
Aug. 9, 1976	William Charles Graybill	Michael Charles Johnson	Missoula Co.
Aug. 10, 1976	Lucy B. Farlan	Lucy B. Riley	Missoula
Aug. 11, 1976	Clinton Eugene Givern	Clinton Eugene Peterson	Baker
Aug. 11, 1976	Adrian Allan Larson	Adrian Allan Larson O'Neill	Billings
Aug. 12, 1976	Rhonda F. Neuman	Rhonda F. Stiles	Custer Co.
Aug. 12, 1976	Glenn Robert Quintero	Glenn Robert Ricker	Roosevelt Co.
Aug. 13, 1976	Blake Allen Martinson	Blake Allen Marshall	Forsyth
Aug. 13, 1976	Pamela Jean Martinson	Pamela Jean Marshall	Forsyth
Aug. 18, 1976	Melissa Lee Welch	Melissa Lee Sweeney	Billings
Aug. 23, 1976	Sheila Knapp	Sheila Trumps	Custer Co.
Aug. 27, 1976	Ha To Ha	Dana Hong	Billings
Aug. 27, 1976	William Cecil Moraczewski	William Cecil Murray	Missoula
Aug. 27, 1976	Timothy Allen Smith	Timothy Allen McLaury	Libby
Sept. 1, 1976	Trent James McClure	Trent James Sinclair	Lake Co.
Sept. 1, 1976	Colleen June Soliz	Colleen June Kober	Billings
Sept. 2, 1976	Earl Collins Brown	Earl Brown Battleson	Peerless
Sept. 2, 1976	Diane Linn O'Donnell Sonnenberg	Diane Linn	Missoula Co.
Sept. 3, 1976	Eve Elizabeth Ausmus	Eve Elizabeth Murray	Helena
Sept. 7, 1976	Diane Helen Dellwo Stott	Diane Helen Dellwo	Choteau
Sept. 8, 1976	Gerda Jean Nelson	Gaerda Jean Nelson	Lake Co.
Sept. 9, 1976	Fredrick Freeman	George Fredrick Popham	Missoula Co.
Sept. 20, 1976	Lloyd Robert Emeline	Lloyd Robert Butcher	Custer Co.
Sept. 20, 1976	Rene Colette Emeline	Rene Colette Butcher	Custer Co.
Sept. 20, 1976	Gail Sherret Gibson Shelhamer	Lena Sherret Gibson Shelhamer	Missoula Co.

HeinOnline -- 1977 vol. II 2159 1977

CHANGES IN NAMES DECREED IN 1976

Date of Judgment	Original Name	Name Decreed	Residence
Sept. 21, 1976	Gayla Kerner	Gayla Freeman	Butte
Sept. 21, 1976	Richard Kerner	Richard Freeman	Butte
Sept. 27, 1976	Danette Gay Jette	Danette Jette Thompson	Missoula Co.
Sept. 28, 1976	Vicki L. Pritchard	Vicki L. Anderson	Twin Falls, Id.
Sept. 29, 1976	Kathleen Carter	Kathleen Garland	Custer Co.
Sept. 30, 1976	Candice Sue Tabish	Candice Sue Hayes	Missoula Co.
Sept. 30, 1976	Debra Jean Zarling	Debra Jean Vietenheimer	Missoula Co.
Oct. 1, 1976	Albert Boyd Penrod	Albert Boyd Holte	Billings
Oct. 1, 1976	Colleen Hazel Penrod	Coleen Hazel Holte	Billings
Oct. 8, 1976	Patricia Anez	Patricia Scielzo	Custer Co.
Oct. 8, 1976	Dorothy Riggs	Dorothy Kimball	Custer Co.
Oct. 12, 1976	Helen Goforth	Helen V. Smith	Heron
Oct. 13, 1976	Bret T. Scannel	Bret T. Hagel	Great Falls
Oct. 13, 1976	Bruce L. Scannel	Bruce L. Hagel	Great Falls
Oct. 13, 1976	Debra A. Scannel	Debra A. Hagel	Great Falls
Oct. 13, 1976	Sharon M. Scannel	Sharon M. Hagel	Great Falls
Oct. 13, 1976	Tami H. Scannel	Tami H. Hagel	Great Falls
Oct. 14, 1976	Kathleen L. Moore	Kathleen L. Kipf	Custer Co.
Oct. 14, 1976	Zonda Jean Swope	Zonda Jean Gunnells	Custer Co.
Oct. 14, 1976	Trudy Carol Tantlinger	Trudy Carol King	Missoula Co.
Oct. 19, 1976	Laura Lea Weber	Laura Lea Hale	Helena
Oct. 28, 1976	Vicky Lorraine Claver	Vicky Lorraine Island	Kalispell
Nov. 3, 1976	Melody Dawn Marceau	Melody Dawn Martin	Cascade Co.
Nov. 4, 1976	Vickie L. Towne	Vickie L. McClellan	East Helena
Nov. 4, 1976	Obrey Sylvester Weiler	Aubrey Sylvester McCall	Westby
Nov. 9, 1976	Janet K. Heaps	Janet K. Veach	Thompson Falls
Nov. 9, 1976	Warren Douglas Looney	Warren Douglas O'Looney	Helena
Nov. 15, 1976	Martin Ray Maestas	Martin Ray Mastas	Bozeman
Nov. 15, 1976	Ethel G. Malley	Ethel G. Blaylock	Custer Co.
Nov. 16, 1976	Sheryl Lynn Rodgers	Sheryl Lynn Prescott	Cleveland
Nov. 17, 1976	Pamela S. Davis	Pamela S. Fox	Havre
Nov. 17, 1976	Indigo Sarah Majstrick	Indigo Sarah Millar	Lake Co.
Nov. 19, 1976	Freddie Dale Joseph	Freddie Dale Siphakis	Hamilton
Nov. 19, 1976	Lillian Mankameyer	Lillian Cruise	Custer Co.
Nov. 22, 1976	Eugene Jess Stedwell	Eugene LaVerne McDanold	Glendive
Nov. 26, 1976	Patricia A. Boyle	Patricia A. Huson	Custer Co.
Nov. 29, 1976	Jamie Christopher Boles	Jamie Christopher Michael Bersch	Glendive
Nov. 29, 1976	John Douglas Bradford	Keewadin	Missoula
Nov. 29, 1976	Marion H. Crane	Michael H. Crane	Pondera Co.
Nov. 29, 1976	First Methodist Church of Bozeman, Montana	Bozeman United Methodist Church	Bozeman
Nov. 29, 1976	Lorna Frankforter	Lorna Niles	Custer Co.
Nov. 29, 1976	Jan C. Hendrie	Jane Jaynes	Custer Co.
Nov. 29, 1976	Lisa Marie McLaughlin	Lisa Marie Fryer	Havre
Dec. 8, 1976	Edwina Big Man	Edwina Beaumont	Billings
Dec. 9, 1976	Annarae Frances Heavy Runner	Ina Rae Frances Randall	Glacier Co.
Dec. 13, 1976	Donald Leroy Johnson	Donald Leroy Brown, Jr.	Helena
Dec. 14, 1976	Berva Dawn Janeice Sharp	Susan Janeice Sharp	Heron
Dec. 20, 1976	Betty LaVonne Lunstad	Betty LaVonne Lundstad	Bigfork
Dec. 20, 1976	Craig Stanley Lunstad	Craig Stanley Lundstad	Bigfork
Dec. 20, 1976	Ernest Stanley Lunstad	Ernest Stanley Lundstad	Bigfork
Dec. 20, 1976	Joel Jon Lunstad	Joel Jon Lundstad	Bigfork
Dec. 20, 1976	Lance John Lunstad	Lance John Lundstad	Bigfork
Dec. 22, 1976	Louise E. Demopoulos	Edith Louise Hess	Billings
Dec. 22, 1976	Dolly Schmoeckel	Dolly Young	Malta

HeinOnline -- 1977 vol. II 2160 1977

APPENDIX

HeinOnline -- 1977 vol. II 2161 1977

HeinOnline -- 1977 vol. II 2162 1977

APPENDIX

BALLOT ISSUES

CONSTITUTIONAL AMENDMENT NO. 3

By Chapter 499, Laws of 1975, the Legislature proposed an amendment to the Constitution of the State of Montana to require the Legislature to dedicate a portion of the coal severance tax to a permanent trust fund.

Chapter 499 was approved by the following vote at the General Election held November 2, 1976:

For:	178,773
Against:	103,001

The title and text of Chapter 499 follow.

An Act to Submit to the Qualified Electors of Montana an Amendment to the Constitution to Require the Legislature to Dedicate a Portion of the Coal Severance Tax to a Permanent Trust Fund.

Be it enacted by the Legislature of the State of Montana:

Section 1. Article IX of the Montana constitution is amended by adding a new section 5 that reads as follows:

"Section 5. Severance tax on coal — trust fund. The legislature shall dedicate not less than one-fourth (¼) of the coal severance tax to a trust fund, the interest and income from which may be appropriated. The principal of the trust shall forever remain inviolate unless appropriated by vote of three-fourths (¾) of the members of each house of the legislature. After December 31, 1979, at least fifty percent (50%) of the severance tax shall be dedicated to the trust fund."

Section 2. When this amendment is submitted to the qualified electors of Montana, there shall be printed on the ballot the full title and section 1 of this act and the following words:

"☐ For a permanent trust fund from coal taxes.

☐ Against a permanent trust fund from coal taxes."

INITIATIVE NO. 72

By Initiative, the people proposed laws to provide property tax relief for owner-occupied homesteads.

HeinOnline -- 1977 vol. II 2163 1977

The Initiative was approved by the following vote at the General Election held November 2, 1976:

For:	204,532
Against:	83,611

The text of the Initiative law follows.

An Initiative Measure for an Act Entitled: "An Act to Provide Property Tax Relief for Owner-Occupied Homesteads".

Be it enacted by the people of Montana:

Section 1. Short Title. This act shall be known as and may be referred to as the "state funded homestead tax relief act".

Section 2. Definitions. As used in this act unless the context requires otherwise (1) "Homestead" means a dwelling, or mobile home as defined in section 84-6601, R.C.M. 1947, together with adjacent land, sufficient and necessary for the maintenance of the property used as the principal place of abode of the owner when the property is owned by the occupant or under valid contract establishing equity or ownership by the occupant.

(2) "Total taxable value" means the taxable value of a homestead.

(3) "State share taxable value" means a taxable value equivalent to five thousand dollars ($5,000) of the appraised value of a homestead or the total taxable value of a homestead, whichever amount is lesser.

(4) "State supported mill levies" means all property tax levies which apply to habitable property except voted elementary and secondary school levies, the university 6 mill levy, voted levies for the retirement of bonded indebtedness and levies for special improvement districts or improvement district reserve funds which are not county wide or which are supported by a fee or charge rather than an ad valorem tax levy.

(5) "State share tax liability" means the state share taxable value for each homestead in each taxing jurisdiction times the state supported mill levies in that taxing jurisdiction.

(6) "Homestead owner's taxable value" means the total taxable value of the homestead less the state share taxable value.

Section 3. Homestead owner's tax liability. The tax liability of a homestead owner shall be computed by deducting the state share tax liability from the tax liability on the total taxable value. Each tax statement sent to the person in whose name the property is assessed shall set forth separately the total tax due, the state share tax liability and the homestead owner's tax liability and shall label the amounts as such.

Section 4. Duties of the department of revenue. (1) The department of revenue shall compute the state share tax liability according to this act and shall certify this amount by county.

(2) The department of revenue may adopt rules necessary for the administration of this act.

HeinOnline -- 1977 vol. II 2164 1977

Section 5. Remission of state share to counties. (1) The governor shall include in the budget submitted to the legislature, a provision for funds to be made available to the department of revenue sufficient to remit the state share tax liability to each county.

(2) To the extent funds are provided by the legislature, the department of revenue shall remit the state share tax liability to the county treasurer of each county in two equal payments; the first no later than November 30 of each year and the second no later than the following May 31.

Section 6. Duties of the county treasurer. The county treasurer shall credit each expenditure account with the amount received from the department of revenue in accordance with the mill levy for that account no later than December 31 for the first payment and June 30 for the second payment.

Section 7. Effective date. This act shall become effective July 1, 1977.

INITIATIVE NO. 73

By Initiative, the people proposed law known as the Montana Recall and Advisory Recall Act.

The Initiative was approved by the following vote at the General Election held November 2, 1976:

For:	155,899
Against:	115,702

The text of the Initiative law follows.

The Montana Recall and Advisory Recall Act.

Be it enacted by the People of the State of Montana:

Section 1. Short Title. This act shall be known and cited as the Montana Recall And Advisory Recall Act.

Section 2. Officers Subject To Recall. Every person holding a public office of the state or any of its political subdivisions either by election or appointment, is subject to recall from such office by the qualified electors of the state or political subdivision. Any reason causing the electorate dissatisfaction with a public official shall be sufficient grounds for recall, notwithstanding good faith attempts to perform the duties of his office.

Section 3. Method of Removal Cumulative. The recall is cumulative and additional to, rather than a substitute for, other methods for removal of public officers.

Section 4. Number of Electors Required For Recall Petition. A recall petition shall not name more than one officer to be recalled. Recall petitions for elected or appointed state officers shall contain the signatures of qualified electors equalling at least ten percent (10%) of the number of persons voting at the preceding state general election. Recall petitions

HeinOnline -- 1977 vol. II 2165 1977

for elected or appointed county officers shall contain the signatures of qualified electors equalling at least fifteen percent (15%) of the number of persons voting at the preceding county general election. Recall petitions for elected or appointed officers of cities, towns, or other political subdivisions of the state shall contain the signatures of qualified electors equalling at least twenty percent (20%) of the number of persons voting at the preceding general election for the city, town or other political subdivision.

Section 5. Circulation Of Recall Petitions — Limitations. No recall petition shall be filed against an officer until he has held office for two months.

No recall petition may be filed against an officer for whom a recall election has been held for a period of two years during his term of office, unless the state or political subdivision or subdivisions financing such recall election is first re-imbursed for all expenses of the preceding recall election.

Section 6. Filing of Recall Petitions. Recall petitions for elected officers shall be filed with the official who is provided by law to accept the declaration of nomination or petition for nomination for such office. Recall petitions for appointed state, county or city or town officers shall be filed with the secretary of state, county clerk or city or town clerk respectively. Recall petitions for appointed officers from other political subdivisions shall be filed with the county clerk if the boundaries of the political subdivisions lie wholely within one (1) county or otherwise with the secretary of state.

Section 7. Form of Recall Petition. The form of the recall petition shall be substantially as follows:

RECALL PETITION

To the Honorable ....., Secretary of State for the State of Montana (or name and office of other filing officer). We, the undersigned citizens and electors of the State of Montana (or name of appropriate political subdivision) respectfully demand that ....., holding the office of ....., be recalled for the following reasons, to-wit: (Setting out the reasons in not more than 200 words). That a special election therefore be called; that we, each for himself, say, I have personally signed this petition; I am a qualified elector of the State of Montana (or name of appropriate political subdivision); my residence and post office address are correctly written after my name.

A recall petition shall contain a general statement of not more than two hundred (200) words stating the reason for recall. Such a statement is solely for information of the electors and set forth any reason causing the dissatisfaction with the public official and may be political rather than legal in nature.

Section 8. Form Of Circulation Sheets. The signatures on each petition shall be placed on sheets of paper known as "circulation sheets", substantially fourteen inches long and eight and one-half inches wide. Such circulation sheets shall be ruled with a horizontal line one and one-half

HeinOnline -- 1977 vol. II 2166 1977

inches from the top thereof. The space above such line shall remain blank and shall be for the purpose of binding. The circulation sheet shall be vertically divided into two columns. The first column shall be three and one-half inches in width, measured from the left edge of the sheet, and shall be for the purpose of containing the signatures. The second column shall encompass the remainder of the width of the sheet and shall be the space on which shall be placed the post office address of the signers, together with the street number, if the residence of a signer can be so designated, and the address of such signer shall be opposite his name on the same line.

At the top of each sheet, under the one and one-half inch margin, shall be printed the word "Warning", under which shall be printed in eight-point type, single leaded, the following:

Warning.

Any person signing any name other than his own to this petition or signing the same more than once for the same measure at one election or who is not, at the time of signing the same, a qualified elector of the state, is punishable by a fine not exceeding five hundred dollars ($500) or imprisonment in the penitentiary not exceeding two (2) years, or both such fine and imprisonment.

The petition, for purposes of circulation, may be divided into sections, each section to contain not more than twenty five circulation sheets. No section, however, shall be circulated for signatures unless it has attached to the front sheet thereof a certified petition copy. The sponsors shall set out in their application for petition copies the number of sections into which each petition is to be divided for circulation, and the number of circulation sheets which it is desired that each section shall contain, but there need be no uniformity as to the number of circulation sheets contained in each section.

Section 9. Forms Not Mandatory. The forms prescribed in this act are not mandatory, and if substantially followed, the petition shall be sufficient, notwithstanding clerical and merely technical errors.

Section 10. Who May Petition — False Signatures — Penalties. Every person who is a qualified elector of this state may sign a petition for recall of a state officer. Every person who is a qualified elector of a political subdivision of this state may sign a petition for recall of an officer of that political subdivision. Any person signing any name other than his own to any petition, or knowingly signing his name more than once for the recall, or who is not at the time of the signing the same a qualified elector or any officer or person knowingly and wilfully violating any provision of this section, shall be punished by a fine not to exceed Five Hundred Dollars ($500), or by imprisonment in the state penitentiary not to exceed Two (2) years, or by both.

Section 11. County Clerk To Verify Signatures. The county clerk in each county in which such a petition is signed shall compare the signatures of the electors in such county with registration signatures on file in such clerk's office, and, if satisfied the signatures are genuine, certify that fact to the official with whom the recall petition was filed, as follows:

HeinOnline -- 1977 vol. II 2167 1977

State of Montana }
County of } ss

To the Honorable ....., Secretary of State of the State of Montana (or name and title of other officer):

I, ..., Clerk in and for ..... County, do hereby certify that I have compared the signatures on ..... sheets (specifying number of sheets) of the petition for recall attached hereto, with the signatures of the registered voters as they appear upon the registration forms, books and records of my office, and from such information as I have been able to obtain I believe the signatures, numbering ....., are genuine. As to the remainder of the signatures thereon, I believe they are not genuine, except that the following names (.....) do not appear on the registration forms, books and records in my office.

..... County Clerk

(Seal of Office)

By .....
Deputy Clerk

Every such certificate shall be prima facie evidence of the facts stated therein and of the qualifications of the registered voters whose signatures are certified, and the secretary of state, or other official receiving the recall petition shall consider and count only such signatures as are certified; provided, that the secretary of state, or city clerk or town clerk shall consider and county any remaining signatures of the registered voters which prove to be genuine shall be considered and counted if they are attested to in the manner and form as provided for initiative and referendum petitions.

The county clerk shall not retain any petition or any part of it for more than fifteen (15) days. At the expiration of such period the county clerk shall deliver the same to the person from whom it was received with such clerk's certification.

Section 12. Mandamus For Refusal To File — Injunction. If the secretary of state, county clerk, city or town clerk or other filing official refuses to accept and file any petition for recall with the proper number of signatures of qualified electors, any elector may within ten (10) days after such refusal apply to the district court for a writ of mandamus. If it is determined that the petition is sufficient, the district court shall order the petition to be filed with a certified copy of the Writ attached thereto, as of the date when it was originally offered for filing. On a showing that any filed petition is not sufficient, the court may enjoin certification, printing or recall election.

All such suits or appeals therefrom shall be advanced on the court docket and heard and decided by the court as expeditiously as possible. Any aggrieved party may file an appeal within ten (10) days after any adverse order or decision as provided by law.

Section 13. Resignation Of Official Proclamation Of Election. If the officer named in the petition for recall submits in writing such officer's

HeinOnline -- 1977 vol. II 2168 1977

resignation, it shall be accepted and become effective the day it is offered. The vacancy created by such resignation shall be filled as provided by law provided that the official named in the petition for recall shall not be appointed to fill such vacancy. If the officer named in the petition for recall refuses to resign or does not resign within five (5) days after the petition is filed, a special election shall be proclaimed unless the filing is within ninety (90) days of a general election, in which case the question shall be placed on the general election ballot. The proclamation of special election shall be made by the governor in the case of a state officer and by the board or official empowered by law to proclaim special elections for the political subdivision in the case of any officer of a political subdivision of the state.

Section 14. Notification To Officer — Statement of Justification. Upon filing the petition, the official with whom it is filed shall immediately give written notice to the officer named in the petition. The notice shall state that a recall petition has been filed, shall set forth the reasons contained therein and shall notify the officer named in the recall petition that he has the right to prepare and have printed on the ballot a statement containing not more than two hundred (200) words giving reasons why he should not be recalled. No such statement of justification shall be printed on the ballot unless it is delivered to the filing official within ten (10) days of the date notice is given.

Section 15. Notice Of A Recall Election Shall Be In The Following Form:

NOTICE OF RECALL ELECTION

Notice is hereby given pursuant to law that a recall election will be held on the ..... day of ....., 197.... for the purpose of voting upon the recall of .....

DATED at ....., the ..... day of ....., 197...

Section 16. Form Of Ballot. The ballot at such recall election shall be entitled "Recall Ballot", and shall set forth the statement contained in the recall petition stating the reasons for demanding the recall of such officer and the officer's statement of reasons why he should not be recalled. Following the statements shall be printed the following instructions to the voter. "To vote on the recall, mark a cross (X) in the square at the right of yes or no," and immediately thereunder the question "Shall ..... (naming the officer) be recalled", and immediately to the right of such question shall be printed the words "yes" and "no" not less than three-sixteenths (3/16) of an inch in height, and at the right of each word a square shall be printed on the ballot in which the voter may indicate such voter's preference.

Section 17. Officer To Remain In Office Until Results Declared — Filling Of Vacancy. The officer named in the recall petition for recall shall continue in office until the results of the special election are officially declared. If a majority of those voting on the question vote to remove the officer then the office shall become vacant and the vacancy filled as provided by law, provided that the officer recalled shall in no event be appointed to fill the vacancy.

HeinOnline -- 1977 vol. II 2169 1977

Section 18. Conduct Of Special Elections. Special elections for recall shall be conducted and the results canvassed and certified in all respects as general elections, except as herein otherwise provided. The powers and duties conferred or imposed by law upon boards of election, registration officers, canvassing boards and other public officials who conduct general elections, are conferred and imposed upon similar officers conducting recall elections under the provisions of this article together with the penalties prescribed for the breach thereof.

Section 19. Expenses Of Election. Expenses of a recall election for a state officer shall be paid from the funds of the state, and expenses of a recall election for an officer of a political subdivision of the state shall be paid from the funds of such subdivision.

Section 20. Provisions Applicable To Members Of Congress. The provisions of this act relating to recall of state officers and recall elections are applicable to the recall of an United States senator or representative, except that only electors residing in a representative's congressional district shall be eligible to petition for his recall or vote at the recall election.

Section 21. Petition For Advisory Recall Of United States District Judge. When there is filed with the secretary of state a petition containing the signatures of qualified electors equalling five percent (5%) of the persons voting at the preceding state general election, requesting the resignation of a United States district judge for the district of Montana, the secretary of state, shall submit to the electors at the next ensuing general election, the question whether the elections request the resignation of the judge. The petition shall be in the form as hereinabove provided except that it will request the resignation of rather than demand the recall of the United States district judge. The petition shall contain a statement of not more than two hundred (200) words setting forth the reasons for the request. Upon filing of the petition, the judge against whom the petition is filed shall be immediately notified by the secretary of state of the filing, and there shall be printed upon the ballot the statement in petition, and, at the request of the judge, a statement by him of not more than two hundred (200) words in response to the request which may be a statement that the judge deems himself committed to resign dependent on the results of the election.

Section 22. Form Of Ballot — Advisory Election Of Successor. The form of the ballot shall be as provided in Section 16 except that the question presented shall be "shall (name of person) be requested to resign from the office of United States District Judge, Yes ... No ...". The registered voters shall vote by make a cross (X) in the space after the word "Yes" or "No." Immediately below and separate from the question shall be printed the words: "For United States District Judge (Recommended to the President for appointment)" and there shall then follow the names of candidates for the office as have been filed with the secretary of state not less than forty (40) days prior to the election by petition of five percent (5%) of the electors.

Section 23. Certification Of Results. Within ten (10) days after certification of the results of the election, the secretary of state shall transmit

HeinOnline -- 1977 vol. II 2170 1977

the results to the judge named in the petition, and if the resignation is favored, to the President and Senate of the United States.

If a majority of the voters voting on the question have requested the resignation of the judge, and a vacancy occurs, the majority candidate for the office shall be deemed endorsed by the electors and recommended to the President and Senate of the United States for appointment and confirmation to fill the vacancy.

Section 24. Advisory Election For United States District Judge. When a vacancy occurs in the office of a United Stated district judge for the district of Montana, the electorate may, by advisory vote, endorse and recommend to the President and the Senate of the United States an appointee to fill the vacancy.

There shall be printed upon the ballot at the next primary, special or general election held through the State after the vacancy, the words: "For United States District Judge (recommendation to the President and Senate for appointment)", and below, the names of persons filed with the secretary of state by petition of not less than five percent (5%) of the electors not less than forty (40) days before the election. If congress will convene before the election at which the vote can be taken, the governor shall, on petition of five percent (5%) of the electors, call a special election for such purpose to be held not less than thirty (30) days nor more than sixty (60) days after filing the petition.

Section 25. Severability And Construction. If any one or more articles, provision, section, subsection, clause, phrase or word of this act or the application thereof to any person or circumstance is found to be unconstitutional, the same is hereby declared to be severable and the balance of this part shall remain effective notwithstanding such unconstitionality. The people hereby declare that they would have passed this part, and each article, provision, section, subsection, sentence, clause phrase or word thereof, irrespective of the fact that any one or more article, provision, section, subsection, sentence, clause, phrase, or word be declared unconstitutional.

HeinOnline -- 1977 vol. II 2171 1977

HeinOnline -- 1977 vol. II 2172 1977

GENERAL INDEX

NOTE:

Index of Appropriations and Resolutions
Is Included In General Index

HeinOnline -- 1977 vol. II 2173 1977

HeinOnline -- 1977 vol. II 2174 1977

INDEX TO TEXT

A

ABANDONED PROPERTY
Hearings, allocation of duties ..... Ch. 155
Listing requirements revised ..... Ch. 195
Refunds under $10 abolished ..... Ch. 195

ABORTION
Counselors and counseling services, repeal ..... Ch. 42

ABSTRACTERS, BOARD OF
Termination ..... Ch. 562

ACUPUNCTURE
Treatment without prescription ..... SJR 8

ADAPTIVE SERVICES DIVISION
Legislative evaluation ..... SJR 46

ADJUTANT GENERAL
Appropriation ..... HB 145

ADMINISTRATION, BOARD OF
Name changed ..... Ch. 132

ADMINISTRATION, DEPARTMENT OF
Appropriations ..... Ch. 549, HB 143, HB 144, HB 145, HB 504
Architecture, preparation of working drawings allowed on specific projects ..... Ch. 371
Building codes promulgation ..... Ch. 504
Capitol art works, appropriation for protection ..... Ch. 549
Communications systems, development by ..... Ch. 341
Fiscal notes, repeal of section substituting department for budget director ..... Ch. 229
Housing, Board of—administration transferred to ..... Ch. 163
Legislative hearing rooms and offices, plan for ..... HJR 8
Renewable Resource Development Program, administrative duties transferred ..... Ch. 323
Self-insurance of governmental entities ..... Ch. 360
Smoke detectors, use and maintenance encouraged ..... HJR 9
State treasurer functions and duties transferred to ..... Ch. 468
(State Agency for) Surplus Property, functions transferred to department ..... Ch. 478
Vehicles procured for stated, energy efficiency a primary consideration ..... HJR 60

(MONTANA) ADMINISTRATIVE CODE
Acupuncture treatment without prescriptions ..... SJR 8
Appropriation ..... HB 145
Legislative approval during interim by mail ballot ..... Ch. 561
Legislative intent, rules to conform ..... Ch. 560
Model rules, revision and updating ..... HJR 5
Open fire permits, change in rule ..... HJR 7

ADMINISTRATIVE PROCEDURE
Citizen participation laws, revision of definitions and duties ..... Ch. 452
Legislative intent, rules to conform ..... Ch. 560

HeinOnline -- 1977 vol. II 2175 1977

Model rules, revision and updating....HJR 5
Open meetings, revision of open meetings law....Ch. 567
Revision generally....Ch. 285

ADOPTION
Birth certificates, substitute—issuance procedure....Ch. 162
Hard-to-place children, subsidy for adoption....Ch. 434, HB 832
Parental rights, procedure for termination....Ch. 422
Revision generally....Ch. 33
Subsidized Adoption Act of 1977....Ch. 434
appropriation....HB 832

AERONAUTICS
Revision generally....Ch. 232

AERONAUTICS, BOARD OF
Termination....Ch. 562

AGE
Alcoholic beverages, legal drinking age raised to 19....Ch. 264
constitutional amendment regarding....Ch. 459

AGING AND AGED PERSONS
Center for
appropriation....HB 145
residents, provision for payment of care....Ch. 450
(Montana State) Golden Years Pass....Ch. 415
Medical assistance, supplementary—subrogation and third party liability to rights of recipients....Ch. 379
Recreational vehicles owned by, property tax classification....Ch. 502
Service buildings, property tax exemption....Ch. 491
Social Security office in Billings, closure of hearings and appeals office....HJR 13

(MONTANA) AGRICULTURAL EXPERIMENT STATION
Appropriations....HB 143, HB 145, HB 282
Conversion of wheat and barley to alcohol, research....SJR 42
Satellite station established....HB 282

AGRICULTURE
Apiaries, revision generally....Ch. 25
Barley, research on conversion to alcohol....SJR 42
Coal tax trust fund, study of investment to give young farmers a start....SJR 44
Cropland spraying program, revision generally....Ch. 362
Egg dealer's law and license, revision....Ch. 141
Farm labor, unemployment insurance for....Ch. 523
Forest fire protection expanded....Ch. 397
Grain
conversion to alcohol for energy purposes, research....SJR 42
federal grain inspection supervisory fee, protest....HJR 49
federal loan price increase on wheat urged....SJR 49
merchandising regulation, general revision....Ch. 43
nonresident loans, list requirement repealed....Ch. 21
public warehousemen, regulations and rates....Ch. 177
Grazing districts, authority clarified....Ch. 22
Insect control programs, funds for implementation....Ch. 362
Leases, agricultural and grazing—renewals for less than 10-year terms....Ch. 304
Noxious plant management, technical and financial assistance....Ch. 466
Pesticides
cropland spraying program, revision generally....Ch. 362
revision generally....Ch. 462
Public warehousemen, grain regulations and rates....Ch. 177
Revision generally....Ch. 13

HeinOnline -- 1977 vol. II 2176 1977

Seed warehouses, revision generally ..... Ch. 315
Taxation, repeal of list preparation for nonresident grain loans ..... Ch. 21
Unemployed Montanans, work program ..... HJR 47
Unemployment insurance for farm labor ..... Ch. 523
Water rights adjudication, administrative work to be expedited ..... SJR 48
Weather modification permits, publication of notice of intention ..... Ch. 46
Wheat
conversion to alcohol, research on ..... SJR 42
federal loan price increase urged ..... SJR 49

AGRICULTURE, DEPARTMENT OF
Appropriation ..... HB 145
Cropland spraying program, revision generally ..... Ch. 362
Hail Insurance, State Board of
termination ..... Ch. 562
treasurer's membership transferred to state auditor ..... Ch. 468
Investment of earmarked revenue funds ..... Ch. 16
Noxious plant management, financial assistance to local governments ..... Ch. 466
Public warehousemen, grain regulations and rates ..... Ch. 177
Rural rehabilitation, rulemaking authority ..... Ch. 30

AIRCRAFT
Registration provisions clarified ..... Ch. 210
Transportation of hunters, equipment, or wildlife prohibited ..... Ch. 485
Wildlife, harassment prohibited ..... Ch. 485

AIRLINES
Property tax assessment, consolidation of procedures for centralization and general revision ..... Ch. 98
amendment to Sec. 3, Ch. 98 ..... Ch. 494

AIRPORTS
Buildings exempt from taxation when leased to private entities ..... Ch. 387
Noise, height, and land use regulations in airport influence areas ..... Ch. 551

ALCOHOLIC BEVERAGES
Age limit for consumption or possession raised to 19 ..... Ch. 264
constitutional amendment regarding ..... Ch. 459
Beer, imported—tax allocation to alcoholism treatment and rehabilitation ..... Ch. 414
Driving while under the influence of
imprisonment mandatory ..... Ch. 289
penalty revision ..... Ch. 289, Ch. 430
sentence not deferrable ..... Ch. 436
Local government license fees, increase ..... Ch. 509
Minors, violations by ..... Ch. 446
Possession of intoxicating substance by minor, treatment when proceedings held in youth court ..... Ch. 536
Revision generally ..... Ch. 496
Taxation, increase of license tax to fund alcoholism treatment ..... Ch. 414

ALCOHOLISM
Alcoholic beverages, taxation to provide funding ..... Ch. 414
Treatment and rehabilitation ..... Ch. 414

ALIENS
Employment prohibited without authorization ..... Ch. 56
Heirs, personal representative's duties ..... Ch. 370
Illegal, unemployment compensation benefits denied ..... Ch. 428

HeinOnline -- 1977 vol. II 2177 1977

AMBULANCE SERVICES
"Patient", clarification of definition ..... Ch. 86

AMERICAN COUNCIL OF SPOTTED ASSES
Commendation for promotional efforts ..... HJR 41

AMTRAK
Helena connection with the "Portland Rose" encouraged ..... HJR 53

ANATOMICAL GIFTS
Driver's license, space for indication of intent ..... Ch. 28

ANTIQUITIES
Preservation, legislative study ..... HJR 18
Revision generally ..... Ch. 3

APIARIES
Revision generally ..... Ch. 25

APPRENTICESHIP
Increase of programs urged ..... HJR 52

APPROPRIATIONS
Adjutant General ..... HB 145
Administration, Department of ..... HB 145
capital projects ..... HB 144, HB 504
capitol art, protection ..... Ch. 549
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Administrative Code Program ..... HB 145
Adoption of hard-to-place children ..... HB 832
Adult basic education program ..... HB 835
Agencies, state ..... HB 143, HB 145
(Montana) Agricultural Experiment Station ..... HB 145
satellite station ..... HB 282
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Agriculture, Department of ..... HB 145
Air pollution studies in specific areas ..... HB 250
Boulder River School and Hospital ..... HB 145
capital projects ..... HB 144
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Budget and Accounting System, supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Budget and Program Planning, Office of ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Budget Director, state classification and compensation plan ..... Ch. 563
Burgess, Larry W.—judgment against the state ..... HB 554
Business Regulation, Department of ..... HB 145
Campaign Finances and Practices, Commissioner of ..... HB 145
Capital projects ..... HB 144, HB 504
Capitol art, preservation ..... Ch. 549, HB 144
Center for the Aged ..... HB 145
(Montana) Children's Center ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Citizen's Advocate ..... HB 145
Civil Defense Division ..... HB 145
(State) Classification and Compensation Plan ..... Ch. 563
Coal Tax Oversight Committee ..... HB 145
funds reappropriated from coal board to legislative council ..... HB 55
Coal tax revenue allocation, See **TAXATION**

Commerce and Small Business Development, Office of ..... HB 145
Community Affairs, Department of ..... HB 145
capital projects ..... HB 144
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
weatherization programs, expansion ..... Ch. 583
Community colleges ..... HB 145
Constitutional Convention proceedings, editing and publishing ..... HB 160
Consumer Counsel ..... HB 145
Cooperative Extension Service ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Council of State Governments, dues ..... HB 145
County attorneys ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Crime Control Division ..... HB 145
Crime victims compensation ..... Ch. 527
Day-care assistance expanded ..... HB 242
Deaf and Blind, School for ..... HB 145
Displaced homemaker pilot programs ..... Ch. 506
District courts ..... HB 145
Eastern Montana College ..... HB 145
capital projects ..... HB 144
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Eastmont Training Center ..... HB 145
Economic Development Program ..... HB 145
Education, adult basic programs ..... HB 835
Employment Security Division ..... HB 145
Environmental Quality Council ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Examiners, Board of—funds to satisfy court judgments against state ..... HB 554
Fire Service Training Academy ..... HB 145
Fish and Game, Department of ..... HB 145
capital projects ..... HB 144
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
wild horse island acquisition ..... HB 836
Foster Grandparent Program ..... HB 145
Galen State Hospital ..... HB 145
capital projects ..... HB 144
General Appropriations Act of 1977 ..... HB 145
Glendive Nursing Home, capital projects ..... HB 144
Governor's Office ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Health and Environmental Sciences, Department of ..... HB 145
study of air pollution concentrations in specific areas ..... HB 250
Higher Education, Commissioner of ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Highway Patrol, capital projects ..... HB 504
Highways, Department of ..... HB 145
capital projects ..... HB 144
(Montana) Historical Society ..... HB 145
russell, charles m.—acquisition of painting ..... HB 826
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Home weatherization program ..... Ch. 583
(State Funded) Homestead Tax Relief Act ..... HB 828

Housing, Board of ..... HB 145
Human Rights Division ..... HB 145
Indians, legal jurisdiction project ..... HB 145
Institutions, Department of ..... HB 145
  capital projects ..... HB 144
  supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Interim studies ..... HB 842
Judgments against state ..... HB 554
Judicial boards and commissions ..... HB 145
Jurisdiction Project ..... HB 145
Justice, Department of ..... HB 145
  capital projects ..... HB 144
  supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Labor and Industry, Department of ..... HB 145
  displaced homemakers pilot program ..... Ch. 506
  supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Labor Standards Division ..... HB 145
(State) Law Library ..... HB 145
  supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Legal Jurisdiction Project ..... HB 145
Legislative Auditor ..... HB 145
Legislative Council
  coal tax oversight committee expenses ..... HB 55, HB 145
  constitutional convention proceedings, money for editing and publishing ..... HB 160
  council of state governments, dues ..... HB 145
  interim studies ..... HB 842
  legislative revenue oversight committee expenses ..... HB 842
  national conference of state legislatures
    dues payment ..... HB 693
    travel expenses ..... HB 145
  operating costs and expenses ..... HB 1
  recodification expenses ..... HB 64
  western states forestry task force ..... HB 145
Legislative Fiscal Analyst ..... HB 145
Legislative journals, unpublished—publication ..... HB 295
Legislative Revenue Oversight Committee ..... HB 842
Legislature
  jurisdictional oversight committee ..... HB 145
  operating expenses ..... HB 1, HB 145, HB 838
  unpublished journals, publication ..... HB 295
(State) Library Commission ..... HB 145
  supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Lieutenant Governor ..... HB 145
  medal of honor grove program ..... HB 502
Livestock, Department of ..... HB 145
  supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Long-range building program ..... HB 144, HB 504
Mental Health Advisory Council ..... HB 145
Merit System Council ..... HB 145
  supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Military Affairs, Department of ..... HB 145
  capital projects ..... HB 144
Mines, Bureau of ..... HB 145
  supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Montana Arts Council ..... HB 145
Montana College of Mineral Science and Technology ..... HB 145

HeinOnline -- 1977 vol. II 2180 1977

bond issue for physical education facility ..... Ch. 507
capital projects ..... HB 144
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Montana State University ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Mountain View School ..... HB 145
capital projects ..... HB 144, HB 504
National Conference of State Legislatures, travel expenses ..... HB 145
Natural Resources and Conservation, Department of ..... HB 145
capital projects ..... HB 144
renewable resource development program ..... HB 708
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Northern Montana College ..... HB 145
capital projects ..... HB 144
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Oil and Gas Commission
capital projects ..... HB 144
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Omnibus bill ..... HB 145
Pardons, Board of ..... HB 145
Parks and Recreation Program ..... HB 145
Personnel Appeals, Board of ..... HB 145
Pine Hills School ..... HB 145
capital projects ..... HB 144
Prisoners, extradition and transportation ..... HB 143
Professional and Occupational Licensing, Department of ..... HB 145
Public Education, Board of ..... HB 145
Public Employees Retirement System Program ..... HB 145
Public Service Commission, appropriation subject to legislative revision ..... Ch. 137
Public Service Regulation, Department of ..... HB 145
Recodification expenses ..... HB 64
Regents, Board of ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Renewable resource development program ..... HB 708
Revenue, Department of ..... HB 145
(state funded) homestead tax relief act ..... HB 828
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
(Legislative) Revenue Oversight Committee ..... HB 842
Russell, Charles M.—acquisition, restoration, and protection of paintings ..... HB 144, HB 826
Saline seep study ..... HB 145
School Foundation Program ..... HB 145
Secretary of State ..... HB 145
publication of 3 unpublished legislative journals ..... HB 295
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Social and Rehabilitation Services, Department of ..... HB 145
adoption of hard-to-place children ..... HB 832
day care assistance expanded ..... Ch. 581
foster grandparent program ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Sourdough Land and Cattle Company, judgment against the state ..... HB 554
State agencies ..... HB 143, HB 145
State Auditor ..... HB 145

State Lands, Department of ..... HB 145
State Prison ..... HB 145
capital projects ..... HB 144
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
State self-insurance ..... HB 145
State Tax Appeal Board ..... HB 145
State Treasurer, supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Statewide Budget and Accounting System, supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Superintendent of Public Instruction ..... HB 145
adult basic education ..... HB 835
capital projects ..... HB 144
Supreme Court ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Swan River Youth Forest Camp ..... HB 145
Teachers' Retirement Board ..... HB 145
University of Montana ..... HB 145
capital projects ..... HB 144
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
University system, See also separate units of the system
biennium ..... HB 145
capital projects ..... HB 144
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Valley Forge Medal of Honor Grove ..... HB 502
Veterans Affairs, Board of ..... HB 145
(Montana) Veterans' Home ..... HB 145
capital projects ..... HB 144
Vietnam Veterans Honorarium Program ..... HB 145
Visitors, Board of ..... HB 145
Vocational education ..... HB 145
capital projects ..... HB 144
Vocational Education, Advisory Council for ..... HB 145
Warm Springs State Hospital ..... HB 145
capital projects ..... HB 144
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Weatherization program, expansion ..... Ch. 583
Western Montana College ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Western States Forestry Task Force ..... HB 145
Wild Horse Island, acquisition ..... HB 836
Workers' Compensation Division ..... HB 145
crime victims compensation ..... Ch. 527
prosecution and defense, supplemental funds ..... HB 143
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Workers' Compensation Judge ..... HB 145
supplemental funds for fiscal year ending June 30, 1977 ..... HB 143
Zook Brothers Construction Company, judgment against the state ..... HB 554

ARCHITECTS, BOARD OF
Injunctions for violations provided ..... Ch. 544
Termination ..... Ch. 562

ARCHITECTURE AND ARCHITECTS
Administration, Department of—preparation of working drawings allowed on specified projects ..... Ch. 371

Licensing revision ..... Ch. 544

ARONSON, HONORABLE J. HUGO
Honor paid to ..... HJR 106

ARSON
Arson Bureau, notification of release of person convicted of ..... Ch. 206

ARSON BUREAU
Notification of release of person convicted of arson ..... Ch. 206

ARTS
Capitol art, protection ..... Ch. 549
Revision generally ..... Ch. 3

(MONTANA) ARTS COUNCIL, See **MONTANA ARTS COUNCIL**

ATHLETES AND ATHLETICS
Coaches in private schools, assistant—faculty membership not required ..... Ch. 350
Montana State University "Bobcats" honored ..... SJR 25
Unemployment compensation benefits denied ..... Ch. 428

ATHLETICS, BOARD OF
Termination ..... Ch. 562

ATTACHMENT, See also **LIENS**
Bond required for service when sheriff's costs substantial ..... Ch. 426
Judicial supervision of writ issuance, preseizure notice and hearing, or postseizure hearing ..... Ch. 299

ATTORNEY GENERAL
(Montana) Administrative Procedure Act, revision of model rules ..... HJR 5
Consumer Protection Act, powers clarified ..... Ch. 407
Duties amended ..... Ch. 118
Investigative subpoena ..... Ch. 486
Opinion of, effect ..... Ch. 118
Salary ..... Ch. 461
Unfair trade practices, powers clarified ..... Ch. 407

ATTORNEYS-AT-LAW
Bar admission
rule revision ..... SJR 16
supreme court rules, constitutional amendment for legislative disapproval ..... Ch. 420
Court administrator, practice of law prohibited ..... Ch. 396
Fees, claims against governmental entities ..... Ch. 188
Incapacity proceedings, appointment of counsel ..... Ch. 222
Law Day, tribute to ..... HJR 93
Malpractice, statute of limitations ..... Ch. 220

AUCTION SALES
Revision generally ..... Ch. 263

AUDITOR, See **LEGISLATIVE AUDITOR; STATE AUDITOR**

B

BAD CHECKS
Traffic violations, criminal charges when issued as bond for ..... Ch. 295

BALLOTS, See **ELECTIONS**

HeinOnline -- 1977 vol. II 2183 1977

BANKING BOARD, STATE
Termination....Ch. 562

BANKS AND TRUST COMPANIES
Bank holding companies, use of "bank" in name or title....Ch. 217
Common trust funds, establishment for collective investment....Ch. 271
Electronic funds transfer systems....Ch. 503
Federal reserve banks, investment securities deposited with....Ch. 278
Foreign associations, revision of definition of transacting business....Ch. 66
Revision generally....Ch. 71
Taxation, See **TAXATION**

BARBERS, BOARD OF
License fees revision....Ch. 533
Termination....Ch. 562

BARLEY
Research on conversion to alcohol....SJR 42

BARS AND TAVERNS, See ALCOHOLIC BEVERAGES

BATTERED SPOUSES
Legislative study....HJR 103

BEES
Apiaries, revision generally....Ch. 25

BIG HOLE NATIONAL BATTLEFIELD
Jurisdiction....Ch. 125

BIRTH CERTIFICATES
Substitute, issuance procedure....Ch. 162

BISON
Trespass by, liability of owner....Ch. 199

BLIND OR VISUALLY HANDICAPPED PERSONS
Clarification of housing laws regarding....Ch. 35
Medical assistance, supplementary—subrogation and third party liability to rights of recipients....Ch. 379
School for Deaf and Blind, appropriation....HB 145

BOATS AND BOATING
Revision generally....Ch. 124

BOBCAT
Reclassified as fur-bearing animal....Ch. 235

BOILERS
Inspection fee requirement deleted....Ch. 83
Inspectors reports, acceptance by Division of Workers' Compensation....Ch. 152
Traction engines, marking and inspection—repeal....Ch. 84

BOND ISSUES
Bond Validating Act, application extended....Ch. 564
County bond elections, time limit and delivery of petitions....Ch. 347
County hospital funding....Ch. 513
Montana College of Mineral Science and Technology, physical education facility....Ch. 507
Urban renewal projects, financing through....Ch. 532

BOND VALIDATING ACT
Application extended....Ch. 564

HeinOnline -- 1977 vol. II 2184 1977

BOULDER RIVER SCHOOL AND HOSPITAL
Appropriations ..... HB 143, HB 144, HB 145
Residents, provision for payment for care ..... Ch. 450

BOXING, SPARRING, OR WRESTLING
License requirement for exhibitions, clarification ..... Ch. 5

BRANDING AND BRANDS, See **LIVESTOCK**

BRIDGES
Federal-state-local committee to formulate plan for bridge across the Missouri River between Winifred and Big Sandy ..... SJR 36
Replacement, funding for ..... Ch. 78

BUDGET AND BUDGETING, See also **APPROPRIATIONS**
Economy and reform measures, legislative study ..... HJR 85
Interim legislative committee to approve amendments ..... Ch. 392
Statewide Budget and Accounting System, appropriation ..... HB 143

BUDGET AND PROGRAM PLANNING, OFFICE OF
Appropriations ..... HB 143, HB 145

BUDGET DIRECTOR
Appropriation ..... Ch. 563
Fiscal notes, repeal of section substituting Department of Administration for Budget Director ..... Ch. 229

BUFFALO
Trespass by, liability of owner ..... Ch. 199

BUILDING AND LOAN ASSOCIATIONS
Branching de novo prohibited ..... Ch. 363
Consolidation or merger prohibited ..... Ch. 363
Electronic funds transfer system ..... Ch. 503
Foreign associations, revision of definition of transacting business ..... Ch. 66
Revision generally ..... Ch. 71

BUILDINGS AND BUILDING REGULATIONS
Administration, Department of—promulgation of building codes ..... Ch. 504
Architects for, license required ..... Ch. 544
Asbestos-containing spray materials, use in construction prohibited ..... Ch. 570
Code, state—energy conservation rules applicable ..... Ch. 173
Codes, local—administrative functions consolidated ..... Ch. 504
Demolition of buildings containing asbestos insulation or fireproofing, procedures ..... Ch. 570
Fibrated product or compound, procedure for use ..... Ch. 570
"Public building" defined ..... Ch. 544
Smoke detectors, use and maintenance ..... HJR 9
State-owned buildings
appropriations ..... HB 144, HB 504
construction projects, bid requirements clarified ..... Ch. 487
fire protection ..... Ch. 481

BUREAU OF RECLAMATION
Sun-Teton unit of Missouri River Basin Project, study urged ..... HJR 21

BURGESS, LARRY W.
Judgment against state ..... HB 554

BUSINESS
Coal tax trust funds, study of investment to give young people a start ..... SJR 44

HeinOnline -- 1977 vol. II 2185 1977

BUSINESS REGULATION, DEPARTMENT OF
Appropriation....HB 145
Banking Board, State—termination....Ch. 562
Consumer Affairs Division, legislative study of functions....SJR 46
Milk
testing of value of raw milk....Ch. 245
transportation, jurisdiction transferred from....Ch. 19
Milk Control, Board of
termination....Ch. 562
transportation of milk, jurisdiction transferred to....Ch. 19
Motor vehicle manufacturers, distributors, and importers
administration of regulation of relationship with dealers....Ch. 380
hearings before department....Ch. 381
Petroleum products manufacture and distribution, standards and regulation....Ch. 77

BUTTE, CITY OF
Harrison Avenue interchange, Butte Technical Advisory Council to cooperate in correcting hazardous conditions....HJR 61

C

CAMPAIGN FINANCES AND PRACTICES, COMMISSIONER OF
Appropriation....HB 145
Salary....Ch. 461
School trustees exempt from filing reports with....Ch. 23

CAMPAIGN PRACTICES, See **ELECTIONS**

CAMPERS, See **TAXATION**

CANADA
Air quality protection treaty, request for negotiation....HJR 70
Poplar River Power Project, position statement....HJR 48

CAPITOL COMPLEX
Appropriations....Ch. 549, HB 144, HB 799
Art, protection....Ch. 549
Wheeler, Senator Burton K.—placement of bust....SJR 34

CARRIERS
"Axle" defined....Ch. 269
Certificates, filing fee increased....Ch. 476
Commodities restrictions, enforcement....Ch. 280
Forms supplied by Public Service Commission....Ch. 476
Garbage and solid waste, vehicles transporting
class "D" created for....Ch. 138
defined as "motor carrier"....Ch. 139
municipal services, competition prohibited....Ch. 131
Hearing notices, publication costs....Ch. 476
Interstate Commerce Commission annual reports to be submitted....Ch. 476
(Montana) Motor Carrier Act—vehicles transporting garbage and solid wastes, classification and definition....Ch. 138, Ch. 139
Penalty for violations, conformity with jurisdiction of justices' courts....Ch. 282
Public Service Commission, See **PUBLIC SERVICE COMMISSION**

CATASTROPHIC ILLNESS
Insurance program....HJR 66

CEMENT AND GYPSUM PRODUCERS, See **TAXATION**

HeinOnline -- 1977 vol. II 2186 1977

CEMENT DEALERS, See **TAXATION**

CEMETERIES
Corporations, consumer protection provisions ..... Ch. 454
County land conveyed for cemetery use ..... Ch. 7
Property of associations, tax-exempt status clarified ..... Ch. 413
Tax levy, ceiling increased ..... Ch. 74

(MONTANA) CENTER FOR THE AGED
Appropriation ..... HB 145
Residents, provision for payment for care ..... Ch. 450

CENTRAL PAYROLL SYSTEM
Base and warrant distribution, exceptions ..... Ch. 51

CHARLES M. RUSSELL GAME RANGE
Importance of livestock to ..... SJR 41

CHIEF JUSTICE OF THE SUPREME COURT
Salary ..... Ch. 461

CHILD LABOR LAWS
Legislative study ..... SJR 40

CHILDREN, See **MINORS**

(MONTANA) CHILDREN'S CENTER
Appropriations ..... HB 143, HB 145

CHIROPRACTIC AND CHIROPRACTORS
"Chiropractic" redefined ..... Ch. 579
License renewal and disciplinary provisions, revision ..... Ch. 516

CHIROPRACTORS, BOARD OF
Revision generally ..... Ch. 432
Term of membership ..... Ch. 579
Termination ..... Ch. 562

CIGARETTES
Excise tax, appeal procedures clarified ..... Ch. 155

CITIES AND TOWNS, See also **LOCAL GOVERNMENT**
Annexation of land
fire districts ..... Ch. 81
freeholders' rights ..... Ch. 395
garbage and solid waste services, competition prohibited following annexation ..... Ch. 131
Fire protection services, See **FIRES AND FIRE PROTECTION**
Garbage and solid waste services, competition prohibited following annexation of area ..... Ch. 131
Highway department weigh scales, request for avoiding discrimination against localities in operation of ..... HJR 67
Judges—election, qualification, and vacancy in office ..... Ch. 219
Local government code, legislative study ..... SJR 39
Municipal courts, general revision ..... Ch. 429
Municipal Police Officers' Retirement Act ..... Ch. 456
Police, See **POLICE**
Special improvement districts, corner lot assessments ..... Ch. 404
Subdivisions, See **SUBDIVISIONS**

CITIZEN'S ADVOCATE, OFFICE OF
Appropriation ..... HB 145
Human service functions, legislative evaluation ..... SJR 46

CITY COURTS
Judges—election, qualification, and vacancy in office ..... Ch. 219
Jurisdiction over violations by minors ..... Ch. 446

CIVIL DEFENSE, See also **EMERGENCIES AND EMERGENCY SERVICES**
Appropriation....HB 145
(Montana) Disaster Act of 1977....Ch. 335
Revision generally....Ch. 49
Shelters, funding and personnel....HJR 51
Sovereign immunity continued....Ch. 73

CIVIL PROCEDURE
Class action complaint requirements....Ch. 170

CLASS ACTION
Complaint requirements for injunctive relief....Ch. 170

CLERK OF THE DISTRICT COURT
Fees collected by....Ch. 548

CLERK OF THE SUPREME COURT
Salary....Ch. 461

CMR PAINTING FUND
Creation....SR 7

COAL, See also **MINES AND MINING**
Board, funds reappropriated to legislative council for coal tax oversight committee expenses....HB 55
Canadian power plant, position statement....HJR 48
(Coal) Conservation Act, conversion to 5-year permits with annual reporting requirements....Ch. 352
Legislative studies
agriculture and business, trust fund investment to give young people a start....SJR 44
housing, trust fund investment in....SJR 2
Magnetohydrodynamic energy extraction, federal funding requested....HJR 94
Poplar River Power Project, position statement....HJR 48
Revenue allocation, See **TAXATION**
Strip mine reclamation, support for federal legislation....HJR 40
Taxation, See **TAXATION**

COAL CONSERVATION ACT
1-year operating permits, conversion and annual reporting requirements....Ch. 352

COAL TAX OVERSIGHT COMMITTEE
Appropriations....HB 55, HB 145
Continued....Ch. 540

CODE COMMISSIONER
Recodification, amendment of laws relative to....Ch. 1

CODE COMMISSIONER BILLS
Repeal of unconstitutional provisions
vocational education....Ch. 4
Revision and clarification of laws generally
adoption....Ch. 33
aeronautics....Ch. 232
agriculture....Ch. 13
alcoholic beverage code....Ch. 496
antiquities....Ch. 3
arts....Ch. 3
banks and trust companies....Ch. 71
blind or visually handicapped persons....Ch. 35
boats and boating....Ch. 124
boxing, sparring, or wrestling—licensure requirements....Ch. 5
building and loan associations....Ch. 71
campaign practices, criminal provisions regarding....Ch. 334

HeinOnline -- 1977 vol. II 2188 1977

civil defense....Ch. 49
coal severance tax....Ch. 156
consumer loan businesses....Ch. 71
corporations, partnerships, and associations....Ch. 62
courts....Ch. 344
credit transactions....Ch. 185
credit unions....Ch. 71
crimes....Ch. 359
criminal procedure....Ch. 184
dairy products....Ch. 12
deferred compensation plans for public employees....Ch. 60
development credit corporations....Ch. 71
developmentally disabled persons....Ch. 37
discrimination....Ch. 35, Ch. 38
dissolution of marriage....Ch. 33
education....Ch. 266
election laws, criminal provisions regarding....Ch. 334
elections....Ch. 365
environmental protection....Ch. 140
firemen, retirement and death and disability benefits....Ch. 157
fish and game....Ch. 9
gambling....Ch. 508
game wardens, retirement and death and disability benefits....Ch. 8
health and safety....Ch. 187
highway patrol, retirement and death and disability benefits....Ch. 65
human rights....Ch. 35, Ch. 38
human rights, commission for....Ch. 35
institutions, state....Ch. 37
judges and justices....Ch. 344
judges and justices retirement system....Ch. 63
judiciary....Ch. 344
law....Ch. 309
legislature....Ch. 309
libraries, arts, and antiquities....Ch. 3
livestock....Ch. 12
marriage....Ch. 33
mentally ill persons....Ch. 37
metal mines license tax....Ch. 156
military affairs....Ch. 49
milk and milk products....Ch. 12
minerals....Ch. 39
minors....Ch. 100
oil and gas....Ch. 39
oil and gas severance tax....Ch. 156
parent and child....Ch. 33
(state) parks....Ch. 2
partnerships....Ch. 62
"person", standardization of definition in taxation statutes....Ch. 52
police, retirement and death and disability benefits....Ch. 224
professional and occupational licensing....Ch. 101
property tax assessment of railroads, utilities, airlines, mines, and oil and gas wells....Ch. 98
amendment to Sec. 3, Ch. 98....Ch. 494
public assistance....Ch. 37
public contracts....Ch. 97
public employees, deferred compensation plans for....Ch. 60
public employees, retirement system....Ch. 99
public employees under federal social security....Ch. 64
recreational vehicles....Ch. 124
resource indemnity trust tax....Ch. 156
safety....Ch. 187
sheriffs, retirement and death and disability benefits....Ch. 59

HeinOnline -- 1977 vol. II 2189 1977

snowmobiles ..... Ch. 124
state finance ..... Ch. 61
support of dependents ..... Ch. 33
taxation ..... Ch. 34, Ch. 36, Ch. 52, Ch. 98, Ch. 126, Ch. 155, Ch. 156
amendment to Sec. 3, Ch. 98 ..... Ch. 494
teachers, retirement and death and disability benefits ..... Ch. 127
trade and commerce ..... Ch. 265
tramways ..... Ch. 124
unfair trade practices ..... Ch. 518
veterans ..... Ch. 49
vocational rehabilitation ..... Ch. 37
water and water rights ..... Ch. 460
water use ..... Ch. 460
welfare ..... Ch. 37
wrestling, licensure requirements ..... Ch. 5
youth court ..... Ch. 100

Taxation
appeals, procedures clarified ..... Ch. 155
corporation, general revision and clarification ..... Ch. 34
gasoline, general revision and clarification ..... Ch. 34
hearings, administrative tax case—allocation of duties of conducting and specifying appeal procedures ..... Ch. 155
income, general revision and clarification ..... Ch. 34
license tax, general revision and clarification ..... Ch. 126
license tax on specific companies, provision for uniform collection procedure ..... Ch. 36
oil and gas severance tax, general revision and clarification ..... Ch. 156
"person", standardization of definition ..... Ch. 52
property tax, consolidation of procedures for centralized assessment of railroads, utilities, airlines, mines, oil and gas wells ..... Ch. 98
amendment to Sec. 3, Ch. 98 ..... Ch. 494
property tax, general revision and clarification ..... Ch. 126

CODE OF ETHICS ..... Ch. 569

COLLECTION AGENCIES
Nonresident debts owed to state, department of revenue may contract for collection ..... Ch. 248

COLLECTIVE BARGAINING
Arbitrators and fact finders, training for ..... Ch. 57
Closed meetings permitted ..... Ch. 567

COLLEGES AND UNIVERSITIES, See **(MONTANA) UNIVERSITY SYSTEM**

COLUMBIA INTERSTATE COMPACT
Repeal ..... Ch. 464

COMMON TRUST FUNDS
Establishment for collective investment ..... Ch. 271

COMMUNITY AFFAIRS, DEPARTMENT OF
Aeronautics, Board of—termination ..... Ch. 562
Appropriations ..... Ch. 583, HB 143, HB 144, HB 145
County Printing, Board of—termination ..... Ch. 562
Environmental impact statements, preparation costs minimized ..... SJR 14
Housing, Board of—administration transferred from ..... Ch. 163
Indian Affairs Unit, legislative evaluation ..... SJR 46
Volunteer Bureau, legislative evaluation ..... SJR 46
Weatherization programs expanded ..... Ch. 583

COMMUNITY COLLEGES, See **(MONTANA) UNIVERSITY SYSTEM**

HeinOnline -- 1977 vol. II 2190 1977

COMMUNITY SERVICE ORGANIZATIONS
Property tax exemption ..... Ch. 491

COMPARATIVE NEGLIGENCE
Actions involving ..... Ch. 433

CONDEMNATION
Expense of litigation defined ..... Ch. 48

CONFIDENTIAL AND PRIVILEGED COMMUNICATIONS, See **PRIVACY**

CONGRESS
Air quality protection treaty with Canada, request for negotiation ..... HJR 70
Beef labeling and inspection requirements requested ..... HJR 96
Charles M. Russell Game Range, request recognition of importance of livestock to ..... SJR 41
Civil defense shelters, funding urged ..... HJR 51
Coal strip mine reclamation, legislative support conditional ..... HJR 40
Electrical energy generated in Montana, allocation to Montanans first urged ..... HJR 19
Firearms, opposition to registration and confiscation ..... HJR 27
Forest fire protection, full federal funding requested ..... SR 8, HR 3
Fort Union Trading Post reconstruction, funding urged ..... HJR 83
Grain inspection supervisory fee, federal—protest ..... HJR 49
Indian reservations, state's jurisdiction over non-indians and increased law enforcement—legislation requested ..... SJR 35
Irrigation of lands under single ownership or leased from state, request to raise general limitation ..... HJR 26
Medicaid, request for system to be more responsive to individual needs ..... HJR 74
Natural gas, new—request price deregulation ..... SJR 22
OSHA, review urged ..... HJR 25
Panama Canal, position statement ..... SR 5
Political campaigns at Malmstrom Air Force Base, request for allowance ..... HJR 29
Rail-highway grade crossing safety improvements, request for allowance ..... HJR 64
Representatives, applicability of montana recall and advisory recall act removed ..... Ch. 364
Saccharin ban protested ..... HJR 92
Social Security office in Billings, opposition to closure of hearings and appeals office ..... HJR 13
Speed limit of 65 m.p.h. requested for certain areas ..... HJR 11
Surface mine legislation, request to refrain from usurping state authority by weakening state legislation ..... SJR 18
(Federal) Water Pollution Control Act, request for repeal of section 404 ..... HJR 43
Wilderness proposals, request for field hearings ..... HJR 78

CONSERVATION DISTRICTS, See **SOIL AND WATER CONSERVATION DISTRICTS**

CONSTABLES, See also **PEACE OFFICERS**
Property trust indenture foreclosures, notice of sale to be posted upon request of a trustee ..... Ch. 53

CONSTITUTIONAL AMENDMENTS
Bar admission, legislative disapproval of supreme court rules ..... Ch. 420
Budget amendments, legislative interim committee to approve ..... Ch. 392
Drinking age established by legislature or the people ..... Ch. 459
Legislative members to resign prior to running for another office ..... Ch. 358

HeinOnline -- 1977 vol. II 2191 1977

Local government, voter review optional ..... Ch. 70

CONSTITUTIONAL CONVENTION, 1972
Proceedings to be edited and published
appropriation ..... HB 160
committee to supervise, creation ..... Ch. 373

CONSTITUTIONAL RIGHTS, See also **RIGHTS**
(The Montana) Civil Rights Claims Act ..... Ch. 66
Discrimination, See **DISCRIMINATION**
Initiative and referendum
general revision ..... Ch. 342
petition verification ..... Ch. 477

CONSUMER AFFAIRS DIVISION
Legislative evaluation ..... SJR 46

CONSUMER COUNSEL
Appropriation ..... HB 145
Discovery powers in contested cases ..... Ch. 136
Utility rate cases, adversary role clarified ..... Ch. 474

CONSUMER LOAN ACT
Revision generally ..... Ch. 71

CONSUMER PROTECTION
Beef labeling and inspection requirements requested ..... HJR 96
Cemetery or mausoleum-columbarium, provisions for ..... Ch. 454
Consumer Protection Act, enforcement powers clarified ..... Ch. 407
Door-to-door sales, general revision of 3-day cooling-off
period ..... Ch. 191
Professional services violations, legal remedies for ..... Ch. 541

CONTAINERS
Dairy products, three liquid quart containers ..... Ch. 76

CONTRACTS, See also **PUBLIC CONTRACTS**
Distillates, sale on other than gross volume unlawful ..... Ch. 274

COONEY DAM, See also **WATERS AND WATER RIGHTS**
Repairs and financing, study to be made ..... Ch. 442

COOPERATIVE EXTENSION SERVICE
Appropriations ..... HB 143, HB 145

COOPERATIVES
Marketing associations, revision generally ..... Ch. 298

CORPORATIONS
Cemetery or mausoleum-columbarium, consumer protection
provisions ..... Ch. 454
Dissolution, involuntary—secretary of state to order
without court decree ..... Ch. 455
Foreign, revision of definition of transacting business ..... Ch. 66
(Montana) Religious Corporation Sole Act, membership on board
of advisors—limitation removed ..... Ch. 113
Revision generally ..... Ch. 62
Taxation, See **TAXATION**

CORRECTIONS, See also **CRIMES AND CRIMINAL PROCEDURE**
Commission of second crime in prison, effect ..... Ch. 340
Driving while under the influence of alcohol or drugs
imprisonment mandatory ..... Ch. 289
penalty revision ..... Ch. 430
sentence not deferrable ..... Ch. 436
Extradition and transportation of prisoners,
appropriation ..... HB 143

HeinOnline -- 1977 vol. II 2192 1977

Imprisonment mandatory for certain crimes ..... Ch. 289
Juvenile facilities, purchase of clothing ..... Ch. 230
Parole or furlough
commission of second crime, effect ..... Ch. 340
disallowance ..... Ch. 580
(Montana State) Prison
appropriations ..... HB 143, HB 144, HB 145
old prison site, transfer to city of deer lodge ..... HJR 65

CORRECTIONS DIVISION
Legislative evaluation ..... SJR 46

COSMETOLOGISTS, BOARD OF
Licensing regulations revision ..... Ch. 533
Membership, reduction and qualification ..... Ch. 511
Termination ..... Ch. 562

COSMETOLOGY AND COSMETOLOGISTS
Licensing and price agreement provisions revised ..... Ch. 305

COUNTIES, See also **LOCAL GOVERNMENT**
Bond elections, time limit and delivery of petitions ..... Ch. 347
Cemeteries, land conveyed for ..... Ch. 7
County Printing, Board of—termination ..... Ch. 562
Fire protection services, See **FIRES AND FIRE PROTECTION**
Grants-in-aid, clarification generally and return of moneys
at close of fiscal year ..... Ch. 168
Highway construction, state funds to match federal-aid
off-system road funds ..... Ch. 79
Hospitals
bond issue to fund ..... Ch. 513
lease of county property for ..... Ch. 80
Livestock grazing across county lines, transportation
permits ..... Ch. 312
Local government code, legislative study ..... SJR 39
Medicaid eligibility, determination ..... Ch. 327
Recreational grounds, land conveyed for ..... Ch. 7
Salaries of specific officers ..... Ch. 493
Subdivisions, See **SUBDIVISIONS**
Water and sewer districts, publication of notice requirement
changed ..... Ch. 296

COUNTY ASSESSOR
Salary ..... Ch. 493

COUNTY ATTORNEY
Appropriations ..... HB 143, HB 145
Community colleges, duties clarified ..... Ch. 121
Investigative subpoena ..... Ch. 486
Unfair Trade Practices and Consumer Protection Act, powers
clarified ..... Ch. 407

COUNTY CLERK AND RECORDER
Bond elections, delivery of petition to county
commissioners ..... Ch. 347
Nonresident grain loans, list preparation—repeal ..... Ch. 21

COUNTY CORONER
Duties ..... Ch. 530

COUNTY PRINTING, BOARD OF
Termination ..... Ch. 562

COUNTY SHERIFF, See also **PEACE OFFICERS**
Property trust indenture foreclosures, notice of sale to be
posted at request of a trustee ..... Ch. 53
Retirement system, See **RETIREMENT SYSTEMS**

Service of writ of execution or attachment, bond required when sheriff's costs substantial ..... Ch. 426

COUNTY SUPERINTENDENT OF SCHOOLS
Funding—authorization to request, accept, and disburse ..... Ch. 238

COUNTY TAX APPEAL BOARD
Appeals, decisions and hearings ..... Ch. 155, Ch. 249
Procedure and organization, revision ..... Ch. 155, Ch. 355

COUNTY TREASURER
Mobile home movement declaration ..... Ch. 105
Property tax notices, additional information required ..... Ch. 134
School funds, report of year ending fund balances ..... Ch. 180

COUNTY WELFARE BOARD
Reimbursement to state department ..... Ch. 109

COURT ADMINISTRATOR
Establishment of office ..... Ch. 396

COURTS, See also specific court
Revision generally ..... Ch. 344

CRANE OPERATORS
Licensing clarification ..... Ch. 148

CREDIT TRANSACTIONS
Installment sales, retail—revision of interest rates and penalties ..... Ch. 284
Revision generally ..... Ch. 185

CREDIT UNIONS
Central credit union, insurance exemption on share accounts ..... Ch. 111
Electronic funds transfer systems ..... Ch. 503
Revision generally ..... Ch. 71

CRIME CONTROL, BOARD OF
Composition and functions, clarification ..... Ch. 202
Volunteer peace officers, qualifying and training standards set by ..... Ch. 85

CRIME CONTROL DIVISION
Appropriation ..... HB 145

CRIME VICTIMS COMPENSATION ACT OF MONTANA ..... Ch. 527

CRIMES AND CRIMINAL PROCEDURE, See also **CORRECTIONS**
Bad checks, issuing as bond for traffic violation ..... Ch. 295
Campaign funds, misuse ..... Ch. 538
Campaign practices, general revision of criminal provisions ..... Ch. 334
Careless driving ..... Ch. 294
Charges, amendment by prosecution ..... Ch. 431
Commission while imprisoned, on parole, or furloughed—effect ..... Ch. 340
Concealed weapon, carrying ..... Ch. 411
Crime Victims Compensation Act of Montana ..... Ch. 527
Death penalty, imposition ..... Ch. 338
Defendant lacking fitness to be tried for criminal offense, court to provide for treatment ..... Ch. 568
Driving carelessly ..... Ch. 294
Driving recklessly to elude police officer ..... Ch. 287
Driving while under the influence of alcohol or drugs
mandatory imprisonment ..... Ch. 289
penalty revisions ..... Ch. 289, Ch. 430
sentence not deferrable ..... Ch. 436

HeinOnline -- 1977 vol. II 2194 1977

Drug-related crimes
driving under the influence of ..... Ch. 289, Ch. 430, Ch. 436
mandatory prison sentences, exceptions and restrictions ..... Ch. 584
possession, minors ..... Ch. 536
Elections, general revision of criminal provisions ..... Ch. 334
Endangering the welfare of children, applicability clarified ..... Ch. 218
Felony convictions, parole eligibility restricted ..... Ch. 580
Firearms, See Weapons
Fish and game violations, penalty revisions ..... Ch. 465
Hazardous waste disposal violations ..... Ch. 542
Imprisonment mandatory
driving while intoxicated ..... Ch. 289
drug related crimes ..... Ch. 289, Ch. 584
violent crimes ..... Ch. 584
Intoxicating substance, unlawful possession by minors
treatment when proceedings held in youth court ..... Ch. 536
Investigative subpoenas ..... Ch. 486
Minors
endangering the welfare of children, applicability clarified ..... Ch. 218
intoxicating substance, possession ..... Ch. 536
motion picture previews, violent—showing to minors ..... Ch. 391
Mobile homes, moving when taxes delinquent ..... Ch. 250
Motion pictures, showing violent previews to minors ..... Ch. 391
Motor vehicle manufacturers, distributors, and importers—
violation of relationship with dealers ..... Ch. 380
Motorcycle helmet requirement, removal for adults ..... Ch. 54
Nuclear wastes, storage in Montana ..... Ch. 68
Piracy of sound recordings, live performances, and transfer
of recorded sound without permission ..... Ch. 367
Reckless driving to elude police officer ..... Ch. 287
Recordings, piracy unlawful ..... Ch. 367
Revision generally ..... Ch. 184, Ch. 334, Ch. 359
Second offense—commission while imprisoned, on parole, or furloughed ..... Ch. 340
Sentencing provisions, study ..... SJR 28
Sexual intercourse without consent
payment for medical examinations ..... Ch. 128
timely complaint or immediate outcry, effect of failure to make ..... Ch. 94
videotape testimony of victim allowed ..... Ch. 384
Solid waste management violations ..... Ch. 542
Telecommunications charges, aiding avoidance ..... Ch. 175
Theft, welfare fraud as ..... Ch. 273
Unemployment compensation fraud ..... Ch. 240
Victims, compensation ..... Ch. 527, SJR 19
Violent crimes, imprisonment mandatory ..... Ch. 584
Violent motion picture previews, showing to minors ..... Ch. 391
Weapons
concealed, carrying ..... Ch. 411
dangerous—mandatory prison sentences, exceptions and restrictions ..... Ch. 584
firearm, obscuring identity unlawful ..... Ch. 167
Welfare fraud as theft ..... Ch. 273

CRIMINAL CODE OF 1973
Revision generally ..... Ch. 359
Sentencing provisions, study ..... SJR 28

CRIMINAL PROCEDURE, See **CRIMES AND CRIMINAL PROCEDURE**

D

DAIRY PRODUCTS, See **MILK AND MILK PRODUCTS**

HeinOnline -- 1977 vol. II 2195 1977

DAMAGES
Buffalo, owner's liability for trespassing by ..... Ch. 199
Comparative negligence, actions involving ..... Ch. 433
Innkeeper's liability for personal property loss ..... Ch. 14
Pleading in actions for personal injury or wrongful death ..... Ch. 525
Professional liability, See **MALPRACTICE**
Property destruction by minors, amount recoverable ..... Ch. 227
Tort actions, See **TORTS**

DAMS AND RESERVOIRS, See **WATERS AND WATER RIGHTS**

DAY-CARE SERVICES
Assistance by state, pilot project ..... Ch. 581
Expenses deductible on income tax ..... Ch. 102
Facilities, license applications by indians on reservations acceptable ..... Ch. 293

DEAF AND BLIND, SCHOOL FOR
Appropriation ..... HB 145

DEATH
Anatomical gifts, space on driver's license to indicate intent to make ..... Ch. 28
Definition ..... Ch. 228

DEATH SENTENCE
Imposition ..... Ch. 338

DEBTS, DEBTORS, AND CREDITORS
Nonresident debts owed to state, collection procedure ..... Ch. 248
Revision generally ..... Ch. 185

DEER LODGE, CITY OF
Old prison site transferred to ..... HJR 65

DEFERRED COMPENSATION PLANS
Public employees, revision generally ..... Ch. 60

DENTISTS, BOARD OF
Termination ..... Ch. 562

DEVELOPMENT CREDIT CORPORATIONS
Revision generally ..... Ch. 71

DEVELOPMENTAL DISABILITIES ADVISORY COUNCIL
Human service functions, legislative evaluation ..... SJR 46

(MONTANA) DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES ACT OF 1974
Revision generally ..... Ch. 559

DEVELOPMENTALLY DISABLED PERSONS
Administration of services ..... Ch. 559
Community centers, funding ..... SJR 15
Revision generally ..... Ch. 37, Ch. 559
Sheltered workshops, state procurement of products and services ..... Ch. 547
Special education ..... Ch. 539, HJR 105

DISABLED PERSONS
Medical assistance—subrogation and third party liability to rights of recipients ..... Ch. 379
Sheltered workshops, state procurement of products and services ..... Ch. 547

(MONTANA) DISASTER ACT OF 1977 ..... Ch. 335

DISCRIMINATION
Clarification of specific statutes regarding ..... Ch. 35
Deletion of erroneous reference to federal civil rights laws ..... Ch. 27
Grounds for unlawful discrimination, standardization of terms ..... Ch. 38

DISPLACED HOMEMAKERS
Pilot programs, appropriation and time period ..... Ch. 506

DISSOLUTION OF MARRIAGE
Name change to woman on request ..... Ch. 174
Revision generally ..... Ch. 33

DISTRICT COURTS
Appeals—motor vehicle manufacturers, distributors, and importers ..... Ch. 381
Appropriation ..... HB 145
Clerk of the district court, fees collected by ..... Ch. 548
Judicial districts—creation, alteration of boundaries, and change in number of judges ..... Ch. 517
Law clerks, study of use of clerks and secretaries prior to creation of new judgeships ..... HJR 3

DISTRICT JUDGES
Number to be changed in certain districts ..... Ch. 517
Salary ..... Ch. 461
Sentencing convicted felons, parole or furlough disallowed ..... Ch. 580

DISTRICT YOUTH GUIDANCE HOMES
Residents, provision for payment of care ..... Ch. 450

DIVORCE, See **DISSOLUTION OF MARRIAGE**

DOOR-TO-DOOR SALES
3-day cooling-off period, general revision ..... Ch. 191

DRIVER'S LICENSE
Anatomical gift, space for indication of intent to make ..... Ch. 28

(MONTANA) DRUG PRODUCT SELECTION ACT ..... Ch. 403

DRUGS
Criminal sale or possession, mandatory prison sentence ..... Ch. 584
Driving while under the influence of, penalty revisions ..... Ch. 289, Ch. 430, Ch. 436
(Montana) Drug Product Selection Act ..... Ch. 403
Optometrists, use for diagnostic purposes ..... Ch. 361
Possession
dangerous drugs, mandatory prison sentence ..... Ch. 584
minors ..... Ch. 536
Product selection when ..... Ch. 403

E

EASTERN MONTANA COLLEGE, See also **(MONTANA) UNIVERSITY SYSTEM**
Appropriations ..... HB 143, HB 144, HB 145

EASTMONT TRAINING CENTER
Appropriation ..... HB 145
Residents, provision for payments for care ..... Ch. 450

ECONOMIC DEVELOPMENT PROGRAM
Appropriation ..... HB 145

HeinOnline -- 1977 vol. II 2197 1977

(MONTANA) ECONOMIC LAND DEVELOPMENT ACT
Revision and clarification ..... Ch. 582

EDUCATION, See also **SCHOOLS, DISTRICTS, AND TRUSTEES**
Academic excellence in (Montana) university system honored ..... SJR 50
Adult basic education program, establishment and funding ..... Ch. 290, HB 835
Commissioner of Higher Education, appropriations ..... HB 143, HB 145
Educational Broadcasting Commission, repeal ..... Ch. 341
Fire services training school, creation ..... Ch. 104
Funding of public institutions through property taxation continued ..... Ch. 376, Ch. 463
Interstate Agreement on Qualification of Educational Personnel ..... Ch. 328
Personnel, interstate agreement on qualifications ..... Ch. 328
Public Education, Board of, See **PUBLIC EDUCATION, BOARD OF**
Revision generally ..... Ch. 266
Special education
audit annually by legislative auditor ..... HJR 105
revision of laws ..... Ch. 539
Superintendent of Public Instruction, See **SUPERINTENDENT OF PUBLIC INSTRUCTION**
(Montana) University system, See **(MONTANA) UNIVERSITY SYSTEM**
Vocational, See **VOCATIONAL EDUCATION**

EDUCATIONAL BROADCASTING SYSTEM
Repeal ..... Ch. 341

EGGS AND POULTRY
Egg dealer's law and license, revision ..... Ch. 141
Property tax classification change ..... Ch. 497

ELECTIONS
Ballot
judicial ballot, placement ..... Ch. 116
mail, legislative approval of administrative rules during interim ..... Ch. 561
Bond issues, See **BOND ISSUES**
Campaign fund, public—made permanent ..... Ch. 538
City judges ..... Ch. 219
Commissioner of Campaign Finances and Practices
appropriation ..... HB 145
salary ..... Ch. 461
Contributions, political
income tax deductions ..... Ch. 158
school district trustees, exempt from reporting requirement ..... Ch. 23
simplification of report forms ..... HJR 79
Criminal provisions regarding—general revision, repeal, and recodification ..... Ch. 334
Initiative and referendum
petition verification ..... Ch. 477
revision generally ..... Ch. 342
Laws, study to be made ..... HJR 14
Legislators, candidacy for other office during term ..... Ch. 91, Ch. 358
Local government
municipal commissioners, election ..... Ch. 351
nonpartisan ..... Ch. 477
Nonpartisan elections ..... Ch. 477
Malmstrom Air Force Base, request for allowance of political campaigns on base ..... HJR 29
(The) Public Campaign Fund Act ..... Ch. 538
Public funding of campaigns for designated public offices ..... Ch. 538

HeinOnline -- 1977 vol. II 2198 1977

(Montana) Recall Act ..... Ch. 364
(Montana) Recall and Advisory Recall Act, amendments ..... Ch. 364
Revision generally ..... Ch. 334, Ch. 365
School trustees, exemption and exception from filing and finance laws ..... Ch. 23
Voter registration cancelled for failure to vote, notification requirement revised ..... Ch. 369

(STATE) ELECTRICAL BOARD
Termination ..... Ch. 562

(MONTANA) ELECTRONIC FUNDS TRANSFER ACT ..... Ch. 503

EMERGENCIES AND EMERGENCY SERVICES, See also **CIVIL DEFENSE**
Energy resource emergencies and supply alerts, procedures during ..... Ch. 577
Governor, energy emergency powers ..... Ch. 577

EMINENT DOMAIN
Expense of litigation defined ..... Ch. 48

EMPLOYMENT SECURITY DIVISION, See also **UNEMPLOYMENT COMPENSATION**
Appeal of decision of Board of Labor Appeals ..... Ch. 201
Appropriation ..... HB 145
Governmental payments to division, election of method ..... Ch. 165
Unemployment compensation fraud detection, quarterly report to legislative auditor ..... SJR 38

ENERGY, See also **COAL; OIL AND GAS; UTILITIES; WATERS AND WATER RIGHTS**
Arctic gas pipeline, distribution point in Montana and construction along inland route through Montana urged ..... SJR 17
Conservation
appropriation ..... HB 144
great falls gas company commended for homeowner help ..... HJR 24
rules applicable to state building code ..... Ch. 173
school districts to implement programs ..... HJR 75
speed limit of 65 m.p.h. established ..... Ch. 122
weatherization programs expanded ..... Ch. 583
Dams in Montana, power to Montanans first ..... HJR 19
Emergency procedures ..... Ch. 577
Fort Peck Project, support for additional hydroelectric generation capacity ..... SJR 24
Governor, emergency powers ..... Ch. 577
Legislative energy policy committee ..... Ch. 577
Nonfossil energy systems, tax incentive ..... Ch. 574
(Legislative Energy) Policy Committee ..... Ch. 577
Poplar River Power Project, position statement ..... HJR 48
Renewable resource development program, See **RENEWABLE RESOURCE DEVELOPMENT**
Resource emergencies, procedures during ..... Ch. 577
Solid waste recovery for energy production ..... Ch. 575
Supply alerts, procedures during ..... Ch. 577
Tax incentives ..... Ch. 574, Ch. 576
Vehicles procured by state, energy efficiency as a prime consideration ..... HJR 60
Weatherization programs expanded ..... Ch. 583
Wheat and barley, research on conversion to alcohol ..... SJR 42

(PROFESSIONAL) ENGINEERS AND LAND SURVEYORS, BOARD OF
Quorum, fees, and registration revisions ..... Ch. 317
Termination ..... Ch. 562

ENVIRONMENTAL PROTECTION
Geophysical exploration—shot holes, plugging and reclamation requirements ..... Ch. 272

Hard-rock mining reclamation, operating permit
applications....Ch. 427
Impact statements
fees for....Ch. 117
state agencies required to make and contents....SJR 14
Nuclear wastes
storage, treatment, and disposal—revision of control....Ch. 542
storage in Montana unlawful....Ch. 68
Off road vehicles, position on closure of public lands
to....SR 6
Reclamation of mining lands
coal conservation act, conversion of 1-year operating
permits....Ch. 352
federal coal strip mine reclamation legislation
supported....HJR 40
hard-rock mining act
distribution of moneys collected from....Ch. 29
operating permit applications, time to act on
extended....Ch. 427
(Montana) strip and underground mine reclamation act
conversion of 1-year operating permits....Ch. 352
Revision generally....Ch. 140

ENVIRONMENTAL QUALITY COUNCIL
Appropriations....HB 143, HB 145
Environmental impact statements, preparation costs
minimized....SJR 14
Vacancies, how filled....Ch. 204

ENVIRONMENTAL SCIENCES DIVISION
Legislative evaluation....SJR 46

ESTATES AND PROBATE PROCEEDINGS
Homestead allowance, uniformity in and title problems
remedied....Ch. 153
Incapacitated persons
appointment of counsel to determine incapacity and need for
guardian....Ch. 222
definition amended....Ch. 514
Joint tenancy
estate distribution when tenants die within 120 hours of
each other....Ch. 75
inheritance tax laws, revision and update....Ch. 490
termination of interests....Ch. 409
Personal representatives
alien heirs, duties in estates involving....Ch. 370
priority of persons seeking appointment as, court appointment
when agreement cannot be reached....Ch. 223
Taxation, See **TAXATION**, Inheritance tax

ETHICS
Public officers and employees....Ch. 569

EVIDENCE
Professional standards committee, evidential privilege....Ch. 267
Sexual intercourse without consent, videotape testimony of
victim allowed....Ch. 384

EXAMINERS, BOARD OF
Appropriation....HB 554
Court judgment against state, appropriation to satisfy....HB 554
Personnel hired by, provision deleted....Ch. 343
Revision generally....Ch. 343

EXECUTION, WRIT OF
Bond required for service when sheriff's costs
substantial....Ch. 426

HeinOnline -- 1977 vol. II 2200 1977

EXPRESS COMPANIES, See **TAXATION**

F

FEDERAL-STATE COORDINATOR
Office repealed ..... Ch. 114

FINANCE CHARGES, See **INTEREST**

FINANCE COMPANIES
Revision generally ..... Ch. 71

FINANCIAL INSTITUTIONS
Taxation, alternative methods
legislative revenue oversight committee study ..... Ch. 458
legislative study ..... HJR 99

FIRE MARSHAL BUREAU
Advisory Council, creation ..... Ch. 519
Revision generally ..... Ch. 519
Transfer to department of justice ..... Ch. 519

FIREARMS
Concealed weapon, carrying ..... Ch. 411
Confiscation and registration, opposition ..... HJR 27
Identity, obscuring unlawful ..... Ch. 167

FIRES AND FIRE PROTECTION
Appropriation ..... HB 145
Arson, notice to arson bureau of release of person
convicted of ..... Ch. 206
Compilation and publishing of statutes regarding ..... Ch. 522
Fire districts, land transferred to cities by annexation as
a detraction procedure ..... Ch. 81
Fire services training school, creation ..... Ch. 104, HB 145
Fire wardens, clarification of statutes ..... Ch. 397
Firemen
minimum wage statute renumbered ..... Ch. 448
overtime compensation provided ..... Ch. 448
retirement, See **RETIREMENT SYSTEMS**
Forest fire protection
expanded ..... Ch. 397
full federal funding requested ..... SR 8, HR 3
tax assessments, disposition of funds ..... Ch. 110
Open fire permits ..... HJR 7
Pamphlet compiled and published of statutes regarding ..... Ch. 522
Smoke detectors, use and maintenance ..... HJR 9
State-owned buildings, protection for ..... Ch. 481
Suppression of fires, sovereign immunity continued ..... Ch. 73
Tax assessments, disposition of funds ..... Ch. 110
Training school, creation ..... Ch. 104
Volunteer fire companies
certificate filing ..... Ch. 69
pension
increase ..... Ch. 58
payments, agency fund for ..... Ch. 95, Ch. 480

(STATE) FISH
Blackspotted cutthroat trout to be named state fish ..... Ch. 6

FISH AND GAME
Aircraft use by hunters prohibited ..... Ch. 485
Appropriations ..... HB 144, HB 836

Bird or animal calls, recorded or amplified—use prohibited in taking of wildlife....Ch. 196
Bobcat reclassified as fur-bearing animal....Ch. 235
Branding of wild animals....Ch. 10
Charles M. Russell Game Range, importance of livestock to....SJR 41
Columbia Interstate Compact, repeal....Ch. 464
Coyote reduction by aerial hunting at Fort Peck Reservoir, endorsement....HJR 82
Dogs attacking hooved game animals, destruction....Ch. 400
Federal Fish and Wildlife Service requested not to designate new areas as grizzly bear habitat....HJR 68
Fishing access sites—portion of license fees for development, operation, and maintenance....Ch. 82
Game wardens, See Wardens
Grizzly bear habitat, federal fish and wildlife service requested not to designate new areas for....HJR 68
Helicopters, use to harass wildlife prohibited....Ch. 485
Locating game with aircraft, hunting same day prohibited....Ch. 485
Minors becoming 12 years old prior to September 15 of the hunting season, special permits for....Ch. 169
Penalty revisions....Ch. 465
Private land, hunting and fishing on....SJR 3
Revision generally....Ch. 9
Seasons and limits—input of local rod and gun clubs, landowners, and game wardens considered when set....HJR 15
Snare traps, use regulations....Ch. 149
Taxidermists, records requirements....Ch. 129
Wardens
retirement, See **RETIREMENT SYSTEMS**
seasons and limits, setting—consideration of input by....HJR 15
Wild Horse Island, appropriation for acquisition....HB 836

FISH AND GAME, DEPARTMENT OF
Appropriations....HB 143, HB 144, HB 145, HB 836
Director
department head....Ch. 417
gubernatorial appointment....Ch. 417
qualifications, change in....Ch. 417
seasons and limits—input of local rod and gun clubs, landowners, and game wardens considered when setting....HJR 15
Employees, grievance procedure....Ch. 417
Environmental impact statements, preparation costs minimized....SJR 14
Historic preservation program, administrative duties transferred from....Ch. 440
(Montana) Outfitters Council, termination....Ch. 562

FISH AND GAME COMMISSION
Functions, reallocation....Ch. 417
Name changed....Ch. 417
Powers stated....Ch. 417
Seasons and limits—input of local rod and gun clubs, landowners, and game wardens considered when setting....HJR 15

FLOODPLAINS AND FLOODWAYS, See WATERS AND WATER RIGHTS

FOOTBALL
Montana State University "Bobcats" honored....SJR 25

FORENSIC SCIENCE, DIVISION OF
Creation....Ch. 530

(MONTANA) FORENSIC SCIENCE SYSTEM ACT....Ch. 530

FORESTS AND FORESTRY
Coniferous trees transportation, bill of sale requirements—
repeal....Ch. 464
Federal timber agencies requested to increase timber sales
on over-mature timber stands....HJR 78
Fire protection
expanded....Ch. 397
full federal funding requested....SR 8, HR 3
tax assessments, disposition of funds....Ch. 110
Lien for driving logs, repeal....Ch. 464
Sale of timber
federal agencies requested to increase sales on over-mature
timber stands....HJR 78
state, emergency advertising provisions....Ch. 301
Taxation, See **TAXATION**, Timber
Unemployed Montanans, work program....HJR 47
Western States Forestry Task Force, delegates to attend....SJR 23
Wilderness proposals, congress requested to hold field
hearings....HJR 78

FORT PECK PROJECT, See **WATERS AND WATER RIGHTS**

FORT UNION TRADING POST
Reconstruction....HJR 83

FRATERNAL BENEFIT SOCIETIES
Property tax exemption....Ch. 491

FRAUD, See also **CRIMES AND CRIMINAL PROCEDURE**
Sound recordings, live performances, and transfer of recorded
sound without permission....Ch. 367
Unemployment compensation fraud....Ch. 240
Welfare fraud as theft....Ch. 273

FREE ENTERPRISE
Support urged....HJR 55

FREIGHT LINE COMPANIES, See **TAXATION**

G

GALEN STATE HOSPITAL
Appropriations....HB 144, HB 145
Residents, provision for payment for care....Ch. 450

GALLATIN COUNTY
Boundary change....Ch. 447

GAMBLING
Revision generally....Ch. 508

GAME WARDENS
Retirement, See **RETIREMENT SYSTEMS**
Seasons and limits, consideration of wardens' input when
setting....HJR 15

GARBAGE COLLECTION, See **SOLID WASTE MANAGEMENT**

GASOLINE
Distillates, sale on other than gross volume unlawful....Ch. 274
Manufacture and distribution of petroleum products, standards
and regulations....Ch. 77
Taxation, See **TAXATION**

GENERAL APPROPRIATIONS ACT OF 1977....HB 145

HeinOnline -- 1977 vol. II 2203 1977

GEOPHYSICAL EXPLORATION
Shot holes, plugging and reclamation requirements....Ch. 272

GLENDIVE NURSING HOME
Capital projects....HB 144

(MONTANA STATE) GOLDEN YEARS PASS....Ch. 415

GOVERNOR
Appropriations for office....HB 143, HB 144, HB 145
Energy emergency powers....Ch. 577
Federal-state coordinator, office repealed....Ch. 114
Fish and Game, Department of—department head to be director appointed by....Ch. 417
Handicapped children requiring special care and services, leadership provided for interagency cooperation....HJR 72
Salary....Ch. 461
Utilities, accident report requirement deleted....Ch. 472

GRAIN, See **AGRICULTURE**

GREAT FALLS GAS COMPANY
Commendation for energy conservation measures....HJR 24

GRIZZLY BEARS
Habitat, Federal Fish and Wildlife Service requested not to designate new areas for....HJR 68

GROCERY STORES
Retail license, failure to make timely application for renewal....Ch. 419

H

HAIL INSURANCE, STATE BOARD OF
State Treasurer's membership transferred to State Auditor....Ch. 468
Termination....Ch. 562

HANDICAPPED PERSONS
Income tax exemption for handicapped children....Ch. 500
Minors, leadership for interagency cooperation to meet needs of....HJR 72
Parking, special permit....Ch. 31
Sheltered workshops, state procurement of products and services....Ch. 547

HARD-ROCK MINING ACT, See **MINES AND MINING**

HAZARDOUS WASTES
Storage, treatment, and disposal—revision of control....Ch. 542
Storage in Montana unlawful....Ch. 68

HEALTH, EDUCATION, AND WELFARE—DEPARTMENT OF
Medicaid, request for system to be more responsive to individual needs....HJR 74

HEALTH AND ENVIRONMENTAL SCIENCES, BOARD OF
Safe drinking water standards established by....Ch. 556
Solid waste management, authority....Ch. 575
Stream classification, authorization to change....Ch. 444
Uranium, solution extraction—adoption of rules....Ch. 543
Veterinarian to be member....Ch. 524

HEALTH AND ENVIRONMENTAL SCIENCES, DEPARTMENT OF
Air pollution concentrations in specific areas, study to be made....HB 250

HeinOnline -- 1977 vol. II 2204 1977

Appropriations ..... HB 145, HB 250
Birth certificate, issuance of substitute ..... Ch. 162
Director, statutory qualifications removed ..... Ch. 326
Environmental impact statements, preparation costs minimized ..... SJR 14
Environmental Sciences Division, legislative evaluation ..... SJR 46
Health Services Division, legislative evaluation ..... SJR 46
Home health agencies, licensing and regulation ..... Ch. 383
Hospital and Medical Facilities Division, legislative evaluation ..... SJR 46
Injunctions, actions when public health laws are violated ..... Ch. 288
Laboratory services, fees for ..... Ch. 288
Local government planning fund created for resource recovery program ..... Ch. 575
Motor vehicle wrecking facilities and graveyards
revision generally ..... Ch. 251, Ch. 252
screening ..... Ch. 252
Pollution, enforcement of laws against persons resident in canada or not found in Montana ..... Ch. 308
Powers and duties ..... Ch. 288
Public water supply provisions, administration and enforcement ..... Ch. 556
Solid waste management
authority ..... Ch. 542, Ch. 575
grant fund ..... Ch. 575
Subdivisions, inspection and monitoring of water supply and sewage disposal systems ..... Ch. 557
Water and Waste Water Operators, Board of—termination ..... Ch. 562

HEALTH AND SAFETY
Abortion, counselors and counseling services—repeal ..... Ch. 42
Asbestos-containing spray materials, use in construction prohibited ..... Ch. 570
Demolition of buildings containing asbestos insulation or fireproofing, procedures ..... Ch. 570
Fibrated product or compound, procedure for use ..... Ch. 570
Home health agencies, licensing and regulation ..... Ch. 383
OSHA, review urged ..... HJR 25
Pollution, See **POLLUTION**
Public water supply provisions, administration and enforcement ..... Ch. 556
Railroads
cabooses, spotlight required ..... Ch. 32
highway crossing safety improvements, congress requested to release funds for ..... HJR 64
Revision generally ..... Ch. 187
Saccharin ban, protest ..... HJR 92
Shot holes, plugging and reclamation requirements ..... Ch. 272
Smoke detectors, use and maintenance ..... HJR 9
Subdivisions, water supply and sewage disposal systems—revision generally ..... Ch. 557
Water quality
drinking water standards, establishment and enforcement ..... Ch. 556
stream reclassification ..... Ch. 444

HEALTH CARE PROFESSIONALS
Ambulance services, clarification of definition of "patient" ..... Ch. 86
Malpractice actions, See **MALPRACTICE**
Medicaid, See **MEDICAID**
Professional standards committees, member's liability and evidential privilege ..... Ch. 267

HEALTH SERVICES DIVISION
Legislative evaluation....SJR 46

HEARING AID DISPENSERS, BOARD OF
Termination....Ch. 562

HEATING, VENTILATION, AND AIR CONDITIONING
Bond requirements eliminated....Ch. 541

(WARM AIR) HEATING, VENTILATION, AND AIR CONDITIONING, BOARD OF
Termination....Ch. 562

HELICOPTERS
Use to harass wildlife prohibited....Ch. 485

HIGHER EDUCATION, COMMISSIONER OF
Appropriations....HB 143, HB 145

HIGHWAY COMMISSION
Harrison Avenue interchange in Butte, cooperation in correcting hazardous conditions at....HJR 61
Membership requirements changed....Ch. 186

HIGHWAY PATROL, See also **PEACE OFFICERS**
Carriers, enforcement of commodities restrictions....Ch. 280
Retirement, See **RETIREMENT SYSTEMS**
Subpoenas, reimbursement for time spent in answering....Ch. 221
Traffic violations, liability for bad check issued as bond for....Ch. 295

HIGHWAYS
Appropriation....HB 144
"Axle" defined....Ch. 269
Bridge replacement, funding for....Ch. 78
Carriers, enforcement of commodities restrictions....Ch. 280
Construction of Highway 93, recognition of need....HJR 10
Driving on, See **MOTOR VEHICLES; TRAFFIC OFFENSES**
Ekalaka-Alzada Road, completion of paving....HJR 76
Harrison Avenue Interchange in Butte, correction of hazardous conditions....HJR 61
Junkyards along roads, screening for....Ch. 252
Maintenance system and funding established for public highways....Ch. 390
Oil and gas royalties, federal—reduction of deposit from....Ch. 357
Public highways, state maintenance system and funds for....Ch. 390
Rail-highway grade crossing safety improvements, congress requested to release funds for....HJR 64
Right-of-way, authorization and review of local public works projects on....Ch. 283
State highways, maintenance responsibility and funds for....Ch. 390
Traffic offenses, See **TRAFFIC OFFENSES**

HIGHWAYS, DEPARTMENT OF
Appropriations....HB 144, HB 145
Carriers, enforcement of commodities restrictions....Ch. 280
Director, relocation assistance applications reviewed by....Ch. 143
Ekalaka-Alzada Road, completion of paving—exploration of means available....HJR 76
Environmental impact statements, preparation costs minimized....SJR 14
Highway 93 construction, recognition of need....HJR 10
Local public works projects on state right-of-way, review....Ch. 283

HeinOnline -- 1977 vol. II 2206 1977

Maintenance responsibilities and agreements with local governments ..... Ch. 390
State construction funds to match federal-aid off-system road funds ..... Ch. 79
Weigh scales operation, request to avoid discrimination against localities ..... HJR 67

HISTORICAL SITES AND OBJECTS
Big Hole National Battlefield, jurisdiction ..... Ch. 125
Fort Union Trading Post reconstruction ..... HJR 83
Historic preservation program, Historical Society to assume administrative duties ..... Ch. 440
Russell, Charles M.—acquisition of painting ..... SR 7, HB 826

(MONTANA) HISTORICAL SOCIETY
Appropriations ..... HB 143, HB 145, HB 826
Board of trustees, membership ..... Ch. 520
Historic preservation program, society to assume administrative duties ..... Ch. 440
Historic records network, creation ..... Ch. 366
Legislative study on preservation of Montana's historic and cultural record ..... HJR 18
Records retention and destruction ..... Ch. 441
Russell, Charles M.—painting
acquisition, restoration, and protection ..... HB 826
bank account for donations to purchase, establishment ..... SR 7

HOLIDAYS
Law Day, tribute to ..... HJR 93

(STATE FUNDED) HOMESTEAD TAX RELIEF ACT
Amendments ..... Ch. 457
Appropriation ..... HB 828

HOMESTEADS
Estates, uniformity in and title problems in homestead allowance remedied ..... Ch. 153

HORSE RACING, BOARD OF
License fees revision ..... Ch. 533
Relicensure applications denied for violation of laws ..... Ch. 306
Termination ..... Ch. 562

HORSES AND HORSE RACING
Licensees, payment to Montana-bred winners ..... Ch. 306
Relicensure applications denied for violation of laws ..... Ch. 306

HOSPITAL AND MEDICAL FACILITIES DIVISION
Legislative evaluation ..... SJR 46

HOSPITALS AND RELATED FACILITIES
County, funding by voted bond issues ..... Ch. 513
County property, lease for ..... Ch. 80

HOTELS AND LODGING ESTABLISHMENTS
Liability for losses or injuries to personal property ..... Ch. 14
Nursing service on full-time basis prohibited ..... Ch. 325
Rooming houses
definition clarified ..... Ch. 325
nursing service on full-time basis prohibited ..... Ch. 325

HOUSEWIVES AND MOTHERS
Battered spouses ..... HJR 103
Commendation ..... HJR 38
Displaced homemaker pilot programs ..... Ch. 506

HOUSING
Discrimination, clarification of specific statute regarding ..... Ch. 35

HeinOnline -- 1977 vol. II 2207 1977

Energy conservation, See **ENERGY**
Investment of state funds to promote ..... SJR 2
Low-income subsidized, manager exempt from real estate license act of 1963 ..... Ch. 385
Smoke detectors, use and maintenance ..... HJR 9
Subdivisions, See **SUBDIVISIONS**
Trust funds, investment in to promote ..... SJR 2

HOUSING, BOARD OF
Administration transferred ..... Ch. 163
Appropriation ..... HB 145

HUMAN RIGHTS, See **CONSTITUTIONAL RIGHTS; DISCRIMINATION; RIGHTS**

HUMAN RIGHTS, COMMISSION FOR
Correction of erroneous reference ..... Ch. 35
Termination ..... Ch. 562

HUMAN RIGHTS DIVISION
Appropriation ..... HB 145
Legislative evaluation ..... SJR 46

HUMAN SERVICES, See also **SOCIAL AND REHABILITATION SERVICES, DEPARTMENT OF**
Agencies, legislative evaluation ..... SJR 46
Delivery system, legislative study ..... HJR 88

HUNTING AND FISHING, See **FISH AND GAME**

HUSBAND AND WIFE
Battered spouses, legislative study ..... HJR 103
Revision generally ..... Ch. 33

I

IDENTIFICATION
Firearms, obscuring unlawful ..... Ch. 167

IMMUNITY FROM SUIT, See **SOVEREIGN IMMUNITY**

IMPRISONMENT, See **CORRECTIONS**

INDIAN AFFAIRS, STATE COORDINATOR OF
Human service functions, legislative evaluation ..... SJR 46

INDIANS
Day care facility license applications by ..... Ch. 293
Jurisdiction of state over non-Indians on Indian reservations, congressional legislation requested for ..... SJR 35
Jurisdiction oversight committee and legal jurisdiction project ..... HB 145
Law enforcement on reservations, request for increase ..... SJR 35
Religious practices, culture, and traditions—preservation and perpetuation ..... HJR 32
Representation on boards and agencies, increase ..... HJR 36
Tongue and Powder River Basins, water projects feasibility study ..... HJR 22

INITIATIVE AND REFERENDUM
General revision ..... Ch. 342
Local government, provisions for ..... Ch. 477
Petition verification ..... Ch. 477

INJUNCTION
Class action, injunctive relief ..... Ch. 170

HeinOnline -- 1977 vol. II 2208 1977

Livestock, Department of—injunctive relief permitted to fulfill its duties ..... Ch. 190
Public health law violations ..... Ch. 288

INSECTS AND INSECT CONTROL, See **PESTS AND PESTICIDES**

(STATE) INSTITUTIONS, See also specific institution
Appropriation ..... HB 144
Disposition of former institutions ..... Ch. 410
Residents, provision for payment for care ..... Ch. 450
Revision generally ..... Ch. 37
Sheltered workshops, state procurement of products and services ..... Ch. 547

INSTITUTIONS, BOARD OF
Human service functions, legislative evaluation ..... SJR 46
Teachers, exempt from state classification and pay plan ..... Ch. 565
Termination ..... Ch. 562

INSTITUTIONS, DEPARTMENT OF
Adaptive Services Division, legislative evaluation ..... SJR 46
Aftercare agreement for youth, revision of hearings on alleged violations ..... Ch. 231
Alcoholism treatment, funding ..... Ch. 414
Appropriations ..... HB 143, HB 144, HB 145
Clothing purchases, exempt from bid requirement ..... Ch. 230
Corrections Division, legislative evaluation ..... SJR 46
Criminal defendant lacking fitness to be tried, department to select institution for treatment ..... Ch. 568

INSURANCE
Agents or solicitors
consultant's examination fee ..... Ch. 146
favored agent practices, revision ..... Ch. 320
nonresident agents' license fee ..... Ch. 322
Capital and surplus requirements of companies doing business in the state ..... Ch. 319
Catastrophic illness, study of insurance program ..... HJR 66
Central credit unions, exemption of insurance on share accounts ..... Ch. 111
Companies, insolvent or liquidated—distribution of assets ..... Ch. 200
Consultants, See Agents or solicitors
Enforcement procedures and penalties ..... Ch. 320
Fictitious group provisions, exemption for workers' compensation ..... Ch. 292
Foreign firms, bulk reinsurance—approval by commissioner ..... Ch. 303
Governmental entities
public employees ..... Ch. 563
retirees and families ..... Ch. 214, Ch. 259
self-insurance ..... Ch. 360, HB 145
Independently procured coverages, increase of premium tax ..... Ch. 147
Insurers
rates to be filed with commissioner ..... Ch. 469
retention of cancellation notices, reasons, or intention not to renew—time period ..... Ch. 469
Life insurance group policies, dependent's coverage revised ..... Ch. 215
Medical liability, joint underwriting association established for ..... Ch. 246
Premium tax increased on independently procured coverages ..... Ch. 147
Professional liability
information required of companies by commissioner ..... Ch. 212

HeinOnline -- 1977 vol. II 2209 1977

joint underwriting association established ..... Ch. 246
provision by mutual, stock, or reciprocal insurance companies ..... Ch. 119
Public employees ..... Ch. 563
retirees ..... Ch. 214, Ch. 259
Solicitors, See Agents or solicitors
Title insurance, mandatory reserve and amortization method ..... Ch. 96
Unfair claim settlement, revision ..... Ch. 320
Workers' Compensation, See **WORKERS' COMPENSATION**

INSURANCE, DEPARTMENT OF
Termination ..... Ch. 562

INSURANCE COMMISSIONER
Certificate under seal, fee increase ..... Ch. 322
Enforcement procedures ..... Ch. 320
Foreign insurer, bulk reinsurance—approval required ..... Ch. 303
Insurers' rates to be filed with ..... Ch. 469
Professional liability insurance information and statistics supplied to ..... Ch. 212
Service of process fees increased ..... Ch. 321
Termination of office ..... Ch. 562

INTEREST, See also **LOANS**
Retail installment sales, revision of interest and penalties ..... Ch. 284
Taxes paid under protest, recovery of interest ..... Ch. 394

INTERSTATE AGREEMENT ON QUALIFICATION OF EDUCATIONAL PERSONNEL ..... Ch. 328

INTOXICATING SUBSTANCES, See **ALCOHOLIC BEVERAGES; DRUGS**

INTOXICATION, See also **ALCOHOLISM**
Driving while under the influence of alcohol or drugs
imprisonment mandatory ..... Ch. 289
penalty revisions ..... Ch. 430
sentence not deferrable ..... Ch. 436
Minors, jurisdiction of courts for alcoholic beverage violations committed by ..... Ch. 446

INVESTMENTS
Coal trust funds, See **TAXATION**
Common trust funds, establishment for collective investment ..... Ch. 271
Investment securities—transfer, holding, and deposit ..... Ch. 278
Mortgages in Montana, investment in ..... Ch. 316
Public funds, security for deposits ..... Ch. 92
Registration fees for broker-dealers, advisors, and salesmen—revision ..... Ch. 242
Salesman's residency requirement, waiver ..... Ch. 275
Securities registered for nonissuer transactions, clarification ..... Ch. 150
Trust funds, study on investment of ..... SJR 2

INVESTMENTS, BOARD OF
Mortgages, revision of purchase qualifications ..... Ch. 316
Real property title transfer, authority for execution of deeds ..... Ch. 203

INVESTMENTS COMMISSIONER
Registration fees, retention ..... Ch. 242
Salesman's residency requirement, waiver ..... Ch. 275
Termination of office ..... Ch. 562

HeinOnline -- 1977 vol. II 2210 1977

IRRIGATION, See also **WATERS AND WATER RIGHTS**
District
commissioners, election date changed....Ch. 302
property taxation exemption....Ch. 492
sale or assignment by water owner of water in excess of needs, provision deleted....Ch. 314
Lands under single ownership or leased from state, congress requested to raise general limitation on irrigation....HJR 26
Tax incentives broadened to include any system....Ch. 123

J

JOINT RESOLUTIONS, See **RESOLUTIONS**; specific subject matter

JOINT TENANCY
Distribution of estate when tenants die within 120 hours of each other....Ch. 75
Inheritance tax laws, revision and update....Ch. 490
Termination of interests....Ch. 409

JUDGES AND JUSTICES
City judges—election, qualification, and vacancy in office....Ch. 219
Election
ballot placement....Ch. 116
city judges....Ch. 219
Justices of the Peace, solemnization of marriage by....Ch. 33
Municipal court judges, general revision....Ch. 429
Retirement system, See **RETIREMENT SYSTEMS**
Revision generally....Ch. 344
Salaries....Ch. 461
Sentencing
death penalty, hearing to determine circumstances for....Ch. 338
district judges, parole or furlough disallowed for felony convictions....Ch. 580
U.S. District Judges, advisory recall procedures removed....Ch. 364

JUDICIAL DISTRICTS
Creation of new districts, alteration of boundaries, and number of judges changed....Ch. 517

JUDICIARY, See also **JUDGES AND JUSTICES**; specific court
Appropriation....HB 145
Law Day, tribute to....HJR 93
Revision generally....Ch. 344

JUSTICE, DEPARTMENT OF
Appropriations....Ch. 530, HB 143, HB 144, HB 145
Driver rehabilitation program....Ch. 526
Fire Marshal Bureau transferred to....Ch. 519
Fire protection, compilation and publication of pamphlet of statutes regarding....Ch. 522
Forensic Science, Division of—created....Ch. 530
(Montana) Forensic Science System Act....Ch. 530
Laboratory of criminalistics, provision for....Ch. 530
Subpoenas, bill to person or organization requesting issuance for reimbursement of patrolman's time....Ch. 221

JUSTICES' COURTS
Costs in criminal actions withheld regardless of finding of court or sentence imposed....Ch. 207
Fees in civil actions increased....Ch. 154
Jurisdiction

minors, violations by ..... Ch. 446
motor carriers, penalty for violations to conform with ..... Ch. 282
Motor carriers, penalty for violations to conform with jurisdiction of court ..... Ch. 282
Preliminary hearings, court cost withheld ..... Ch. 207
Small claims procedures, creation within ..... Ch. 572
Unlawful detainer actions, procedures revised ..... Ch. 166

JUSTICES OF THE PEACE
Marriages, solemnization by ..... Ch. 33

JUVENILES, See **MINORS**

L

LABOR AND EMPLOYMENT
Aliens
employment prohibited without authorization, penalty ..... Ch. 56
illegal, unemployment compensation benefits denied ..... Ch. 428
Apprenticeships, increase urged ..... HJR 52
Arbitrators and fact finders, training for ..... Ch. 57
Child labor laws, legislative study ..... SJR 40
Occupational Disease Act of Montana, revision generally ..... Ch. 208
OSHA, review urged ..... HJR 25
Public works projects ..... HJR 47
Sheltered workshops, state procurement of products and services ..... Ch. 547
Unemployed Montanans, work programs ..... HJR 47
Unemployment compensation, See **UNEMPLOYMENT COMPENSATION**
Vocational rehabilitation, revision generally ..... Ch. 37
Wages, See **WAGES**
Workers' Compensation, See **WORKERS' COMPENSATION**

LABOR AND INDUSTRY, DEPARTMENT OF
Appropriations ..... Ch. 506, HB 143, HB 145
Displaced homemakers pilot program ..... Ch. 506
Fact finders and arbitrators, training for ..... Ch. 57
Human Rights, Commission for
correction of erroneous reference ..... Ch. 35
termination ..... Ch. 562
Human Rights Division, legislative evaluation ..... SJR 46
Women's Bureau, legislative evaluation ..... SJR 46

LABOR APPEALS, BOARD OF
Decision of
appeal ..... Ch. 201
time period to appeal ..... Ch. 24, Ch. 201

LABOR STANDARDS DIVISION
Appropriation ..... HB 145

LAND COMMISSIONERS, BOARD OF
Agricultural and grazing leases, renewal for less than 10-year terms ..... Ch. 304
Prison, state—transfer of old site ..... HJR 65
State lands, lease to highest bidder and exceptions ..... Ch. 311

LAND USE PLANNING
Airport influence areas ..... Ch. 551
(Montana) Economic Land Development Act, revision and clarification ..... Ch. 582
Subdivisions, See **SUBDIVISIONS**

HeinOnline -- 1977 vol. II 2212 1977

LANDLORD AND TENANT
(Montana) Residential Landlord and Tenant Act of 1977 ..... Ch. 313
Security deposit, cleaning expense deduction and deletion of list of damage verification requirements ..... Ch. 297
Unlawful detainer, justice court trial procedures revised ..... Ch. 166

LANDSCAPE ARCHITECTS, BOARD OF
Termination ..... Ch. 562

LAW
Revision generally ..... Ch. 309

LAW CLERKS
Study of use of clerks and secretaries prior to creation of new judgeships ..... HJR 3

LAW DAY
Tribute to ..... HJR 93

(STATE) LAW LIBRARY
Appropriations ..... HB 143, HB 145
Revision and modernization of laws ..... Ch. 142

LEGAL JURISDICTION OVERSIGHT COMMITTEE
Created ..... HB 145

LEGISLATIVE AUDIT COMMITTEE
Agencies, legislative review responsibilities ..... Ch. 562

LEGISLATIVE AUDITOR
Appropriation ..... HB 145
Special education programs, annual audit ..... HJR 105
Unemployment compensation fraud detection, quarterly report to ..... SJR 38

LEGISLATIVE COUNCIL
Appropriations ..... HB 1, HB 55, HB 64, HB 145, HB 160, HB 693, HB 842
Coal tax oversight committee, funds to be reappropriated from coal board ..... HB 55
Constitutional Convention proceedings, editing and publication
appropriation ..... HB 160
committee to supervise, appointment ..... Ch. 373
National Conference of State Legislatures, funds for payment of dues ..... HB 693
Operating expenses and publication costs, appropriation ..... HB 1
R.C.M. 1947, copyright purchase appropriation ..... HB 64

LEGISLATIVE ENERGY POLICY COMMITTEE
Created ..... Ch. 577

LEGISLATIVE FISCAL ANALYST
Appropriation ..... HB 145

LEGISLATIVE HISTORY ACT ..... Ch. 560

LEGISLATIVE REVENUE OVERSIGHT COMMITTEE
Appropriation ..... HB 842
Creation and functions ..... Ch. 458

LEGISLATURE
Administrative rules to conform to legislative intent, documentation ..... Ch. 560
Agency review by ..... Ch. 562, SJR 46
Alcoholic beverages, age for consumption or possession established by ..... Ch. 459
Appropriations ..... HB 1, HB 145, HB 295, HB 838
Bar admission, disapproval of supreme court rules ..... Ch. 420

HeinOnline -- 1977 vol. II 2213 1977

Bills
engrossing error in Sec. 7, Ch. 310 corrected....Ch. 573
introduction controlled, interim study of feasibility....SJR 45
Campaign funds, public—designation of offices to receive....Ch. 538
Code of ethics....Ch. 569
Elected officers....Ch. 88
Employees, salaries....SR 2, SR 11, HJR 6, HR 5
Energy Policy Committee, creation....Ch. 577
Ethics code....Ch. 569
Facilities for hearing rooms and offices....HJR 8
House of Representatives
officers and employees, employment for completion of session business and special session....HR 5
rules to govern proceedings, adoption....HR 1
Interim committees established
budget amendments, approval....Ch. 392
energy policy....Ch. 577
legal jurisdiction....HB 145
revenue oversight....Ch. 458
Interim studies
agriculture, investment of coal trust funds to give young farmers a start....SJR 44
appropriation....HB 842
banks, taxation....HJR 99
battered spouses....HJR 103
bill introduction control, feasibility....SJR 45
budgeting and spending, economy and reform....HJR 85
business, investment of coal trust funds to give young people a start....SJR 44
child labor laws....SJR 40
community college districts....SJR 11
crime victims, compensation for....SJR 19
election laws....HJR 14
financial institutions, alternative methods of taxation....HJR 99
fish and game, hunting and fishing on private land....SJR 3
forest land taxation....SJR 29
historic and cultural record of Montana, preservation....HJR 18
housing, promotion by investment of trust funds....SJR 2
human service agencies, evaluation....SJR 46
human services delivery system....HJR 88
investment of trust funds....SJR 2
legal services in executive branch....HJR 59
legislative oversight and policy development....HJR 85
livestock movement and marketing....HJR 91
local government code....SJR 39
mental health facilities, certificate of need requirement....HJR 95
potash, mining regulation....HJR 71
property tax classification system....HJR 98
school districts, intermediate....HJR 84
sentencing, criminal code provisions....SJR 28
subdivisions....SJR 43
timber yield tax....SJR 29
vocational education, governance....HJR 100
water rights....HJR 81
Journals, unpublished—appropriation....HB 295
Jurisdictional oversight committee....HB 145
Legislative intent, documentation that administrative rules conform....Ch. 560
Members
administrative rules approved by mail ballot during interim....Ch. 561
candidacy for other office during term....Ch. 91, Ch. 358

HeinOnline -- 1977 vol. II 2214 1977

compensation and expenses ..... Ch. 103
ethics, implementation of constitutional provisions ..... Ch. 569
resignation to seek other office ..... Ch. 358
retirement systems, public—continued participation ..... Ch. 333
vacancies, how filled ..... Ch. 198
Operating expenses, appropriations ..... HB 1, HB 838
Public Service Commission, revision of appropriation ..... Ch. 137
Revenue Oversight Committee
appropriation ..... HB 842
creation and functions ..... Ch. 458
Revision generally ..... Ch. 309
Rules to govern proceedings
house of representatives ..... HR 1
joint ..... SJR 1
senate ..... SR 1
Salaries of officers and employees ..... SR 2, SR 11, HJR 6, HR 5
Senate
officers and employees, employment for completion of session
business and special session ..... SR 11
rules to govern proceedings, adoption ..... SR 1
Vacancies, how filled ..... Ch. 198
Water projects, approval required for abandonment ..... Ch. 253
Western States Forestry Task Force, delegates to attend ..... SJR 23

LIBRARIES
(State) Law Library, revision and modernization of laws ..... Ch. 142
Revision generally ..... Ch. 3

LIBRARY COMMISSION
Appropriation ..... HB 143, HB 145

LICENSE PLATES, See **MOTOR VEHICLES**

LIENS, See also **ATTACHMENT**
Cement and gypsum producers' license tax, lien may be filed
if delinquent ..... Ch. 108
Driving logs, repeal ..... Ch. 464

LIEUTENANT GOVERNOR
Appropriations ..... HB 145, HB 502
Salary ..... Ch. 461

LIQUOR DIVISION
Administrative expenses, how payable ..... Ch. 398

LIVESTOCK
Auction market law
amendment ..... Ch. 44
clarification ..... Ch. 192
Beef labeling and inspection requirements requested ..... HJR 96
Brands
altered fraudulently, slaughter to determine ownership—
clarification ..... Ch. 15
imported livestock, brand inspection and fees ..... Ch. 41
inspection exemption changed ..... Ch. 482
recordal or transfer ..... Ch. 10
security agreements, fees for ..... Ch. 11
wild animals ..... Ch. 10
Buffalo, owners' liability for trespassing by ..... Ch. 199
Certificate of public convenience and necessity,
transfer ..... Ch. 192
Charles M. Russell Game Range, importance of livestock
to ..... SJR 41
Dealers, hearings on violations ..... Ch. 17
Grazing districts, authority clarified ..... Ch. 22
Imported livestock, brand inspection and fees ..... Ch. 41
Inspection

HeinOnline -- 1977 vol. II 2215 1977

brands....Ch. 41, Ch. 482
removal from market, inspection before and fee....Ch. 482
services at market, amendment....Ch. 44
Leases, agricultural and grazing—renewal for less than 10-year terms....Ch. 304
Marketing and movement, legislative study....HJR 91
(Montana) Rangeland Resources Act....Ch. 408
Release by Department of Livestock before removal from market....Ch. 482
Revision generally....Ch. 12
Sheep, per capita license fee increased....Ch. 261
Stock water impoundments or pits, construction....Ch. 470
Taxation, See **TAXATION**
Transportation permits for grazing across
county lines....Ch. 312
state lines....Ch. 41

LIVESTOCK, BOARD OF
Termination....Ch. 562

LIVESTOCK, DEPARTMENT OF
Appropriation....HB 143, HB 145
Brand security agreements, fees for....Ch. 11
Dealer violations, hearings....Ch. 17
Funding, additional provided by 1-mill levy on assessed value of all livestock....Ch. 120
Injunctive remedies permitted when fulfilling duties under marketing laws....Ch. 190
Investment of earmarked revenue funds....Ch. 16
Release by, before removal of livestock from market....Ch. 482

LOANS
Building and loan associations, foreign—revision of definition....Ch. 66
Consumer, revision generally....Ch. 71
Corporation income tax, interest on loans in real or personal property excluded....Ch. 247

LOCAL GOVERNMENT, See also **CITIES AND TOWNS; COUNTIES**
Airport influence areas—noise, height, and land use regulations developed....Ch. 551
Alcoholic beverages license fees, increase....Ch. 509
Alternative or consolidated forms of government....Ch. 477
Building codes, administrative functions consolidated....Ch. 504
Charter amendment....Ch. 477
Claims against
attorney fees....Ch. 188
clarification of statutes....Ch. 360
Coal severance tax allocation revised....Ch. 540
Commissioners, election....Ch. 351
Elections, nonpartisan....Ch. 477
Fire protection services, See **FIRES AND FIRE PROTECTION**
Floodplains and floodways, adoption of land-use regulations....Ch. 262
Highway maintenance, agreements with department of highways....Ch. 390
Highway right-of-way, authorization and review of public works projects on....Ch. 283
Immunity from suit....Ch. 73, Ch. 189, Ch. 234
Local government code, interim legislative study requested....SJR 39
Noxious plant management, financial assistance....Ch. 466
Revision generally....Ch. 477
School districts, approval required for lease of buildings and lands....Ch. 424
Self-insurance....Ch. 360

HeinOnline -- 1977 vol. II 2216 1977

Solid waste management ..... Ch. 575
Streets, roads, and alleys—assessment of costs to petitioners when discontinued ..... Ch. 72
Subdivisions, See **SUBDIVISIONS**
Urban renewal, financing of costs ..... Ch. 532
Voter review optional, constitutional amendment ..... Ch. 70

LONG-RANGE BUILDING PROGRAM ..... HB 144, HB 504

M

MAGNETOHYDRODYNAMIC ENERGY EXTRACTION
Federal funding requested ..... HJR 94

MAIL
Compliance orders regarding water pollution violations, service by ..... Ch. 444

(MONTANA) MAJOR FACILITY SITING ACT
Notice of intention, filing of application ..... Ch. 179

MALMSTROM AIR FORCE BASE
Political campaigns, congress requested to provide for conducting on base ..... HJR 29

MALPRACTICE
Architects, requirements revised ..... Ch. 544
Insurance
architects, requirements revised ..... Ch. 544
information required by commissioner of insurance ..... Ch. 212
joint underwriting association established ..... Ch. 246
provision by mutual, stock, or reciprocal insurance companies ..... Ch. 119
Legal, statute of limitations ..... Ch. 220
Medical
(Montana) medical malpractice panel act ..... Ch. 449
pretrial review panel, establishment ..... Ch. 449
trial and settlement procedure revised ..... Ch. 449

MARRIAGE, See also **DISSOLUTION OF MARRIAGE**
Invalidation clarified ..... Ch. 279
Justice of the peace or mayor, solemnization by ..... Ch. 33
Revision generally ..... Ch. 33

MASSAGE THERAPISTS, BOARD OF
Termination ..... Ch. 562

MAUSOLEUMS AND COLUMBARIUMS
Consumer protection provisions ..... Ch. 454

MAYORS
Marriage, solemnization by ..... Ch. 33

MEDICAID
Eligibility, county determination ..... Ch. 327
Subrogation and third party liability to rights of recipients ..... Ch. 379
System to be more responsive to individual needs, request for ..... HJR 74

(STATE) MEDICAL EXAMINER
Forensic Science, Division of—examiner as head ..... Ch. 530

MEDICAL EXAMINERS, BOARD OF
Competency and conduct of physicians, report to board ..... Ch. 172
License fees revision ..... Ch. 533

HeinOnline -- 1977 vol. II 2217 1977

Personal appearance prior to license issuance, waiver....Ch. 213
Termination....Ch. 562

(MONTANA) MEDICAL MALPRACTICE PANEL ACT....Ch. 449

MEDICINE, See also **PHYSICIANS AND SURGEONS**
Acupuncture treatment without prescriptions....SJR 8
Ambulance services, definition of "patient" clarified....Ch. 86
Anatomical gifts, indication on driver's license of intent to make....Ch. 28
Catastrophic illness, aid to stricken person and study of insurance program....HJR 66
Death, definition....Ch. 228
Malpractice actions, See **MALPRACTICE**
Medicaid, See **MEDICAID**
Public assistance, subrogation and third party liability to rights of recipient....Ch. 379
Standards committees, members' liability and evidential privilege....Ch. 267

MENTAL DISABILITIES BOARD OF VISITORS
Appropriation....HB 145
Human services, legislative evaluation....SJR 46

MENTAL HEALTH ADVISORY COUNCIL
Appropriation....HB 145
Human services, legislative evaluation....SJR 46

MENTAL HEALTH CENTERS
Facilities, legislative study of certificate of need requirements....HJR 95

MENTALLY ILL PERSONS
Civil commitment, procedures revised....Ch. 546
Community centers
funding....SJR 15
need requirements, legislative study....HJR 95
Estate proceedings
appointment of counsel to determine incapacity and need for guardian....Ch. 222
"incapacitated person", definition amended....Ch. 514
Facilities for, study of need requirements....HJR 95
Money of, handling procedure at time of commitment....Ch. 450
Revision generally....Ch. 37, Ch. 546

MENTALLY RETARDED PERSONS, See **DEVELOPMENTALLY DISABLED PERSONS**

MERIT SYSTEM COUNCIL
Appropriations....HB 143, HB 145
Human service functions, legislative evaluation....SJR 46

MILITARY AFFAIRS
Appropriations....HB 144, HB 145
National guard, application for membership and credit for prior service in public employees' retirement system....Ch. 445
Public employees, military service counted in earning vacation leave credits....Ch. 479
Retirement credit for military service
police....Ch. 368
public employees, national guard members as....Ch. 445
Revision generally....Ch. 49

MILITARY AFFAIRS, DEPARTMENT OF
Adjutant General, appropriation....HB 145
Appropriations....HB 144, HB 145
Disaster and emergency services, supervision....Ch. 335

HeinOnline -- 1977 vol. II 2218 1977

MILK AND MILK PRODUCTS
Containers, provision for 3-quart size ..... Ch. 76
Revision generally ..... Ch. 12
Testing of value of raw milk ..... Ch. 245
Transportation, jurisdiction transferred ..... Ch. 19

MILK CONTROL, BOARD OF
Termination ..... Ch. 562
Transportation of milk, jurisdiction transferred to ..... Ch. 19

MINES, BUREAU OF
Appropriations ..... HB 143, HB 145
Potash, study on regulation of solution mining ..... HJR 71

MINES AND MINING
Coal, See **COAL**
Hard-rock Mining Act
distribution of moneys collected from ..... Ch. 29
reclamation, operating permit applications ..... Ch. 427
Potash, study on regulation of solution mining ..... HJR 71
Reclamation of land, hard rock mining and reclamation account ..... Ch. 29
Research, hard rock mining and reclamation account ..... Ch. 29
Revision generally ..... Ch. 39
Royalties paid under federal Mineral Lands Leasing Act, allocation
highways, reduction ..... Ch. 357
schools, public—increase ..... Ch. 356
"Small miner", definition modified ..... Ch. 423
(Montana) Strip and Underground Mine Reclamation Act—1-year operating permits, conversion and annual reporting requirements ..... Ch. 352
Surface mine legislation, congress requested to refrain from usurping state authority by weakening state legislation ..... SJR 18
Taxation, See **TAXATION**
Uranium, solution extraction suspension ..... Ch. 543

MINORS
Adoption, See **ADOPTION**
Alcoholic beverage violations, jurisdiction of courts ..... Ch. 446
Child labor laws, legislative study ..... SJR 40
(Montana) Children's Center ..... HB 143, HB 145
Custody proceedings, interstate jurisdiction ..... Ch. 537
Day care, See **DAY-CARE SERVICES**
Destruction of property by, amount recoverable ..... Ch. 227
Detention and shelter care of youth, revision generally ..... Ch. 571
Detention facilities, clothing purchases ..... Ch. 230
Drinking age raised to 19 ..... Ch. 264
constitutional amendment ..... Ch. 459
Endangering the welfare of children, applicability clarified ..... Ch. 218
Handicapped, income tax exemption and leadership for interagency cooperation to meet needs of ..... HJR 72
Hard-to-place, adoption subsidized ..... Ch. 434, HB 832
Hunting allowed if minor reaches 12 years of age prior to September 15 of the season, permit issued ..... Ch. 169
Intoxicating substance, unlawful possession by—treatment when proceedings held in youth court ..... Ch. 536
Labor laws, legislative study ..... SJR 40
Motorcycle helmet requirement, age provision ..... Ch. 54
Property destruction by, amount recoverable ..... Ch. 227
Revision generally ..... Ch. 100
Subsidized Adoption Act of 1977 ..... Ch. 434
Traffic offenses, jurisdiction of courts ..... Ch. 446

HeinOnline -- 1977 vol. II 2219 1977

Uniform Child Custody Jurisdiction Act....Ch. 537
Violations by, jurisdiction of courts....Ch. 446

MOBILE HOMES, TRAILERS, AND TRAILER COURTS
Dealers, regulation and dealer license plates....Ch. 535
Movement declaration....Ch. 105
Property tax payments....Ch. 105, Ch. 250, Ch. 499
Smoke detectors, use and maintenance....HJR 9

MONTANA ADMINISTRATIVE CODE, See **(MONTANA) ADMINISTRATIVE CODE**

MONTANA ADMINISTRATIVE PROCEDURE ACT, See **ADMINISTRATIVE PROCEDURE**

MONTANA AGRICULTURAL EXPERIMENT STATION, See **(MONTANA) AGRICULTURAL EXPERIMENT STATION**

MONTANA ALCOHOLIC BEVERAGE CODE, See **ALCOHOLIC BEVERAGES**

MONTANA ARTS COUNCIL
Appropriation....HB 145
Cultural resources study....HJR 45

MONTANA CENTER FOR THE AGED, See **(MONTANA) CENTER FOR THE AGED**

MONTANA CHILDREN'S CENTER
Appropriations....HB 143, HB 145

MONTANA COLLEGE OF MINERAL SCIENCE AND TECHNOLOGY
Appropriations....HB 143, HB 144, HB 145
Physical education facility, bond issue for....Ch. 507

MONTANA DEVELOPMENTAL DISABILITIES SERVICES AND FACILITIES ACT OF 1977
Revision generally....Ch. 559

MONTANA DISASTER ACT OF 1977....Ch. 335

MONTANA DRUG PRODUCT SELECTION ACT....Ch. 403

MONTANA ECONOMIC LAND DEVELOPMENT ACT
Revision and clarification....Ch. 582

MONTANA ELECTRONIC FUNDS TRANSFER ACT....Ch. 503

MONTANA FORENSIC SCIENCE SYSTEM ACT....Ch. 530

MONTANA HISTORICAL SOCIETY, See **(MONTANA) HISTORICAL SOCIETY**

MONTANA MAJOR FACILITY SITING ACT
Notice of intention, filing of application....Ch. 179

MONTANA MEDICAL MALPRACTICE PANEL ACT....Ch. 449

MONTANA MOTOR CARRIER ACT, See **CARRIERS**

MONTANA OUTFITTERS COUNCIL
Termination....Ch. 562

MONTANA RANGELAND RESOURCES ACT....Ch. 408

MONTANA RANGELAND RESOURCES COMMITTEE....Ch. 408

MONTANA RECALL ACT....Ch. 364

MONTANA RECALL AND ADVISORY RECALL ACT
Amendments....Ch. 364

HeinOnline -- 1977 vol. II 2220 1977

MONTANA RELIGIOUS CORPORATION SOLE ACT
Board of advisors, membership limitation removed ..... Ch. 113

(THE) MONTANA RESIDENT STUDENT FINANCIAL ASSISTANCE PROGRAM ..... Ch. 515

MONTANA RESIDENTIAL LANDLORD AND TENANT ACT OF 1977 ..... Ch. 313

MONTANA SOLID WASTE MANAGEMENT ACT ..... Ch. 542

MONTANA STATE GOLDEN YEARS PASS
Senior citizens—nominal fee for entering state parks and recreation areas ..... Ch. 415

MONTANA STATE UNIVERSITY, See **(MONTANA) UNIVERSITY SYSTEM**

MONTANA STRIP AND UNDERGROUND MINE RECLAMATION ACT
1-year operating permits, conversion and annual reporting requirements ..... Ch. 352

MONTANA VETERANS' HOME, See **VETERANS**

MONTANA WATER USE ACT, See **WATERS AND WATER RIGHTS**

MONTANA YOUTH COURT ACT, See **YOUTH COURT**

MORTGAGES
Foreclosure of trust indentures, notice of sale to be posted by sheriff or constable ..... Ch. 53
Investment of state funds in ..... Ch. 316

MORTICIANS, BOARD OF
Composition changed ..... Ch. 233
Termination ..... Ch. 562

MOTHERS AND HOUSEWIVES, See **HOUSEWIVES AND MOTHERS**

MOTION PICTURES
Previews of R- and X-rated movies ..... Ch. 391, HJR 73

(MONTANA) MOTOR CARRIER ACT
Vehicles transporting garbage and solid waste
class "D" created for ..... Ch. 138
defined ..... Ch. 139

MOTOR CARRIERS, See **CARRIERS**

MOTOR VEHICLES
"Axle" defined ..... Ch. 269
Campers, See **TAXATION**
Conservation speed limit of 65 m.p.h. ..... Ch. 122
Dealers
license plates ..... Ch. 535
products liability limited ..... Ch. 380
regulation ..... Ch. 535
succession of interest by designated family members when ..... Ch. 381
Defined as "motor carrier" ..... Ch. 138, Ch. 139
Driver rehabilitation program, creation ..... Ch. 526
Driver's license, space for indication of intent to make anatomical gift ..... Ch. 28
Driving privileges suspended or revoked when convicted of driving while under the influence of alcohol or drugs, penalty revision ..... Ch. 430
Fleet vehicles, registration ..... Ch. 144
Franchise agreements ..... Ch. 380
Handicapped persons, special parking permits ..... Ch. 31
Inspections, repeal ..... Ch. 237
Irrigation district vehicle registration ..... Ch. 492

HeinOnline -- 1977 vol. II 2221 1977

License plates
dealers ..... Ch. 535
irrigation district vehicles ..... Ch. 492
transfers, applicability of registration and reflectorization fees ..... Ch. 243
veterans, free—number restricted ..... Ch. 67
Liquified petroleum gas certificates ..... Ch. 47
Manufacturers, distributors, and importers
dealerships, succession of interest by designated family members—method of protest ..... Ch. 381
regulation of relationship with dealers ..... Ch. 380
New, statement of origin required prior to licensing ..... Ch. 55
Recreational vehicles, See **RECREATIONAL VEHICLES**
Registration
anniversary date, change in registration period ..... Ch. 183
dealers ..... Ch. 399, Ch. 535
driver education vehicles ..... Ch. 521
fees ..... Ch. 243
fleet vehicles ..... Ch. 144
grace period extended, fines changed ..... Ch. 399
irrigation district vehicles ..... Ch. 492
license plate transfers, applicability of registration and reflectorization fees ..... Ch. 243
statement of origin required prior to licensing of new vehicles ..... Ch. 55
Special fuel users' license, private automobiles excepted ..... Ch. 236
Speed limit of 65 m.p.h. ..... Ch. 122, HJR 11
State vehicles, energy efficiency a prime consideration in procurement ..... HJR 60
Traffic offenses, See **TRAFFIC OFFENSES**
Warranty, manufacturer's liability ..... Ch. 380
Weight penalties for overweight vehicles, revision ..... Ch. 239
Wrecking facilities, revision generally ..... Ch. 251, Ch. 252

MOTORCYCLES
Helmet requirement, removal for adults ..... Ch. 54

MOUNTAIN VIEW SCHOOL
Appropriations ..... HB 144, HB 145, HB 504

MUNICIPAL COURTS
General revision ..... Ch. 429
Jurisdiction over violations by minors ..... Ch. 446

MUNICIPAL POLICE OFFICERS' RETIREMENT ACT ..... Ch. 456

N

NAMES
Marriage, dissolution or invalidation—woman's name changed on request ..... Ch. 174

NATIONAL GUARD, See **MILITARY AFFAIRS**

NATURAL GAS, See **OIL AND GAS**

NATURAL RESOURCES AND CONSERVATION, BOARD OF
Reservations of water, periodic review clarified ..... Ch. 416

NATURAL RESOURCES AND CONSERVATION, DEPARTMENT OF
Appropriations ..... HB 143, HB 144, HB 145, HB 708
Big Hole River, feasibility study of off-stream storage ..... HJR 80
Cooney Dam—repair and financing, study to be made ..... Ch. 442
Environmental impact statements
data source utilization in preparation ..... Ch. 117

HeinOnline -- 1977 vol. II 2222 1977

fees for preparation on certain applications under the (Montana) water use act ..... Ch. 117
preparation costs minimized ..... SJR 14
Oil and Gas Conservation, Board of
funds for ..... Ch. 178
oil producers' license tax, income and interest credited to ..... Ch. 254
termination ..... Ch. 562
(Montana) Rangeland Resources Act ..... Ch. 408
(Montana) Rangeland Resources Committee ..... Ch. 408
Renewable Resource Development Program
appropriation and conditions for projects under ..... HB 708
certain duties transferred to ..... Ch. 323
Tongue and Powder River Basins, water projects feasibility study ..... HJR 22
Water appropriation rights, approval of changes and elimination of right to appeal ..... Ch. 416
Water rights adjudication, expedition of administrative work ..... SJR 48
Water users' associations, appeals and protests regarding repair and maintenance on water projects ..... Ch. 253
Weather modification permits, publication of notice of intention ..... Ch. 46

NEGLIGENCE
Comparative, actions involving ..... Ch. 433
Professional, See **MALPRACTICE**

NEWS MEDIA
Reporter's information, privilege extended ..... Ch. 225

NORTHERN MONTANA COLLEGE, See also **(MONTANA) UNIVERSITY SYSTEM**
Appropriations ..... HB 143, HB 144, HB 145

NOXIOUS PLANT MANAGEMENT
Technical and financial assistance ..... Ch. 466

NUCLEAR WASTES
Storage, treatment, and disposal—revision of control ..... Ch. 542
Storage in Montana unlawful ..... Ch. 68

NURSING, BOARD OF
Termination ..... Ch. 562

NURSING AND NURSES
Rooming houses, full-time nursing services prohibited ..... Ch. 325

NURSING HOME ADMINISTRATORS, BOARD OF
Termination ..... Ch. 562

NURSING HOMES
Rooming houses, nursing service on full-time basis prohibited ..... Ch. 325

O

OCCUPATIONAL DISEASE ACT OF MONTANA
Revision generally ..... Ch. 208

OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970
Review urged ..... HJR 25

HeinOnline -- 1977 vol. II 2223 1977

OIL AND GAS
Enhanced recovery program....Ch. 336
Natural gas
arctic gas pipeline, request for distribution point if pipeline constructed and construction along inland route through Montana urged....SJR 17
connection by Montana-dakota utilities limited by federal power commission, request for withdrawal of limitation....HJR 97
price deregulation....SJR 22
Petroleum products manufacture and distribution, standards and regulations....Ch. 77
Pipeline to northern states and port facilities, request to washington legislature....SR 4, HJR 90
Revision generally....Ch. 39
Royalties from federal Mineral Lands Leasing Act, allocation
highways, reduction....Ch. 357
schools, public—increase....Ch. 356
Secondary recovery, substitution of enhanced recovery program....Ch. 336
Shot holes, plugging and reclamation requirements....Ch. 272
Taxation, See **TAXATION**

OIL AND GAS COMMISSION
Appropriations....HB 143, HB 145

OIL AND GAS CONSERVATION, BOARD OF
Funds for....Ch. 178
Oil producers' license tax, income and interest credited to....Ch. 254
Shot holes, plugging and reclamation requirements....Ch. 272
Termination....Ch. 562

OPEN GOVERNMENT
Ethics code....Ch. 569

OPEN MEETINGS
Public agencies, closed meetings permitted in certain instances....Ch. 567
Revision of open meetings law....Ch. 567

OPTOMETRISTS, BOARD OF
Termination....Ch. 562

OPTOMETRY AND OPTOMETRISTS
Drug use for diagnostic purposes and pharmacology course required....Ch. 361
Opticians, restrictions on mechanical work....Ch. 512

OSHA
Review urged....HJR 25

OSTEOPATHIC PHYSICIANS, BOARD OF
Termination....Ch. 562

(MONTANA) OUTFITTERS COUNCIL
Termination....Ch. 562

P

PANAMA CANAL
Position statement....SR 5

PARDONS, BOARD OF
Appropriation....HB 145

HeinOnline -- 1977 vol. II 2224 1977

PARENT AND CHILD, See also **MINORS**
Revision generally ..... Ch. 33

PARK COUNTY
Boundary change ..... Ch. 447

PARKS, STATE
Appropriation ..... HB 144
Gasoline dealers' license tax, increase of amount deposited from ..... Ch. 372
Revision generally ..... Ch. 2
Senior citizens, "golden years pass" for entry at nominal fee ..... Ch. 415
Wild Horse Island, appropriation for acquisition ..... HB 836

PAROLE, See **CORRECTIONS**

PARTNERSHIPS
Revision generally ..... Ch. 62

PATIENT ADVOCATE
Human service functions, legislative evaluation ..... SJR 46

PEACE OFFICERS, See also specific officer
Assistance to other officers, retention of benefits and immunity from liability ..... Ch. 337
Volunteer, minimum qualifying and training standards ..... Ch. 85

PERSONNEL APPEALS, BOARD OF
Appeals—agencies prohibited from interfering, restraining, coercing, or retaliating against employees ..... Ch. 545
Appropriation ..... HB 145
Fact finders and arbitrators, training for ..... Ch. 57
Human service functions, legislative evaluation ..... SJR 46

PESTS AND PESTICIDES
Cropland spraying program, revision generally ..... Ch. 362
Revision generally ..... Ch. 462

PETROLEUM PRODUCTS
Manufacture and distribution, standards and regulation ..... Ch. 77

PHARMACISTS, BOARD OF
License renewal fee charged by ..... Ch. 439
Termination ..... Ch. 562

PHARMACY AND PHARMACISTS
Continuing education required ..... Ch. 439
(Montana) Drug Product Selection Act ..... Ch. 403
License fees revision ..... Ch. 533
License renewal fee charged by Board of Pharmacists ..... Ch. 439
Product selection of certain prescribed drugs ..... Ch. 403

PHYSICIANS AND SURGEONS
Competency and conduct information, report to board of medical examiners ..... Ch. 172
Examinations for victims of sexual offenses, payment ..... Ch. 128
License fees revision ..... Ch. 533
License issuance, waiver of personal appearance requirement ..... Ch. 213
Malpractice, See **MALPRACTICE**
Standards committees, members' liability and evidential privilege ..... Ch. 267

PINE HILLS SCHOOL
Appropriations ..... HB 144, HB 145

HeinOnline -- 1977 vol. II 2225 1977

PIRACY
Sound recordings, live performances, and transfer of recorded sound without permission ..... Ch. 367

PLUMBERS
Licensing
bond requirements eliminated ..... Ch. 541
permit system, inspection, exemptions, and enforcement of state plumbing code ..... Ch. 226

PLUMBERS, BOARD OF
Termination ..... Ch. 562

PODIATRY EXAMINERS, BOARD OF
License fees revision ..... Ch. 533
Organizational revision ..... Ch. 176
Termination ..... Ch. 562

POLICE, See also **PEACE OFFICERS**
Injuries while on duty, salary continuance and reassignment of duty ..... Ch. 451
Retirement, See **RETIREMENT SYSTEMS**

POLICE COURTS, See **CITY COURTS**

POLLUTION
Air pollution
air quality protection treaty with canada, request for negotiations ..... HJR 70
concentrations in specific areas, funds for study ..... HB 250
enforcement of laws against persons resident in canada or not found in Montana ..... Ch. 308
Columbia Interstate Compact, repeal ..... Ch. 464
Hazardous wastes
storage, treatment, and disposal—revision of control ..... Ch. 542
storage in Montana unlawful ..... Ch. 68
Stream classification change when improperly classified ..... Ch. 444
Water pollution
compliance orders, service by mail authorized ..... Ch. 444
enforcement of laws against persons resident in canada or not found in Montana ..... Ch. 308
federal water pollution control act, repeal urged ..... HJR 43
revision generally ..... Ch. 444

POPLAR RIVER POWER PROJECT
Position statement ..... HJR 48

(MONTANA STATE) PRISON, See **CORRECTIONS**

PRIVACY
Income tax returns, federal—divulging information of, unlawful ..... Ch. 346
Public agency meetings, private in certain instances ..... Ch. 567
Reporter's information, privilege extended ..... Ch. 225

PRIVATE INVESTIGATORS, BOARD OF
Bond requirement eliminated ..... Ch. 541

PROFESSIONAL AND OCCUPATIONAL LICENSING, See also specific profession
Legislative review of agencies ..... Ch. 562
License fees revision ..... Ch. 533
Malpractice, See **MALPRACTICE**
Revision generally ..... Ch. 101
Standards committees, liability of health professionals as members and evidential privilege ..... Ch. 267

PROFESSIONAL AND OCCUPATIONAL LICENSING, DEPARTMENT OF
Appropriation ..... HB 145

HeinOnline -- 1977 vol. II 2226 1977

Boards generally
compensation ..... Ch. 531
license fees revision ..... Ch. 533
termination ..... Ch. 562
Licensees, bond requirement eliminated for specific licensees ..... Ch. 541

PROFESSIONAL ENGINEERS AND LAND SURVEYORS, BOARD OF
Quorum, fees, and registration revisions ..... Ch. 317
Termination ..... Ch. 562

PROPERTY
Abandoned, See **ABANDONED PROPERTY**
Annexation to city, See **CITIES AND TOWNS**
Attachment—judicial supervision of writ issuance, preseizure notice and hearing, or postseizure hearing ..... Ch. 299
Corner lot assessments in special improvement districts ..... Ch. 404
Destruction by minors, amount recoverable ..... Ch. 227
Joint tenancy, See **JOINT TENANCY**
Lien against, See **LIENS**
Minors, destruction by—amount recoverable ..... Ch. 227
Mortgages, See **MORTGAGES**
Personal property tax, See **TAXATION**
Special improvement districts, corner lot assessments ..... Ch. 404
Subdivisions, See **SUBDIVISIONS**
Taxation, See **TAXATION**
Title
homestead allowance, title problems remedied ..... Ch. 153
title insurance companies, mandatory reserve and method for its amortization ..... Ch. 96
transfer by board of investments on property obtained by foreclosure ..... Ch. 203
Trust indenture foreclosures, notice of sale to be posted by sheriff or constable ..... Ch. 53
Unclaimed, See **ABANDONED PROPERTY**

PSYCHOLOGISTS, BOARD OF
Termination ..... Ch. 562

PUBLIC ACCOUNTANTS, BOARD OF
License fees revision ..... Ch. 533
Termination ..... Ch. 562

PUBLIC ASSISTANCE, See **WELFARE**

(THE) PUBLIC CAMPAIGN FUND ACT ..... Ch. 538

PUBLIC CONTRACTS
Bid security ..... Ch. 97, Ch. 193
Revision generally ..... Ch. 97

PUBLIC EDUCATION, BOARD OF
Appropriation ..... HB 145
Fire services training school, cost recovery fees ..... Ch. 104
Professional assistant and secretary, appointment ..... Ch. 268
Vocational education governance, legislative study ..... HJR 100

PUBLIC EMPLOYEES
Classification appeal, award of retroactive pay or position ..... Ch. 471
Deferred compensation plans, revision generally ..... Ch. 60
Ethics, implementation of constitutional provisions ..... Ch. 569
Insurance, group ..... Ch. 563
Mileage reimbursement ..... Ch. 453
Military service counted in earning vacation leave credits ..... Ch. 479
Pay schedule for state employees ..... Ch. 563

HeinOnline -- 1977 vol. II 2227 1977

Payroll, state system—base and warrant distribution, exceptions ..... Ch. 51
(Montana) Recall Act ..... Ch. 364
(Montana) Recall and Advisory Recall Act, amendments ..... Ch. 364
Retirement system, See **RETIREMENT SYSTEMS**
Social security, employees under—revision generally ..... Ch. 64
Travel expenses ..... Ch. 453
revision and clarification ..... Ch. 483
Vacation leave credit, military service counted toward ..... Ch. 479

PUBLIC EMPLOYEES' RETIREMENT BOARD
Creation ..... Ch. 132
Trustee and fiduciary responsibilities ..... Ch. 332

PUBLIC LANDS
Off road vehicles, opposition to closure of public lands to ..... SR 6

PUBLIC MEETINGS
Closed meetings permitted in certain instances ..... Ch. 567

PUBLIC OFFICERS
Campaign funding, public ..... Ch. 538
Ethics, implementation of constitutional provisions ..... Ch. 569
Mileage reimbursement ..... Ch. 453
"Personal staff" exemption clarified ..... Ch. 488
(Montana) Recall Act ..... Ch. 364
(Montana) Recall and Advisory Recall Act, amendments ..... Ch. 364
Travel expenses ..... Ch. 453
revision and clarification ..... Ch. 483

PUBLIC PLACES
Fire protection in state-owned buildings ..... Ch. 481
Smoke detectors, use and maintenance ..... HJR 9

PUBLIC RECORDS MANAGEMENT ACT ..... Ch. 339

PUBLIC SERVICE COMMISSION
Accidents, investigation and reporting ..... Ch. 472
Adversary role in rate cases clarified ..... Ch. 474
Appeals, commencement and answer time shortened ..... Ch. 475
Appropriation subject to legislative revision ..... Ch. 137
Carriers
commodities restrictions, enforcement ..... Ch. 280
forms supplied to ..... Ch. 476
hearing notices, publication costs ..... Ch. 476
interstate commerce commission annual reports submitted ..... Ch. 476
Commissioners, salaries ..... Ch. 461
Rate cases
adversary role clarified ..... Ch. 474
rules, adoption mandated ..... Ch. 137
Rates, judicial review of temporary increases ..... Ch. 467
Rates filed with, effective date ..... Ch. 435
Rules for rate cases, adoption mandated ..... Ch. 137
Termination ..... Ch. 562
Travel expenses, approval ..... Ch. 205

PUBLIC SERVICE REGULATION, DEPARTMENT OF
Appropriation ..... HB 145

PUBLIC WATER SUPPLIES, See **WATERS AND WATER RIGHTS**

PUBLIC WORKS PROJECTS
Unemployed Montanans ... . HJR 47

R

RADIOACTIVE WASTES
Storage, treatment, and disposal—revision of control ..... Ch. 542

HeinOnline -- 1977 vol. II 2228 1977

Storage in Montana unlawful ..... Ch. 68

RADIOLOGIC TECHNOLOGISTS
Licensure, revision ..... Ch. 310, Ch. 573

RADIOLOGIC TECHNOLOGISTS, BOARD OF
Termination ..... Ch. 562

RAILROADS
Amtrak, helena connection with the "portland rose" encouraged ..... HJR 53
Cabooses, spotlight installation required ..... Ch. 32
Discriminatory charges unlawful ..... Ch. 473
Locomotives, speedometer installation required ..... Ch. 181
Rail-highway grade crossing safety improvements, congress requested to release funds for ..... HJR 64
Taxation, See **TAXATION**

(MONTANA) RANGELAND RESOURCES ACT ..... Ch. 408

(MONTANA) RANGELAND RESOURCES COMMITTEE ..... Ch. 408

RAPE, See **CRIMES AND CRIMINAL PROCEDURE**, Sexual intercourse without consent

REAL ESTATE, See also **PROPERTY**
Brokers or salesmen
bond requirements eliminated ..... Ch. 541
license fee charged by municipality prohibited ..... Ch. 533

REAL ESTATE, BOARD OF
Composition revised ..... Ch. 378
License fees revision ..... Ch. 533
Termination ..... Ch. 562
Travel authority limited ..... Ch. 533

REAL ESTATE LICENSE ACT OF 1963
Low-income subsidized housing, manager exempt ..... Ch. 385

REAL PROPERTY, See **PROPERTY**

(MONTANA) RECALL ACT ..... Ch. 364

(MONTANA) RECALL AND ADVISORY RECALL ACT
Amendments ..... Ch. 364

(THE) RECIPROCAL AGREEMENT FOR COLLECTION OF WAGES ACT OF 1977 ..... Ch. 216

RECODIFICATION, See also **CODE COMMISSIONER BILLS**
Amendment of laws relative to ..... Ch. 1
Appropriation of supplemental funds ..... HB 64

RECONCILIATION OF SPOUSES
Revision generally ..... Ch. 33

RECORDINGS AND TAPES
Piracy prohibited and penalties for violations ..... Ch. 367

RECREATIONAL VEHICLES
Campers, taxation, See **TAXATION**
Courtesy permit for special fuel vehicles ..... Ch. 270
Motorcycles—helmet requirement, removal for adults ..... Ch. 54
Revision generally ..... Ch. 124
Snowmobiles
closure of public lands to, opposition ..... SR 6
facilities for, taxes used for development and maintenance ..... Ch. 382

HeinOnline -- 1977 vol. II 2229 1977

noise standards maintained at levels prescribed....Ch. 161
nonresident temporary-use permits....Ch. 421
railroads, use on right-of-ways or tracks unlawful....Ch. 421
registration, penalty and general clarification....Ch. 402
revision generally....Ch. 124, Ch. 421
tax paid decal, grace period to obtain extended....Ch. 402
Taxation, See **TAXATION**

REGENTS, BOARD OF
Appropriations....HB 143, HB 144, HB 145

RELIGION
Discrimination, grounds for—standardization of terms....Ch. 38
Indian practices recognized as bona fide religion....HJR 32
(Montana) Religious Corporation Sole Act, board of advisors membership limitation removed....Ch. 113
Schools, religious instruction released time program provided....Ch. 130

(MONTANA) RELIGIOUS CORPORATION SOLE ACT
Board of advisors, membership limitation removed....Ch. 113

RENEWABLE RESOURCE DEVELOPMENT PROGRAM
Administrative duties transferred....Ch. 323
Appropriation....HB 708
Natural Resources and Conservation, Department of—funds and stipulations for projects....HB 708

RENTERS, See **LANDLORD AND TENANT**

REPORTER'S CONFIDENCE ACT
Information, privilege extended....Ch. 225

(THE MONTANA) RESIDENT STUDENT FINANCIAL ASSISTANCE PROGRAM....Ch. 515

(MONTANA) RESIDENTIAL LANDLORD AND TENANT ACT OF 1977....Ch. 313

RESOLUTIONS
Acupuncture, treatment without prescription....SJR 8
Administrative rules, revision and updating of model rules....HJR 5
Agricultural labor, work program for unemployed Montanans....HJR 47
Amtrak, helena connection with the "portland rose" encouraged....HJR 53
Antiquities preservation, legislative study....HJR 18
Apprenticeship programs, increase urged....HJR 52
Aronson, Honorable J. Hugo—honor paid to....HJR 106
Attorneys-at-law, bar admission—rule revision....SJR 16
Battered spouses, legislative study....HJR 103
Beef labeling and inspection requirements, request for....HJR 96
Big Hole River, feasibility study of off-stream storage....HJR 80
Bridge across the Missouri River between Winifred and Big Sandy, federal-state-local committee to formulate plan....SJR 36
Budget and budgeting, legislative study of economy and reform measures....HJR 85
Butte, City of—butte technical advisory council to cooperate in correcting hazardous conditions at harrison avenue interchange....HJR 61
Canada
air quality protection treaty, request for negotiation....HJR 70
poplar river power project, position statement....HJR 48
Catastrophic illness, insurance program....HJR 66
Charles M. Russell Game Range, importance of livestock....SJR 41
Child labor laws, legislative study....SJR 40
Civil defense shelters, funding and personnel....HJR 51
CMR Painting Fund, creation....SR 7

HeinOnline -- 1977 vol. II 2230 1977

Coal
strip mine reclamation, support for federal legislation ..... HJR 40
trust fund investment ..... SJR 2, SJR 44
Coyote reduction by aerial hunting at Fort Peck Reservoir ..... HJR 82
Crimes and criminal procedure
sentencing provisions, study ..... SJR 28
victims, compensation ..... SJR 19
Deer Lodge, City of—transfer of old prison site to ..... HJR 65
Developmentally disabled persons
community centers, funding ..... SJR 15
special education ..... HJR 105
Education
academic excellence in (Montana) university system honored ..... SJR 50
special education, annual audit by legislative auditor ..... HJR 105
Elections
contributions, political—simplification of report forms ..... HJR 79
malmstrom air force base, request for allowance of political campaigns on base ..... HJR 29
study of election laws ..... HJR 14
Energy
conservation
great falls gas company commended for homeowner help ..... HJR 24
school districts to implement programs ..... HJR 75
dams in Montana, power to Montanans first ..... HJR 19
fort peck project, support for additional hydroelectric generation capacity ..... SJR 24
research on conversion of grain to alcohol for energy purposes ..... SJR 42
state vehicles, energy efficiency a prime consideration ..... HJR 60
Environmental protection
impact statements, state agencies required to make and contents ..... SJR 14
off road vehicles, position on closure of public lands to ..... SR 6
Financial institutions, legislative study of alternative methods of taxation ..... HJR 99
Firearms, opposition to confiscation and registration ..... HJR 27
Fires and fire protection
forest fire protection, full federal funding requested ..... SR 8, HR 3
open fire permits ..... HJR 7
smoke detectors, use and maintenance ..... HJR 9
Fish and game
private land, fishing and hunting on ..... SJR 3
seasons and limits—input of local rod and gun clubs, landowners, and game wardens considered when setting ..... HJR 15
Forests and forestry
federal timber agencies requested to increase timber sales on over-mature timber stands ..... HJR 78
fire protection, full federal funding requested ..... SR 8, HR 3
unemployed Montanans, work program ..... HJR 47
Fort Peck Project
additional power generation capacity supported ..... SJR 24
coyote reduction by aerial hunting endorsed ..... HJR 82
recreation and conservation of fish and wildlife included as purpose ..... SJR 27
Fort Union Trading Post, reconstruction ..... HJR 83
Free enterprise, support urged ..... HJR 55
Grain
conversion to alcohol for energy purposes, research ..... SJR 42

HeinOnline -- 1977 vol. II 2231 1977

federal inspection supervisory fee protested ..... HJR 49
federal loan price increase on wheat urged ..... SJR 49
Grizzly bear habitat, federal fish and wildlife service
requested not to designate new areas for ..... HJR 68
Handicapped children, interagency cooperation to meet needs
of and income tax exemption ..... HJR 72
Highways
construction of highway 93, recognition of need ..... HJR 10
ekalaka-alzada road, completion of paving ..... HJR 76
weigh station placement ..... HJR 67
Historic and cultural record of Montana, legislative study
on preservation ..... HJR 18
Housewives and mothers, commendation ..... HJR 38
Housing, investment of state funds to promote ..... SJR 2
Human services
agencies, legislative evaluation ..... SJR 46
delivery system, legislative study ..... HJR 88
Indians
jurisdiction of state over non-indians on indian
reservations, congressional legislation requested ..... SJR 35
law enforcement on reservation, increase requested ..... SJR 35
religious practices, culture, and traditions—preservation
and perpetuation ..... HJR 32
representation on boards and agencies, increase ..... HJR 36
Irrigation of lands under single ownership or leased from state
lands, congress requested to raise general limitation ..... HJR 26
Kootenai River, request for construction of reregulating
dam ..... SJR 20
Law clerks, use of clerks and secretaries to be studied
prior to creating new judgeships ..... HJR 3
Law Day, tribute to ..... HJR 93
Legislature
agency review by ..... SJR 46
bills, interim study on controlled introduction ..... SJR 45
employees, salaries ..... SR 2, SR 11, HJR 6, HR 5
hearing rooms and offices ..... HJR 8
rules to govern proceedings ..... SJR 1
house of representatives ..... HR 1
senate ..... SR 1
Livestock marketing and movement, legislative study ..... HJR 91
Local government code, legislative study ..... SJR 39
Magnetohydrodynamic energy extraction, federal funding
requested ..... HJR 94
Malmstrom Air Force Base, congress requested to provide for
conducting political campaigns on base ..... HJR 29
Medicaid system to be more responsive to individual needs,
request ..... HJR 74
Mental health centers
funding ..... SJR 15
legislative study of certificate of need requirements ..... HJR 95
Mining, congress requested to refrain from usurping state
authority on surface mine legislation by weakening state
legislation ..... SJR 18
Montana Arts Council, cultural resources study ..... HJR 45
Montana State University
auto repair shop, consent for construction ..... SJR 33
"bobcats" honored as national champions of division II
football ..... SJR 25
physical education, athletic, and recreational facilities—
consent for construction, improvement, and equipment ..... SJR 32
Motion picture previews of R- and X-rated movies ..... HJR 73
Natural gas
arctic pipeline, request for distribution point if pipeline
constructed and construction along inland route through
Montana urged ..... SJR 17

HeinOnline -- 1977 vol. II 2232 1977

connnections by Montana-dakota utilities limited by federal power commission, request for withdrawal of limitation ..... HJR 97
price deregulation ..... SJR 22
Oil and gas—pipeline to northern states and port facilities, request to washington legislature ..... SR 4, HJR 90
OSHA, review urged ..... HJR 25
Panama Canal, position statement ..... SR 5
Pollution
air quality protection treaty with canada, request for negotiations ..... HJR 70
water, repeal of federal water pollution control act urged ..... HJR 43
Potash, study on regulation of solution mining ..... HJR 71
(Montana State) Prison, transfer of old prison site to city of deer lodge ..... HJR 65
Public works projects for unemployed Montanans ..... HJR 47
Rail-highway grade crossing safety improvements, congress requested to release funds for ..... HJR 64
Rodeos, recognition and support of national high school rodeo finals ..... HJR 54
Russell, Charles M.—establishment of bank account for donations to purchase "when the land belonged to God" ..... SR 7
Saccharin ban protested ..... HJR 92
Schools, intermediate school districts studied ..... HJR 84
Smoke detectors, use and maintenance in all buildings encouraged ..... HJR 9
Social Security Office in Billings, opposition to closure of hearings and appeals office ..... HJR 13
Speed limit, maximum of 65 m.p.h. ..... HJR 11
Spotted Asses, American Council of—commendation for promotional efforts ..... HJR 41
State classification and compensation plan, guide for compensation of legislative employees and attaches ..... HJR 6
State government
economy and reform measures, legislative study ..... HJR 85
environmental decisionmaking, agency duties clarified ..... SJR 14
indian jurisdiction over non-indians, congressional legislation requested ..... SJR 35
legal services within executive branch, legislative study ..... HJR 59
private sector, utilization in state programs ..... HJR 58
vehicles, energy efficiency a prime consideration ..... HJR 60
Subdivisions, legislative study ..... SJR 43
Sun-Teton unit of Missouri River Basin Project, bureau of reclamation study requested ..... HJR 21
Supreme Court, rule revision on bar admission ..... SJR 16
Taxation
financial institutions, study of alternative methods ..... HJR 99
property tax classification, legislative study ..... HJR 98
timber yield tax, legislative study ..... SJR 29
Tongue and Powder River Basins, water projects feasibility study ..... HJR 22
Unemployment compensation
fraud investigations, report to legislative auditor ..... SJR 38
work programs for benefit recipients ..... HJR 47
(Montana) University system
academic excellence honored ..... SJR 50
community college districts, study to be made ..... SJR 11
Vocational education governance, legislative study ..... HJR 100
Wally Byam Caravan Club International, welcome to Montana ..... SR 9
Waters and water rights
adjudication, administrative work to be expedited ..... SJR 48

HeinOnline -- 1977 vol. II 2233 1977

legislative study ..... SJR 81
off-stream storage sites ..... HJR 80
Welfare, work programs for unemployed persons ..... HJR 47
Western States Forestry Task Force, delegates to attend ..... SJR 23
Wheeler, Senator Burton K.—bust of ..... SJR 34
Wilderness proposals, congress requested to hold field
hearings ..... HJR 78

RETAIL INSTALLMENT SALES ACT
Interest, revision of rates and penalties ..... Ch. 284

RETAIL STORES
Retail license, failure to make timely application for
renewal ..... Ch. 419

RETIREMENT SYSTEMS
Community colleges, provisions clarified ..... Ch. 121
Firemen
full service pension eligibility clarified ..... Ch. 484
maximum pension increase ..... Ch. 58
partial service pension ..... Ch. 484
payments increased ..... Ch. 90
revision generally ..... Ch. 157
terminology standardization ..... Ch. 489
volunteer personnel ..... Ch. 58, Ch. 95, Ch. 480
Game wardens
administration expenses, payment procedure revised ..... Ch. 578
allowances, calculation and payment ..... Ch. 332
beneficiary
duration of benefits increased when death of member is
duty-related ..... Ch. 578
nomination clarified ..... Ch. 330
board
consolidated with public employees' retirement
board ..... Ch. 132
trustee and fiduciary responsibilities ..... Ch. 332
calculation and payment ..... Ch. 332
continuation in public employees' retirement system ..... Ch. 330
funding clarified ..... Ch. 330
insurance premium deducted from benefits ..... Ch. 214
revision generally ..... Ch. 8
state contributions increased ..... Ch. 578
Highway patrol
allowance, calculation and payment ..... Ch. 332
board, fiduciary and trustee responsibilities ..... Ch. 332
insurance premium deducted from benefits ..... Ch. 214
revision generally ..... Ch. 65
Judges and justices
allowance, calculation and payment ..... Ch. 332
board
consolidated with public employees' retirement
board ..... Ch. 132
trustee and fiduciary responsibilities ..... Ch. 332
insurance premium deducted from benefits ..... Ch. 214
revision generally ..... Ch. 63
Legislators, participation continued while serving in
legislature ..... Ch. 333
Municipal Police Officers' Retirement Act ..... Ch. 456
Police
insurance premium deducted from benefits ..... Ch. 214
military service credit, qualification ..... Ch. 368
minimum payments ..... Ch. 406
municipal officers ..... Ch. 456
revision generally ..... Ch. 224
terminology standardization ..... Ch. 489

HeinOnline -- 1977 vol. II 2234 1977

Public employees
allowances, calculation and payment....Ch. 332
appropriation....HB 145
board
created....Ch. 132
trustee and fiduciary responsibilities....Ch. 332
community college districts, funding for....Ch. 121
contributions during absence due to illness or injury....Ch. 300
cost-of-living increase and change of allowance provisions....Ch. 241
game wardens, continuation in public employees' retirement system....Ch. 330
insurance premium deducted from benefits....Ch. 214
insurance provisions for retirees and family....Ch. 259
national guard, application for membership and prior service credit....Ch. 445
revision generally....Ch. 99
service credits and survivorship allowances....Ch. 89
sheriffs, nonsheriff membership service for credit....Ch. 145
Sheriffs
allowances, calculation and payment....Ch. 332
board, trustee and fiduciary responsibilities....Ch. 332
death, duty related—benefits to survivors....Ch. 93, Ch. 214
insurance premium deducted from benefits....Ch. 214
public employees retirement system credits....Ch. 145
revision generally....Ch. 59
Teachers
appropriation....HB 145
beneficiaries, increase in allowances received by....Ch. 443
board, composition....Ch. 45
income tax exemption....Ch. 331
revision generally....Ch. 127, Ch. 331
REVENUE, DEPARTMENT OF
Appropriations....HB 143, HB 145, HB 828
County Tax Appeal Board decisions mailed to....Ch. 249
Debts owed the state, collection procedures....Ch. 248
Director authorized to enter into closing agreements....Ch. 353
Hearings, administrative tax case—allocation of duties in conducting and specifying appeal procedures....Ch. 155
Liquor division, administrative expenses—how payable....Ch. 398
(Legislative Revenue) Oversight Committee....Ch. 458, HB 842
Store licenses, penalty for failure to make timely renewal applications....Ch. 419
Tax jurisdictions, tax computation or levy limited....Ch. 349
(LEGISLATIVE) REVENUE OVERSIGHT COMMITTEE....Ch. 458, HB 842
RIGHTS, See also **CONSTITUTIONAL RIGHTS**
Discrimination, See **DISCRIMINATION**
Firearms, confiscation and registration opposed....HJR 27
Human service agencies, legislative evaluation....SJR 46
RIVERS AND STREAMS, See **WATERS AND WATER RIGHTS**
RODEOS
National High School Rodeo Finals, recognition and support....HJR 54
ROOMING HOUSES, See **HOTELS AND LODGING ESTABLISHMENTS**
RUSSELL, CHARLES M.
"When the Land Belonged to God"
acquisition by state....HB 826
bank account established for donations to purchase....SR 7

S

SACCHARIN
Ban protested....HJR 92

HeinOnline -- 1977 vol. II 2235 1977

SAFETY, See **HEALTH AND SAFETY**

SALARIES
County assessor....Ch. 493
County officers....Ch. 493
Elected state officials....Ch. 461
Legislative officers and employees....SR 2, SR 11, HJR 6, HR 5
Legislators, laws regarding compensation and expenses....Ch. 103

SALES
Auction....Ch. 263
Door-to-door, general revision of 3-day cooling-off period....Ch. 191
Installment, retail—revision of interest rates and penalties....Ch. 284
Timber sales....Ch. 301, Ch. 464, HJR 78

SALINE SEEP
Appropriation....HB 145
Conservation district authority....Ch. 395

SANITARIANS, BOARD OF
License fees revision....Ch. 533
Termination....Ch. 562

SASKATCHEWAN POWER PLANT
Position statement....HJR 48

SAVINGS AND LOAN ASSOCIATIONS, See **BUILDING AND LOAN ASSOCIATIONS**

SCHOOLS, DISTRICTS, AND TRUSTEES, See also **EDUCATION**
Athletic coach assistants not required to be faculty members....Ch. 350
Budget board, duties transferred to board of trustees....Ch. 277
Budget hearings....Ch. 354
Buildings, lands, and facilities
energy consumption, construction and maintenance to minimize....HJR 75
lease of for school purposes, approval required....Ch. 424
rental for use of school buildings....Ch. 424
Bus depreciation reserve fund....Ch. 194
Bus drivers
age limit....Ch. 151
physical examinations....Ch. 50
Bus transportation of students
energy saving measures to be enforced....HJR 75
reimbursement schedule....Ch. 529
stopping and lighting requirements....Ch. 244
Business and free enterprise, support urged....HJR 55
Corporal punishment, use and administration....Ch. 388
County funds, year ending fund balances reported to superintendent of public instruction....Ch. 180
County superintendent—authorization to request, accept, and disburse funds....Ch. 238
Driver education vehicles, registration....Ch. 521
Energy conservation programs, request for....HJR 75
Funding, county superintendent's authority....Ch. 238
Intermediate school districts studied....HJR 84
Lease of buildings and lands for school purposes....Ch. 424
Oil and gas royalties, federal—increase in payments....Ch. 356
Private schools, assistant athletic coaches—faculty membership not required....Ch. 350
Religious instruction released time program provided....Ch. 130
Rental of school buildings, disposition of moneys....Ch. 424

HeinOnline -- 1977 vol. II 2236 1977

School foundation program
appropriation....HB 145
general fund budget amendments....Ch. 505
Special education
audit annually by legislative auditor....HJR 105
revision of laws....Ch. 539
Spending authority, restoration....Ch. 329
Teachers, See **TEACHERS**
Transportation of students by parents, reimbursement....Ch. 534
Trustees, candidates for—exemption and exception from
filing and finance laws....Ch. 23
Vocational education, See **VOCATIONAL EDUCATION**
Warrants, registration not required when moneys are available
in any district fund....Ch. 291

SECRETARY OF STATE
Appropriations for office....HB 143, HB 145, HB 295
Corporations, involuntary dissolution ordered without court
decree....Ch. 455
Journals, publication of 3 unpublished legislative
journals....HB 295
Law library board of trustees, removal from....Ch. 142
Salary....Ch. 461

SENIOR CITIZENS, See **AGING AND AGED PERSONS**

SENTENCES, See **CORRECTIONS; CRIMES AND CRIMINAL PROCEDURE**

SERVICE ORGANIZATIONS
Property tax exemption....Ch. 491

SEWAGE DISPOSAL
Control revisions....Ch. 542
County districts, notice publication requirements
changed....Ch. 296
Subdivisions
petitions for removal of sanitary restrictions....Ch. 554
revision generally....Ch. 557

SEXUAL INTERCOURSE WITHOUT CONSENT, See **CRIMES AND CRIMINAL PROCEDURE**

SHEEP
Per capita license fee increased....Ch. 261

SHELTERED WORKSHOPS
State procurement of products and services....Ch. 547

SHERIFF, See **COUNTY SHERIFF; RETIREMENT SYSTEMS**

SHIELD LAW
Reporter's information, privilege extended....Ch. 225

SLEEPING CAR COMPANIES, See **TAXATION**

SMALL CLAIMS COURTS
Justices' courts, creation within....Ch. 572

SMOKE DETECTORS
Use and maintenance in all buildings encouraged....HJR 9

SNOWMOBILES, See **RECREATIONAL VEHICLES**

SOCIAL AND REHABILITATION SERVICES, DEPARTMENT OF
Appropriations....Ch. 581, HB 143, HB 145, HB 832
Catastrophic illness, aid program and study of insurance
program....HJR 66

HeinOnline -- 1977 vol. II 2237 1977

Day-care
assistance expanded ..... Ch. 581
facility license applications by indians on reservations
acceptable ..... Ch. 293
Human service functions, legislative evaluation ..... SJR 46
Indians, day care license applications accepted ..... Ch. 293
Medical assistance, subrogation and third party liability
to rights of recipients ..... Ch. 379
Reimbursement by counties, clarification ..... Ch. 109
Veterans' Affairs, Board of—termination ..... Ch. 562

SOCIAL SECURITY
Closure of Hearings and Appeals Office in Billings, opposition
to ..... HJR 13
Medical assistance, supplementary—subrogation and third
party liability to rights of recipients ..... Ch. 379
Public employees under, revision generally ..... Ch. 64

SOIL AND WATER CONSERVATION DISTRICTS
Discontinuance of district ..... Ch. 18
Off-stream storage sites, selection and acquisition ..... Ch. 418
Reservoirs, construction and sale of water ..... Ch. 418
Saline seep, district authority ..... Ch. 395
Supervisors' election, procedures revised ..... Ch. 18
Territory excluded ..... Ch. 18

SOLID WASTE MANAGEMENT
Control revision ..... Ch. 542
Local government program created ..... Ch. 575
Motor carriers
class "D" created for ..... Ch. 138
defined ..... Ch. 139
municipal services, competition prohibited ..... Ch. 131
Municipal services, competition prohibited ..... Ch. 131
State program created ..... Ch. 575
Subdivisions, petitions for removal of sanitary
restrictions ..... Ch. 554

SOLID WASTE MANAGEMENT ACT ..... Ch. 575

SOUND RECORDINGS
Piracy prohibited and penalties for violations ..... Ch. 367

SOURDOUGH LAND AND CATTLE COMPANY
Judgment against state ..... HB 554

SOVEREIGN IMMUNITY
Certain immunities continued ..... Ch. 73, Ch. 189
Clarification or removal of statutory references ..... Ch. 234

SPEECH PATHOLOGISTS AND AUDIOLOGISTS, BOARD OF
Termination ..... Ch. 562

SPEED LIMIT
Maximum of 65 m.p.h. ..... Ch. 122, HJR 11

SPOTTED ASSES, AMERICAN COUNCIL OF
Commendation for promotional efforts ..... HJR 41

STATE AGENCY FOR SURPLUS PROPERTY
Functions transferred to Department of Administration and
funds deposited in revolving fund ..... Ch. 478

STATE AUDITOR
Appropriation for office ..... HB 145
Central payroll system—base for and warrant distribution,
exceptions ..... Ch. 51
Hail Insurance, Board of—state treasurer's membership
transferred to ..... Ch. 468

HeinOnline -- 1977 vol. II 2238 1977

Insurance commissioner and department, termination....Ch. 562
Investment commissioner, termination of office....Ch. 562
Law library board of trustees, removal from....Ch. 142
Salary....Ch. 461
Warrants
duplicates, issuance provisions revised....Ch. 318
stale-dated, account established for and disposition of....Ch. 276

STATE BUILDING CODE
Energy conservation rules applicable....Ch. 173

STATE CLASSIFICATION AND COMPENSATION PLAN
Appeals—agencies prohibited from interfering, restraining, coercing, or retaliating against employees....Ch. 545
Legislative employees and attaches, guide for compensation....HJR 6
Pay schedule....Ch. 563
"Personal staff" exemption clarified....Ch. 488
Teachers in state institutions exempt....Ch. 565

STATE EMPLOYEES, See **PUBLIC EMPLOYEES**

STATE FINANCE
Appropriations for state agencies, See **APPROPRIATIONS**
Coal tax, See **TAXATION**
Colleges and universities added to treasury fund structure....Ch. 438
Debts owed to state, collection procedures....Ch. 248
Deposit of state moneys by agencies or institutions....Ch. 92, Ch. 286
Economy and reform measures, legislative study....HJR 85
Private sector, utilization in state programs....HJR 58
Revision generally....Ch. 61
Security for deposit of public funds....Ch. 92
Surplus property income, disposition....Ch. 389

STATE FISH
Blackspotted cutthroat trout....Ch. 6

STATE FUNDED HOMESTEAD TAX RELIEF ACT, See **(STATE FUNDED) HOMESTEAD TAX RELIEF ACT**

STATE GOVERNMENT
Appropriations for state agencies, See **APPROPRIATIONS**
Business and free enterprise, support urged....HJR 55
Classification and compensation plan, See **STATE CLASSIFICATION AND COMPENSATION PLAN**
Coal tax, See **TAXATION**
Construction projects, bid requirements clarified....Ch. 487
Debts owed to, collection procedures....Ch. 248
Environmental decisionmaking, agency duties clarified....SJR 14
Fire protection for state-owned buildings....Ch. 481
Immunity from suit....Ch. 73, Ch. 189, Ch. 234
Indian jurisdiction over non-Indians, congressional legislation requested....SJR 35
Indian representation on boards and agencies, increase....HJR 36
Judgments against, appropriations to satisfy....HB 554
Jurisdiction of Indians over non-Indians, congressional legislation requested....SJR 35
Legal services within executive branch, legislative study....HJR 59
Officials, travel expenses—revision and clarification....Ch. 483
Private sector, utilization in state programs....HJR 58
(Montana) Recall Act....Ch. 364
(Montana) Recall and Advisory Recall Act....Ch. 364
Records management....Ch. 339, Ch. 441

HeinOnline -- 1977 vol. II 2239 1977

Salaries of elected officials....Ch. 461
Self-insurance....Ch. 360, HB 145
Sheltered workshops, state procurement of products and services....Ch. 547
Solid waste management program....Ch. 575
Sovereign immunity, clarification or removal of statutory references....Ch. 73, Ch. 189, Ch. 234
Tort claims against
attorney fees....Ch. 188
clarification of statutes....Ch. 360
Travel expenses....Ch. 453, Ch. 483
Unemployment compensation, method for payments and taxable wage base increase....Ch. 165
Vehicles, energy efficiency as a primary consideration in procurement....HJR 60

STATE LANDS
Acquisition through foreclosure of mortgage investments purchased....Ch. 203
Big Hole National Battlefield, jurisdiction....Ch. 125
Brand, state—placement upon seized logs, repeal....Ch. 464
Forest fire protection expanded....Ch. 397
Leases
agricultural or grazing—renewals for less than 10-year terms....Ch. 304
highest bidder—lease to required, exceptions....Ch. 311
Off road vehicles, opposition to closure of public lands to....SR 6

STATE LANDS, DEPARTMENT OF
Appropriation....HB 145
Environmental impact statements, preparation costs minimized....SJR 14
Hard Rock Mining Act, distribution of moneys collected from....Ch. 29

STATE MEDICAL EXAMINER
Forensic Science, Division of—examiner as head....Ch. 530

STATE PARKS, See **PARKS, STATE**

STATE TAX APPEAL BOARD
Appropriation....HB 145
County tax appeal board, appeal decisions and hearings....Ch. 249
Hearings, administrative tax case—allocation of duties of conducting and specifying appeal procedures....Ch. 155
Human service functions, legislative evaluation....SJR 46

STATE TREASURER
Appropriation....HB 143
Hail Insurance, Board of—membership transferred to state auditor....Ch. 468
Office abolished....Ch. 468

STATE TREASURY
Deposit of state funds....Ch. 286

STATUS OF WOMEN ADVISORY COUNCIL
Human service functions, legislative evaluation....SJR 46

STATUTE OF LIMITATIONS
Legal malpractice actions....Ch. 220

STEAM TRACTION ENGINES
Marking and inspection provisions, repeal....Ch. 84

STORES
Retail license, failure to make timely application for renewal....Ch. 419

HeinOnline -- 1977 vol. II 2240 1977

STREETS AND ROADS
Discontinuance, assessment of costs to petitioners ..... Ch. 72

(MONTANA) STRIP AND UNDERGROUND MINE RECLAMATION ACT
1-year operating permits, conversion and annual reporting requirements ..... Ch. 352

SUBDIVISIONS
Conditions after approval prohibited ..... Ch. 555
Legislative study ..... SJR 43
Master plan areas, simplified procedure ..... Ch. 554
Review of minor subdivisions ..... Ch. 555
Sale before final plat filed ..... Ch. 553
Sanitary restrictions, petitions for removal ..... Ch. 554
Water supply and sewage disposal systems, revision generally ..... Ch. 557

SUBPOENAS
Highway patrolmen, regular duty pay allowed while responding to ..... Ch. 221
Investigative subpoenas ..... Ch. 486

SUBSIDIZED ADOPTION ACT OF 1977 ..... Ch. 434

SUNSET LAW
Legislative review of agencies ..... Ch. 562

SUPERINTENDENT OF PUBLIC INSTRUCTION
Adult basic education programs, appropriation ..... HB 835
Appropriations ..... HB 144, HB 145, HB 835
County school funds, year ending fund balances reported to ..... Ch. 180
Energy conservation programs, supervision and report to legislature ..... HJR 75
Functions transferred to department of administration ..... Ch. 478
Handicapped and hard-to-place children, leadership for interagency cooperation to meet the needs of ..... HJR 72
Salary ..... Ch. 461
Surplus property functions transferred to Department of Administration ..... Ch. 478
Vocational education governance, legislative study ..... HJR 100

SUPPORT OF DEPENDENTS
Revision generally ..... Ch. 33

SUPREME COURT
Appropriations ..... HB 143, HB 145
Bar admission
constitutional amendment for legislative disapproval of rules ..... Ch. 420
rule revision ..... SJR 16
Chief justice, salary ..... Ch. 461
Clerk of the supreme court, salary ..... Ch. 461
Court administrator, office to be established ..... Ch. 396
Law clerks and secretaries, assistance in district court to be studied prior to creation of new judgeships ..... HJR 3
Salaries of justices ..... Ch. 461

(STATE AGENCY FOR) SURPLUS PROPERTY
Functions transferred to Department of Administration and funds deposited in revolving fund ..... Ch. 478

SWAN RIVER YOUTH FOREST CAMP
Appropriation ..... HB 145

HeinOnline -- 1977 vol. II 2241 1977

SWINE
Tax assessment ..... Ch. 393

T

TAXATION
Agricultural—nonresident grain loans, repeal of list
preparation ..... Ch. 21
Airlines, centralized assessment ..... Ch. 98, Ch. 494
Airports, public—buildings exempt from taxation when leased
to private entity ..... Ch. 387
Alcoholic beverages, license tax increased for funding of
alcoholism treatment ..... Ch. 414
Banks and trust companies, ad valorem share tax
alternative methods
legislative revenue oversight committee study ..... Ch. 478
legislative study ..... HJR 99
deduction ..... Ch. 501
valuation of shares ..... Ch. 501
Business inventories
assessment basis defined ..... Ch. 182
penalty for underreporting ..... Ch. 107
reporting for property tax purposes ..... Ch. 255
Campers
assessment, time of ..... Ch. 211
toppers and truck canopy covers excluded ..... Ch. 112
Cement and gypsum producers, license tax
deposit of ..... Ch. 286
revision ..... Ch. 108
Cement dealers, license tax
deposit of ..... Ch. 286
rate change ..... Ch. 106
Cemeteries
levy, ceiling increased ..... Ch. 74
tax-exempt status clarified ..... Ch. 413
Cigarette excise tax, appeal procedures clarified ..... Ch. 155
Closing agreements entered into by Director of Revenue ..... Ch. 353
Coal
license tax allocation
art and cultural projects ..... Ch. 549
deleted ..... Ch. 540
deposit of ..... Ch. 286
(coal tax) oversight committee
continued ..... Ch. 540
funds reallocated to legislative council ..... HB 55
property tax—small producers, exemption on one-half of
gross proceeds ..... Ch. 87
revenue allocation
art and cultural projects, allocation for ..... Ch. 549
(coal tax revenue) oversight committee, funds reallocated
to legislative council ..... HB 55
revision ..... Ch. 540
trust fund created ..... Ch. 540
severance tax
allocation revised ..... Ch. 540
art and cultural projects, allocation for ..... Ch. 549
exemption increased ..... Ch. 164
revision generally ..... Ch. 156
small producers, property tax exemption on one-half of
gross proceeds ..... Ch. 87
trust funds, investment
agriculture and business, legislative study to give young
people a start ..... SJR 44
creation of trust fund ..... Ch. 540

HeinOnline -- 1977 vol. II 2242 1977

legislative studies....SJR 44
Code Commissioner bills....Ch. 34, Ch. 36, Ch. 52, Ch. 98, Ch. 126, Ch. 155, Ch. 156
amendment to Sec. 3, Ch. 98....Ch. 494
Community service organizations, property tax exemption....Ch. 491
Corporation
income tax
closing agreements entered by director of revenue....Ch. 353
interest on loans in real or personal property excluded....Ch. 247
license taxes
accrual characteristics clarified....Ch. 257
closing agreements entered by director of revenue....Ch. 353
deposit of....Ch. 286
energy conservation incentives....Ch. 576
investment credit....Ch. 412
revision generally....Ch. 34
subchapter s corporations, federal changes incorporated....Ch. 405
unemployment compensation taxes, collection when delinquent....Ch. 386
Courtesy permit for special fuel vehicles....Ch. 270
Definition of "person"....Ch. 52
Delinquent tax allowance when computing levies....Ch. 345
(Montana) Economic Land Development Act, revision and clarification....Ch. 582
Electrical energy producers, license tax....Ch. 401
Energy conservation tax incentives....Ch. 574, Ch. 576
Excise tax on cigarettes, appeal procedures clarified....Ch. 155
Exemptions
airports, public—buildings when leased to private entity....Ch. 387
cemetery association property....Ch. 413
community service organization property....Ch. 491
coal
production of less than 20,000 tons....Ch. 164
small producer, one-half of gross proceeds....Ch. 87
energy generation, nonfossil—exemption transferred....Ch. 576
fraternal benefit society property....Ch. 491
grammatical revision....Ch. 20, Ch. 52
handicapped child, income tax exemption....Ch. 500
irrigation district property....Ch. 492
loans secured by security interests....Ch. 247
metal mines, net proceeds....Ch. 498
natural gas, new production....Ch. 256
swine under 3 months....Ch. 393
toppers and truck canopy covers....Ch. 112
Express companies, license tax
deposit of....Ch. 286
provision for uniform collection....Ch. 36
Federal income tax return information, divulging unlawful....Ch. 346
Financial institutions, alternative methods of taxation
legislative revenue oversight committee study....Ch. 458
legislative study....HJR 99
Fire protection assessments, disposition of funds....Ch. 110
Forest land, See **Timber**
Fraternal benefit societies, property tax exemptions....Ch. 491
Freight lines
gross earning taxes, deposit of....Ch. 286
license taxes on, uniform collection procedure....Ch. 36
Gasoline dealer's and distributor's license tax
appeal procedures clarified....Ch. 155
deposit of....Ch. 286
increase for highway maintenance....Ch. 390

HeinOnline -- 1977 vol. II 2243 1977

liquified petroleum gases, tax on vehicle propelled by....Ch. 47
recreational vehicles, special fuel user's courtesy permit....Ch. 270
revision generally....Ch. 34
snowmobile facilities, use for....Ch. 382
special fuel dealers, tax credit....Ch. 258
special fuel users
courtesy permit....Ch. 270
private automobiles excepted....Ch. 236
waiver of filing return....Ch. 377
state park account, amount deposited to increased....Ch. 372
Gasoline importer's tax
repeal....Ch. 375
revision generally....Ch. 34
Hearings, administrative tax case—allocation of duties in conducting and specifying appeal procedures....Ch. 155
(State Funded) Homestead Tax Relief Act
amendments....Ch. 457
funding....HB 828
Importer's tax on gasoline
repeal....Ch. 375
revision generally....Ch. 34
Income tax
appeal procedures clarified....Ch. 155
closing agreements entered by director of revenue....Ch. 353
corporation
closing agreements entered by director of revenue....Ch. 353
interest on loans in real or personal property excluded....Ch. 247
day care expenses, deduction for....Ch. 102
energy conservation incentives transferred to....Ch. 574, Ch. 576
energy systems, nonfossil—tax credit....Ch. 574
estimated tax, penalty exemption....Ch. 374
federal return information, divulging unlawful....Ch. 346
gross income limitation increased....Ch. 159
handicapped child, exemption....Ch. 500
investment credit....Ch. 412
minimum income levels increased....Ch. 159
nonresident grain loans, repeal of list preparation....Ch. 21
political contributions, deductions....Ch. 158
retirement benefits exempted....Ch. 331
return information, divulging unlawful....Ch. 346
revision generally....Ch. 34
small business investment credit....Ch. 412
teacher's retirement, exemption....Ch. 331
Inheritance tax
determination....Ch. 409
joint estates and exemptions, revision and update of laws regarding....Ch. 490
joint tenancies, termination of interest....Ch. 409
life estates, termination of interest....Ch. 409
nonresident, deposit of....Ch. 286
termination of interests....Ch. 409
Insurance premium taxes, increase on independently procured coverage....Ch. 147
Investment credit....Ch. 412
Irrigation
districts, property exemptions....Ch. 492
systems, tax incentives broadened....Ch. 123
Jurisdictions, tax computation or levy limited....Ch. 349
Legislative Revenue Oversight Committee....Ch. 458, HB 842
Levy
community college retirement system funding....Ch. 121
delinquent tax allowance....Ch. 345
(Montana) university system, financial support for....Ch. 376, Ch. 463

HeinOnline -- 1977 vol. II 2244 1977

License taxes
alcoholic beverages, funding of alcoholism treatment....Ch. 414
cement and gypsum producers, revision....Ch. 108
cement dealers, rate change....Ch. 106
coal, tax allocation
art and cultural projects....Ch. 549
deleted....Ch. 540
corporations
accrual characteristics clarified....Ch. 257
closing agreements entered by director of revenue....Ch. 353
energy conservation incentives....Ch. 576
investment credit....Ch. 412
revision generally....Ch. 34
subchapter s corporations, federal changes
incorporated....Ch. 405
courtesy permit for special fuel vehicles....Ch. 270
deposit of....Ch. 286
electrical energy producers....Ch. 401
express companies, provision for uniform collection....Ch. 36
freight line companies, provision for uniform
collection....Ch. 36
gasoline
appeal procedure clarified....Ch. 155
increase....Ch. 390
liquified petroleum gases, tax on vehicle propelled
by....Ch. 47
revision generally....Ch. 34
snowmobile facilities, use for....Ch. 382
special fuel dealers, tax credit....Ch. 258
special fuel users' license....Ch. 236, Ch. 270, Ch. 377
state maintenance system for public highways, increase
for....Ch. 390
state park account, amount deposited to increased....Ch. 372
liquor, funding of alcoholism treatment....Ch. 414
mines and mining
deposit of....Ch. 286
metal mines, revision generally....Ch. 156
micaceous mineral mines....Ch. 209
oil and gas
board of oil and gas conservation, interest and income
credited to....Ch. 178, Ch. 254
rate revised....Ch. 178
revision generally....Ch. 126
sleeping car companies, provision for uniform
collection....Ch. 36
store license renewals, failure to make timely
applications....Ch. 419
telegraph companies
provision for uniform collection....Ch. 36
repeal....Ch. 40
telephone companies, provision for uniform
collection....Ch. 36
Liquor license tax, funding of alcoholism treatment....Ch. 414
Livestock and products of
assessment revision....Ch. 260
classification change....Ch. 497
funding of department of livestock through additional 1-mill
levy....Ch. 120
swine, assessment....Ch. 393
Mines and mining
assessment procedures consolidated....Ch. 98, Ch. 494
gross proceeds
ad valorem taxation....Ch. 498
metal mines, study by legislative revenue oversight
committee....Ch. 458

license tax
deposit of ..... Ch. 286
metal mines
revision generally ..... Ch. 156
study by legislative revenue oversight committee ..... Ch. 458
micaceous mineral mines ..... Ch. 209
metal mines
license tax, revision generally ..... Ch. 156
study by legislative revenue oversight committee ..... Ch. 458
micaceous mineral mines, license tax ..... Ch. 209
net proceeds tax, metal mines deleted ..... Ch. 498
property tax
assessment procedures consolidated ..... Ch. 98, Ch. 494
gross proceeds, ad valorem taxation of ..... Ch. 458, Ch. 498
Mobile homes and house trailers ..... Ch. 105, Ch. 250, Ch. 499
Motor vehicles
irrigation district vehicles ..... Ch. 492
liquefied petroleum gas, license tax on vehicles propelled by ..... Ch. 47
Natural gas, exemption for new gas production consumed in Montana ..... Ch. 256
Net proceeds tax
metal mines deleted ..... Ch. 498
natural gas, new production exemption ..... Ch. 256
Oil and gas
license tax
board of oil and gas conservation, interest and income credited to ..... Ch. 178, Ch. 254
deposit of ..... Ch. 286
rate revised ..... Ch. 178
natural gas, new production exemption from one-half net proceeds tax ..... Ch. 256
net proceeds tax on natural gas, new production exemption ..... Ch. 256
oil producers' severance tax, computation method changed ..... Ch. 160
property tax, revision generally ..... Ch. 98, Ch. 494
severance tax
natural gas, exemption for new production ..... Ch. 256
oil producers, computation method changed ..... Ch. 160
revision generally ..... Ch. 156
"Person", standardization of definition ..... Ch. 52
Personal property tax
campers ..... Ch. 112, Ch. 211
irrigation district exemptions ..... Ch. 492
mobile homes and house trailers, payments ..... Ch. 105, Ch. 250
snowmobiles ..... Ch. 402
Poultry, property tax classification change ..... Ch. 497
Property tax
airports, public—buildings exempt when leased to private entities ..... Ch. 387
appeals by taxpayers, procedures clarified ..... Ch. 155, Ch. 249, Ch. 355
assessment
business inventories, basis defined ..... Ch. 182
centralized assessment of railroads, utilities, airlines, mines, and oil and gas wells ..... Ch. 98, Ch. 494
fire protection, disposition of funds ..... Ch. 110
livestock, revision ..... Ch. 260
omitted assessment, procedure revised ..... Ch. 155
railroads ..... Ch. 494
swine ..... Ch. 393
banks and trust companies, ad valorem share tax
alternative methods
legislative revenue oversight committee study ..... Ch. 458

HeinOnline -- 1977 vol. II 2246 1977

legislative study ..... HJR 99
deduction ..... Ch. 501
valuation of shares ..... Ch. 501
business inventories
assessment basis defined ..... Ch. 182
penalty for underreporting ..... Ch. 107
reporting method ..... Ch. 255
cemeteries
associations, tax-exempt status clarified ..... Ch. 413
ceiling on levy increased ..... Ch. 74
classification
class 8, eligibility criteria revised ..... Ch. 499
legislative study ..... HJR 98
livestock, classification change ..... Ch. 497
poultry, classification change ..... Ch. 497
recreational vehicles of senior citizens ..... Ch. 502
revision and recodification ..... Ch. 566
coal, small producers—portion of gross proceeds
exempt ..... Ch. 87
community college funding—discretionary allocation
continuation, submission to electorate ..... Ch. 463
community college retirement system funding ..... Ch. 121
community service organizations, exemption ..... Ch. 491
county tax appeal board, See **COUNTY TAX APPEAL BOARD**
(Montana) economic land development act, revision ..... Ch. 582
energy conservation incentives transferred from ..... Ch. 576
financial institutions, alternative methods of taxation
legislative revenue oversight committee study ..... Ch. 458
legislative study ..... HJR 99
fire protection assessments, disposition of funds ..... Ch. 110
fraternal benefit societies, exemption ..... Ch. 491
(state funded) homestead tax relief act
amendments ..... Ch. 457
funding ..... HB 828
irrigation district exemptions ..... Ch. 492
irrigation systems, tax incentives broadened ..... Ch. 123
livestock and products of
assessment revision ..... Ch. 260
classification change ..... Ch. 497
funding of department of livestock ..... Ch. 120
swine, assessment ..... Ch. 393
market value, basis for taxation ..... Ch. 566
mines and mining
assessment procedures consolidated ..... Ch. 98, Ch. 494
gross proceeds, ad valorem taxation of ..... Ch. 458, Ch. 498
mobile homes and trailers ..... Ch. 499
notices, additional information required ..... Ch. 134
oil and gas wells, revision generally ..... Ch. 98, Ch. 494
personal, See **Personal Property tax**
poultry classification change ..... Ch. 497
railroads, assessment procedures ..... Ch. 98, Ch. 494
rate and levy delinquency allowance reduced ..... Ch. 345
reappraisal, study by legislative revenue oversight
committee ..... Ch. 458
recreational vehicles of senior citizens,
classification ..... Ch. 502
revision generally ..... Ch. 98, Ch. 126, Ch. 494
swine, assessment ..... Ch. 393
(Montana) university system funding ..... Ch. 376, Ch. 463
utilities, assessment procedures ..... Ch. 98, Ch. 494
Protest payment
interest paid on recovery of taxes ..... Ch. 394
portion of tax payable ..... Ch. 348
Railroads
property tax assessment procedures ..... Ch. 98, Ch. 494

HeinOnline -- 1977 vol. II 2247 1977

sleeping car companies, license tax
collection procedures ..... Ch. 36
deposit of ..... Ch. 286
Recreational vehicles
campers ..... Ch. 112, Ch. 211
senior citizens, classification of vehicles owned by ..... Ch. 502
snowmobiles ..... Ch. 402
special fuel courtesy permits ..... Ch. 270
Resource indemnity trust tax
revision generally ..... Ch. 156
royalty interests taxed ..... Ch. 495
(Legislative) Revenue Oversight Committee ..... Ch. 458, HB 842
Revision generally ..... Ch. 34, Ch. 36, Ch. 52, Ch. 98, Ch. 126, Ch. 155, Ch. 156
amendment to Sec. 3, Ch. 98 ..... Ch. 494
Schools, budget hearings ..... Ch. 354
Severance taxes
coal
allocations revised ..... Ch. 540
art and cultural projects, allocation for ..... Ch. 549
exemption increased ..... Ch. 164
revision generally ..... Ch. 156
natural gas, new production exemption ..... Ch. 256
oil and gas
natural gas, new production exemption ..... Ch. 256
oil producers, computation method changed ..... Ch. 160
revision generally ..... Ch. 156
Sleeping car companies, license tax
deposit of ..... Ch. 286
provision for uniform collection ..... Ch. 36
Snowmobile tax-paid decal, grace period to obtain
extended ..... Ch. 402
State Funded Homestead Tax Relief Act, See (State Funded) Homestead Tax Relief Act
Store licenses, penalty for failure to make timely renewal
applications ..... Ch. 419
Swine, assessment ..... Ch. 393
Telegraph companies, license taxes
provision for uniform collection procedures ..... Ch. 36
repeal ..... Ch. 40
Telephone companies, provision for uniform collection
procedure of license taxes ..... Ch. 36
Timber and forest lands
fire protection tax assessment, disposition ..... Ch. 110
(timber) yield tax, legislative study ..... SJR 29
Unemployment compensation taxes, collection when
delinquent ..... Ch. 386
(Montana) University system
community colleges ..... Ch. 121, Ch. 463
financial support for ..... Ch. 376, Ch. 463
Urban renewal, financing of costs ..... Ch. 532
Utilities, assessment procedures ..... Ch. 98, Ch. 494

TAXIDERMISTS
Records requirements ..... Ch. 129

TEACHERS, See also **SCHOOLS, DISTRICTS, AND TRUSTEES**
Athletic coach assistants not required to be faculty
members ..... Ch. 350
Certification, term ..... Ch. 171
Corporal punishment, use and administration ..... Ch. 388
Institutional, state—exempt from state classification and pay
plan ..... Ch. 565
Interstate Agreement on Qualification of Educational
Personnel ..... Ch. 328

HeinOnline -- 1977 vol. II 2248 1977

Retirement, See **RETIREMENT SYSTEMS**

TELEPHONE AND TELEGRAPH
Taxation, See **TAXATION**
Theft of services, aiding unlawful ..... Ch. 175

TELEVISION
Theft of services, aiding unlawful ..... Ch. 175

TENANT, See **LANDLORD AND TENANT**

THEATERS
Previews of R- and X-rated movies ..... Ch. 391, HJR 73

TIMBER, See **FORESTS AND FORESTRY; TAXATION**

TITLE ABSTRACTERS
Bond requirements eliminated ..... Ch. 541

TORTS, See also **DAMAGES**
Comparative negligence, actions involving ..... Ch. 433
Governmental liability or
immunity ..... Ch. 73, Ch. 189, Ch. 234, Ch. 360
attorney's fees ..... Ch. 188

TRACTION ENGINES
Marking and inspection provisions, repeal ..... Ch. 84

TRADE AND COMMERCE
Free enterprise, support urged ..... HJR 55
Revision generally ..... Ch. 265
Unfair trade practices, See **UNFAIR TRADE PRACTICES**

TRAFFIC OFFENSES
Bond made by check in lieu of cash ..... Ch. 295
Careless driving ..... Ch. 294
Conservation speed limit ..... Ch. 122
Driver rehabilitation program ..... Ch. 526
Driving while under the influence of alcohol or drugs
imprisonment mandatory ..... Ch. 289
penalty revisions ..... Ch. 289, Ch. 430
sentence not deferrable ..... Ch. 436
Minors, jurisdiction of courts ..... Ch. 446
Reckless driving when eluding police ..... Ch. 287
Speed limit of 65 m.p.h. ..... Ch. 122, HJR 11

TRAILERS AND TRAILER COURTS, See **MOBILE HOMES, TRAILERS, AND TRAILER COURTS**

TRAMWAYS
Gross receipts assessment ..... Ch. 437
Revision generally ..... Ch. 124

(STATE) TREASURER
Appropriation ..... HB 143
Hail Insurance, Board of—membership transferred to state
auditor ..... Ch. 468
Office abolished ..... Ch. 468

TRUSTS AND TRUSTEES
Common trust funds, establishment for collective
investment ..... Ch. 271

U

UNCLAIMED PROPERTY, See **ABANDONED PROPERTY**

UNEMPLOYMENT COMPENSATION
Administrative penalty ..... Ch. 240
Agricultural labor, coverage for ..... Ch. 523
Aliens, illegal—benefits denied ..... Ch. 428
Appeal of decision of board of labor appeals ..... Ch. 24, Ch. 201
Athletes, benefits denied ..... Ch. 428
Benefits revision ..... Ch. 528
Compensation Plan No. 2, policy requirements ..... Ch. 324
Contributions, penalty and interest revisions ..... Ch. 197
Definitions, changes ..... Ch. 115
Disqualification for benefits, amendments ..... Ch. 133, Ch. 428
Domestic help, coverage for ..... Ch. 523
Experience rating system, obsolete wording removed ..... Ch. 20
Fraud
criminal penalties ..... Ch. 240
investigation report to legislative auditor ..... SJR 38
Governmental entities, method of payment and increased taxable wage base ..... Ch. 165
Nonprofit organization employees
insurance coverage ..... Ch. 523
payment methods ..... Ch. 165
Subjectivity, removal of superfluous material ..... Ch. 115
Taxes, collection when delinquent ..... Ch. 386
"Total unemployment", definition changed ..... Ch. 115
Work program for benefit recipients ..... HJR 47

UNFAIR TRADE PRACTICES
Attorney general and county attorney powers clarified ..... Ch. 407
Motor vehicle manufacturers, distributors, or importers—dealer relationships ..... Ch. 380
Recordings and tapes, unauthorized duplication prohibited and penalties for violations ..... Ch. 367
Revision generally ..... Ch. 265, Ch. 518
Unfair Trade Practices and Consumer Protection Act
door-to-door sales, violation of cooling-off period provisions ..... Ch. 191
enforcement provisions clarified ..... Ch. 407

UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION ACT
Door-to-door sales, violation of cooling-off period provisions ..... Ch. 191
Enforcement provisions clarified ..... Ch. 407

UNIFORM CHILD CUSTODY JURISDICTION ACT ..... Ch. 537

UNIFORM COMMERCIAL CODE
Investment securities, transfer and holding ..... Ch. 278

UNIFORM PROBATE CODE, See **ESTATES AND PROBATE PROCEEDINGS**

UNIVERSITY OF MONTANA, See also **(MONTANA) UNIVERSITY SYSTEM**
Appropriations ..... HB 143, HB 144, HB 145

(MONTANA) UNIVERSITY SYSTEM
Academic excellence honored ..... SJR 50
Appropriations ..... Ch. 507, HB 143, HB 144, HB 145
Community colleges
appropriations ..... HB 145
districts, study to be made ..... SJR 11
retirement fund provisions clarified ..... Ch. 121
trustees—election date changed, travel expense reimbursements, and powers and duties revised generally ..... Ch. 121
Eastern Montana College, appropriations ..... HB 143, HB 144, HB 145

HeinOnline -- 1977 vol. II 2250 1977

Funding
property taxation continued ..... Ch. 463
6-mill levy ..... Ch. 376
state treasury fund structure, placement in ..... Ch. 438
Historic records network, creation ..... Ch. 366
Montana College of Mineral Science and Technology
appropriations ..... HB 143, HB 144, HB 145
bond issue for physical education facility ..... Ch. 507
Montana State University
appropriations ..... HB 143, HB 144, HB 145
auto repair shop, consent for construction ..... SJR 33
"bobcats" honored as national champions of division II football ..... SJR 25
physical education, athletic, and recreational facilities—consent for construction, improvement, and equipment ..... SJR 32
Northern Montana College, appropriations ..... HB 143, HB 144, HB 145
Students, resident—financial assistance program established ..... Ch. 515
University of Montana, appropriations ..... HB 143, HB 144, HB 145
Western Montana College, appropriations ..... HB 143, HB 145

UNLAWFUL DETAINER
Justice court—action filed in, trial procedures revised ..... Ch. 166

URANIUM
Solution extraction suspension ..... Ch. 543

URBAN RENEWAL
Financing of costs ..... Ch. 532

UTILITIES
Accidents, investigation and reporting ..... Ch. 472
Electrical energy producers
dams in Montana, power to Montanans first ..... HJR 19
license tax ..... Ch. 401
Energy conservation, utilities encouraged to help homeowners ..... HJR 24
(Montana) Major Facility Siting Act—notice of intention, filing of application ..... Ch. 179
Montana-Dakota connections limited by Federal Power Commission, request for withdrawal of limitation ..... HJR 97
Property tax assessment, consolidation of procedures for centralized assessment and general revision ..... Ch. 98, Ch. 494
Rate cases, adversary roles of consumer counsel and public service commission ..... Ch. 474
Rate increases, temporary—judicial review ..... Ch. 467
Rates in schedules or contracts filed with Public Service Commission, effective date ..... Ch. 435

V

VALLEY FORGE
Medal of Honor Grove, appropriation ..... HB 502

VETERANS
License plates free, number restricted ..... Ch. 67
Revision generally ..... Ch. 49
(Montana) Veterans' Home
appropriations ..... HB 144, HB 145
residents, provision for payment for care ..... Ch. 450
Vietnam veterans honorarium
application deadline extended ..... Ch. 135
appropriation ..... HB 145

HeinOnline -- 1977 vol. II 2251 1977

VETERANS' AFFAIRS, BOARD OF
Appropriation....HB 145
Termination....Ch. 562

VETERINARIANS
Health and Environmental Sciences, Board of—membership on....Ch. 524

VETERINARIANS, BOARD OF
Termination....Ch. 562

VISITORS, BOARD OF
Appropriation....HB 145
Human services, legislative evaluation....SJR 46

VOCATIONAL EDUCATION
Appropriations....HB 144, HB 145
Governance, legislative study....HJR 100
Legislative study on governance....HJR 100
Repeal of unconstitutional provisions regarding....Ch. 4

VOCATIONAL EDUCATION, ADVISORY COUNCIL FOR
Appropriation....HB 145

VOCATIONAL REHABILITATION
Revision generally....Ch. 37

VOLUNTEER BUREAU
Legislative evaluation....SJR 46

VOTERS AND VOTING, See **ELECTIONS**

W

WAGES
Firemen, minimum wage statute renumbered....Ch. 448
(The) Reciprocal Agreement for Collection of Wages Act of 1977....Ch. 216

WALLY BYAM CARAVAN CLUB INTERNATIONAL
Welcome to Montana....SR 9

WAREHOUSES AND WAREHOUSEMEN
Public warehousemen, grain regulations and rates....Ch. 177
Seed warehouses, revision generally....Ch. 315

WARM SPRINGS STATE HOSPITAL
Appropriations....HB 143, HB 144, HB 145
Residents, provision for payment for care....Ch. 450

WATER AND WASTE WATER OPERATORS, BOARD OF
Termination....Ch. 562

WATER WELL CONTRACTORS
Bond requirements eliminated....Ch. 541

WATER WELL CONTRACTORS, BOARD OF
Termination....Ch. 562

WATERS AND WATER RIGHTS
Adjudication, administrative work to be expedited....SJR 48
Big Hole River, feasibility study of off-stream storage....HJR 80
Columbia Interstate Compact, repeal....Ch. 464
Conservation districts, See **SOIL AND WATER CONSERVATION DISTRICTS**
Cooney Dam repairs and financing, study....Ch. 442

HeinOnline -- 1977 vol. II 2252 1977

County districts, notice publication requirements changed ..... Ch. 296
Dams in Montana, power to Montanans first ..... HJR 19
Drinking water standards, establishment and enforcement ..... Ch. 556
Floodplains and floodways
damages caused by permitted obstruction, sovereign immunity continued ..... Ch. 73
political subdivisions, adoption of land-use regulations ..... Ch. 262
Fort Peck Project
additional power generation capacity, support ..... SJR 24
coyote reduction by aerial hunting, endorsement ..... HJR 82
recreation and conservation of fish and wildlife, amendment to include as purpose ..... SJR 27
Irrigation, See **IRRIGATION**
Kootenai River, request for construction of reregulation dam ..... SJR 20
Legislative studies ..... HJR 81
Missouri River in vicinity of Winifred and Big Sandy, bridge across ..... SJR 36
Off-stream storage sites ..... Ch. 418, HJR 80
Pollution
enforcement of laws against persons resident in canada or not found in Montana ..... Ch. 308
federal water pollution control act, repeal urged ..... HJR 43
stream classification change ..... Ch. 444
Power
fort peck project, additional generation capacity ..... SJR 24
locally generated, to Montanans first ..... HJR 19
poplar river power project, position statement ..... HJR 48
Public water supply provisions, administration and enforcement ..... Ch. 556
Rehabilitation of water affected by mining ..... Ch. 29
Reservoir sites, construction and sale of water ..... Ch. 418
Revision generally ..... Ch. 460
Sewage disposal, See **SEWAGE DISPOSAL**
Stock water impoundments or pits, construction ..... Ch. 470
Subdivision sewer and water systems, inspection and monitoring ..... Ch. 557
Sun-Teton unit of Missouri River Basin Project, bureau of reclamation study requested ..... HJR 21
Tongue and Powder River Basins, water projects feasibility study ..... HJR 22
Unappropriated waters, permit for use ..... Ch. 307
(Montana) Water Use Act
amendments ..... Ch. 416
applications for permits or approvals, maximum fee payable for environmental impact statements ..... Ch. 117
Water users' associations, appeals and protests relating to repair and maintenance costs of water projects ..... Ch. 253
Water works projects, unsafe—sovereign immunity continued ..... Ch. 73
Weather modification permits, publication of notice of intention ..... Ch. 46
Yellowstone River Basin, moratorium extended ..... Ch. 26

WEAPONS, DANGEROUS, See CRIMES AND CRIMINAL PROCEDURE; FIREARMS

WEATHER MODIFICATION
Permits, publication of notice of intention ..... Ch. 46

WELFARE
Audit of records ..... Ch. 425
Fraud as theft ..... Ch. 273
Grants-in-aid to counties, clarification generally and return of moneys ..... Ch. 168

Low-income housing, manager exempt from real estate license act of 1963 ..... Ch. 385
Medicaid, See **MEDICAID**
Medical assistance, subrogation and third party liability to rights of recipient ..... Ch. 379
Revision generally ..... Ch. 37
State, county board to reimburse ..... Ch. 109
Work programs for unemployed persons ..... HJR 47

WESTERN MONTANA COLLEGE
Appropriations ..... HB 143, HB 145

WESTERN STATES FORESTRY TASK FORCE
Appropriation ..... HB 145
Delegates to attend ..... SJR 23

WHEELER, SENATOR BURTON K.
Bust of ..... SJR 34

WILD HORSE ISLAND
Appropriation for acquisition ..... HB 836

WINIFRED-BIG SANDY
Missouri River, joint committee to formulate plan for bridge across ..... SJR 36

WITNESSES
Reporter's examination privilege deleted ..... Ch. 225

WOMEN'S BUREAU
Legislative evaluation ..... SJR 46

WORKERS' COMPENSATION
Competitive rating among insurers ..... Ch. 558
"Employee", definition clarified ..... Ch. 281
Fictitious group provisions, exemption ..... Ch. 292
Occupational Disease Act of Montana, revision generally ..... Ch. 208
Uninsured employers' fund ..... Ch. 550

WORKERS' COMPENSATION DIVISION
Appropriations ..... HB 143, HB 145
Boiler inspector's reports, discretion in acceptance ..... Ch. 152

WORKERS' COMPENSATION JUDGE
Appropriation ..... HB 143, HB 145

WRESTLING
License requirement for exhibitions, clarification ..... Ch. 5

Y

YELLOWSTONE NATIONAL PARK
Contiguous portions to be included in Gallatin and Park counties ..... Ch. 447

YELLOWSTONE RIVER BASIN
Moratorium extended ..... Ch. 26

YOUTH COURT
Aftercare agreement for youth, revision of hearings on alleged violations ..... Ch. 231
Detention
revision generally ..... Ch. 571
Intoxicating substance, unlawful possession by minor—
treatment when proceedings held in ..... Ch. 536

HeinOnline -- 1977 vol. II 2254 1977

Jurisdiction over alcoholic beverage and traffic violations....Ch. 446
Revision generally....Ch. 100

YOUTH GUIDANCE HOMES
Residents, provision for payment of care....Ch. 450

Z

ZOOK BROTHERS CONSTRUCTION COMPANY
Judgment against state....HB 554

HeinOnline -- 1977 vol. II 2256 1977

CODE INDEX

HeinOnline -- 1977 vol. II 2257 1977

HeinOnline -- 1977 vol. II 2258 1977

CODE INDEX

CODES OF 1947

Title-Sec.	Action	Page
1-325, 326	amended	210
1-401	amended	232
1-502	amended	232
		234
1-701, 702	amended	232
1-704	amended	232
1-724—739	enacted	551
1-829—832	repealed	232
1-903	amended	232
1-912	amended	232
1-918	amended	232
1-1001—1005	repealed	232
1-1101	amended	232
3-201	amended	13
3-205	amended	13
3-208	amended	177
3-209	amended	43
3-210	amended	13
3-220	amended	13
3-224, 225	amended	13
3-227	amended	13
		43
3-228.1, 228.2	amended	43
3-228.3	amended	359
3-233	amended	16
3-310, 311	amended	315
3-313	amended	315
3-316	amended	315
3-710	amended	13
3-712	amended	13
3-802.2	amended	13
3-802.4	amended	13
	amended	315
3-804, 805	amended	13
3-807	amended	13
3-1215	amended	13
3-1405, 1406	amended	13
3-1714.3	amended	13
3-1729	amended	13
3-1901	amended	13
3-1902	amended	13
		315
3-1903	amended	13
3-1907, 1908	amended	315
3-2033	amended	16
3-2301	amended	141
3-2303	amended	141
3-2304	repealed	141
3-2305	amended	141
3-2309	repealed	141
3-2311	amended	141
3-2313	amended	141

HeinOnline -- 1977 vol. II 2259 1977

3-2315	repealed	141
3-2404	amended	12
3-2445, 2446	repealed	12
3-2489	amended	12
3-2496—2498	amended	12
3-24-122	amended	12
3-24-127	amended	12
3-24-138	amended	12
3-2601—2604	repealed	13
3-2605	repealed	13
	amended	343
3-2606	repealed	13
3-2806	enacted	30
3-2917	amended	16
3-3102—3107	amended	25
3-3112	amended	13
3-3303	amended	13
3-3312	amended	13
3-3402	amended	13
3-3501	amended	13
	.....	362
3-3502—3506	amended	362
3-3507	enacted	362
4-1-304	amended	496
4-1-305	repealed	496
4-1-307	repealed	496
4-1-401	amended	414
4-1-404	amended	414
4-1-406	amended	398
4-1-407	amended	286
4-2-102	amended	496
4-2-204	amended	496
4-4-105	amended	496
4-4-106	repealed	496
4-4-201, 202	amended	496
4-4-301—303	amended	496
4-4-401	amended	496
4-4-403, 404	amended	496
4-4-406	amended	509
4-5-105	amended	496
4-6-102	amended	496
4-6-104	amended	264
4-6-205	amended	496
4-6-206	repealed	496
4-6-401	amended	496
5-102	amended	71
5-202.1	amended	71
5-403	amended	71
5-504	amended	71
5-506	amended	71
5-508	amended	71
5-508.1	enacted	217
5-517	amended	71
5-519	amended	71
5-530	amended	71
5-604	amended	71
5-609	amended	71
	.....	453
5-610, 611	amended	71
5-702	amended	71
5-707	amended	71
5-802	amended	71
5-1002	amended	71
5-1019	amended	71
5-1021	amended	71

5-1027 ..... amended 71
5-1028 ..... amended 503
5-1032 ..... amended 71
5-1039 ..... amended 71
5-1040 ..... amended 359
5-1044 ..... amended 359
5-1055 ..... amended 71
5-1106 ..... amended 71
5-1115 ..... amended 71
5-1117 ..... amended 343
5-1125 ..... repealed 71
5-1126 ..... amended 71
5-1407 ..... enacted 271
5-1508 ..... amended 71
5-1601—1603 ..... enacted 278
5-1701—1721 ..... enacted 503
6-501 ..... amended 193
7-102 ..... amended 71
7-112 ..... amended 71
7-113.2 ..... amended 363
7-113.3 ..... enacted 363
7-130 ..... amended 66
7-139 ..... amended 71
7-156 ..... amended 71
8-101 ..... amended 139
8-102 ..... amended 138
8-102.1 ..... enacted 138
8-103.4 ..... amended 518
8-108—110 ..... amended 476
8-118 ..... amended 476
8-119 ..... amended 282
8-126 ..... amended 476
8-132 ..... enacted 280
9-107 ..... amended 62
9-119 ..... amended 62
9-209 ..... amended 74
9-804 ..... amended 62
9-1003, 1004 ..... amended 62
9-1006 ..... amended 62
9-1013 ..... amended 62
10-204, 205 ..... amended 100
10-207—210 ..... repealed 100
10-806 ..... amended 293
10-1203 ..... amended 571
10-1206 ..... amended 100
..... 446
10-1209 ..... amended 571
10-1210 ..... amended 100
..... 571
10-1212—1216 ..... amended 571
10-1217 ..... amended 100
10-1218 ..... amended 100
..... 571
10-1220 ..... amended 100
..... 344
10-1222 ..... amended 571
10-1224 ..... amended 100
10-1229, 1230 ..... amended 100
10-1235 ..... amended 571
10-1236 ..... amended 100
..... 571
10-1237 ..... amended 571
10-1238 ..... amended 450
10-1242 ..... amended 100
..... 571

10-1243 ..... amended 571
10-1246 ..... amended 100
10-1248 ..... amended 100
10-1249 ..... amended 100
..... 450
10-1251, 1252 ..... amended 100
10-1301 ..... amended 100
10-1309—1311 ..... amended 100
10-1320 ..... amended 100
11-403 ..... amended 510
11-519 ..... amended 81
11-526 ..... enacted 131
11-721.1 ..... repealed 364
11-988 ..... amended 566
11-1011 ..... amended 566
11-1019 ..... amended 566
11-1024 ..... amended 259
..... 563
11-1024.1 ..... amended 489
11-1301 ..... amended 566
11-1305, 1306 ..... repealed 234
11-1601 ..... amended 344
11-1601.1 ..... enacted 344
11-1602, 1603 ..... amended 344
11-1603.1 ..... enacted 344
11-1604 ..... amended 344
11-1701 ..... amended 429
11-1703, 1704 ..... amended 429
11-1704.1 ..... enacted 429
11-1705 ..... amended 429
11-1708 ..... amended 429
11-1709 ..... repealed 344
..... 429
11-1710, 1711 ..... amended 344
..... 429
11-1717, 1718 ..... amended 429
11-1809 ..... amended 489
11-1819 ..... amended 489
11-1821.1 ..... repealed 224
..... 456
11-1822.1—1822.7 ..... enacted 451
11-1823 ..... amended 224
..... 456
..... 489
11-1824 ..... repealed 224
..... 456
11-1825 ..... amended 224
..... 456
..... 489
11-1826 ..... amended 456
11-1828, 1829 ..... amended 224
11-1830 ..... amended 224
..... 489
11-1834 ..... amended 456
11-1836 ..... amended 224
..... 456
11-1838 ..... amended 224
repealed 456
amended 489
11-1839 ..... amended 224
repealed 456
11-1839.1 ..... enacted 489
11-1840 ..... amended 224
repealed 456
11-1841 ..... repealed 456

11-1842 ..... amended 224
repealed 456
amended 489
11-1842.1 ..... enacted 368
11-1843 ..... amended 224
..... 489
11-1844 ..... amended 224
..... 456
..... 489
11-1845 ..... amended 214
..... 224
11-1845.1 ..... enacted 214
11-1846.1 ..... enacted 406
11-1847 ..... amended 489
11-1848 ..... repealed 456
11-1849 ..... amended 406
..... 489
11-1850 ..... amended 224
repealed 456
11-1851—1854 ..... enacted 337
11-1855—1859 ..... enacted 85
11-1860—1892 ..... enacted 456
11-1902—1905 ..... amended 489
11-1909 ..... amended 566
11-1910 ..... amended 157
..... 489
11-1910.1 ..... enacted 157
11-1910.2 ..... enacted 489
11-1911 ..... amended 157
..... 484
..... 489
11-1912 ..... amended 157
11-1914 ..... amended 157
11-1916 ..... amended 359
11-1919 ..... amended 157
..... 489
..... 566
11-1922 ..... amended 157
11-1923 ..... amended 157
..... 489
11-1924 ..... amended 157
11-1925 ..... amended 58
..... 157
..... 484
..... 489
11-1925.1 ..... enacted 484
11-1926, 1927 ..... amended 157
..... 489
11-1927.1, 1927.2 ..... amended 157
..... 489
11-1928—1930 ..... amended 157
11-1932 ..... renumbered 41-2303.1 448
amended 489
11-1935, 1936 ..... amended 489
11-2003 ..... amended 69
11-2004, 2005 ..... amended 489
11-2007 ..... amended 157
11-2008 ..... amended 81
11-2020.1 ..... enacted 157
amended 480
11-2020.2 ..... enacted 157
amended 489
11-2022 ..... amended 90
..... 95
..... 157

..... 480
..... 489
11-2023, 2024 ..... amended 157
..... 489
11-2024.1 ..... enacted 157
11-2025 ..... amended 95
..... 157
..... 489
11-2026, 2027 ..... amended 132
..... 157
..... 489
11-2028 ..... amended 95
11-2029 ..... amended 157
..... 489
11-2030 ..... amended 95
..... 157
..... 480
11-2031 ..... amended 157
11-2201 ..... amended 566
11-2205 ..... amended 566
11-2289, 2290 ..... enacted 404
11-2303 ..... amended 566
11-2806 ..... enacted 72
11-3127 ..... amended 489
11-3132 ..... repealed 364
11-3214 ..... amended 489
11-3220 ..... repealed 364
11-3266 ..... amended 489
11-3271 ..... amended 219
11-3271.1—3271.3 ..... enacted 219
11-3283 ..... amended 38
11-3524 ..... amended 157
..... 489
11-3540 ..... repealed 364
11-3860 ..... amended 552
11-3862 ..... amended 552
11-3866 ..... amended 555
11-3867 ..... amended 553
11-3876 ..... amended 553
11-3910 ..... amended 532
11-3917 ..... amended 38
11-3921 ..... amended 532
..... 566
11-3922—3925 ..... repealed 532
11-4111 ..... amended 566
12-216 ..... amended 309
12-402 ..... amended 309
12-501 ..... amended 1
12-505 ..... amended 1
12-505.1 ..... enacted 1
12-506, 507 ..... amended 1
12-509, 510 ..... amended 1
13-812 ..... amended 274
14-221, 222 ..... repealed 62
14-307 ..... amended 566
14-312 ..... amended 62
14-408—410 ..... amended 298
14-430, 431 ..... enacted 298
14-605 ..... amended 71
14-631 ..... amended 359
14-665 ..... amended 71
14-671 ..... amended 111
15-2006 ..... amended 265
..... 275
15-2011 ..... amended 150

HeinOnline -- 1977 vol. II 2264 1977

15-2016 ..... amended 242
15-2105 ..... amended 62
15-2212 ..... amended 62
15-2274 ..... amended 62
15-2287 ..... amended and renumbered 15-2701 455
15-2288, 2289 ..... repealed 455
15-2290 ..... amended 455
15-2299 ..... amended 66
15-2351 ..... repealed 455
15-2352 ..... amended 62
repealed 455
15-2353 ..... repealed 455
15-2354 ..... amended 455
15-2408 ..... amended 113
15-2504 ..... amended 62
15-2603 ..... amended 71
15-2701—2706 ..... enacted 455
16-216 ..... amended 447
16-234 ..... amended 447
16-502 ..... amended 566
16-807, 808 ..... amended 566
16-912 ..... amended 493
16-1032 ..... amended 80
16-1045 ..... amended 513
16-1047 ..... amended 513
16-1131 ..... amended 7
16-1152 ..... amended 362
..... 566
16-1412 ..... amended 566
16-1724—1727 ..... enacted 466
16-1802 ..... amended 234
16-2010.1 ..... amended 566
16-2021, 2022 ..... amended 347
16-2615 ..... repealed 184
16-2714 ..... amended 426
16-2731—2733 ..... repealed 234
16-3001 ..... amended 344
16-3401 ..... amended 530
16-3402 ..... repealed 530
16-3403 ..... repealed 184
..... 530
16-3409 ..... amended 530
16-3603—3605 ..... amended 344
16-3606 ..... repealed 344
16-3607 ..... amended 344
16-4020 ..... amended 566
16-4503 ..... amended 296
16-4505 ..... amended 296
16-4507 ..... amended 296
16-4520 ..... amended 296
16-4527 ..... amended 296
16-4533 ..... amended 296
16-4806 ..... amended 38
16-5119 ..... amended 453
17-205 ..... amended 234
17-1301—1315 ..... enacted 449
18-318 ..... amended 185
18-403 ..... amended 185
18-510 ..... amended 185
18-515 ..... amended 185
19-103 ..... amended 309
19-105 ..... amended 309
19-112 ..... amended 468
19-125 ..... enacted 6
23-2601 ..... amended 365

23-2605 ..... amended 365
23-2606 ..... repealed 334
23-2704 ..... amended 342
..... 365
23-2802 ..... amended 342
..... 365
23-2901 ..... amended 365
23-3002, 3003 ..... amended 365
23-3006 ..... amended 334
23-3013 ..... amended 369
23-3014, 3015 ..... amended 365
23-3018 ..... amended 365
23-3021 ..... repealed 365
23-3025 ..... repealed 334
23-3026 ..... amended 365
23-3029 ..... repealed 334
23-3030 ..... repealed 365
23-3304, 3305 ..... amended 365
23-3308 ..... amended 365
23-3311—3316 ..... amended 365
23-3317 ..... repealed 334
23-3319 ..... amended 365
23-3326 ..... amended 342
23-3403 ..... amended 365
23-3405 ..... amended 365
23-3506 ..... amended 365
23-3512 ..... amended 365
25-3513 ..... amended 365
..... 468
23-3515 ..... amended 365
23-3605 ..... amended 334
23-3606 ..... amended 365
23-3607 ..... amended 334
23-3610—3613 ..... amended 365
23-3708 ..... amended 365
23-3711 ..... amended 365
23-3713 ..... amended 365
23-3715 ..... amended 365
23-3717 ..... repealed 334
23-3801 ..... amended 365
23-3804 ..... amended 116
23-3807 ..... amended 365
23-3812 ..... amended 334
23-3820, 3821 ..... repealed 334
23-3822 ..... amended 334
..... 365
23-3905 ..... amended 365
23-4011 ..... amended 365
23-4013—4016 ..... amended 365
23-4103 ..... amended 365
23-4117 ..... amended 365
23-4121 ..... amended 365
..... 468
23-4401, 4402 ..... amended 365
23-4404 ..... repealed 365
23-4405 ..... enacted 365
23-4511 ..... repealed 334
23-4701—4721 ..... repealed 334
23-4723, 4724 ..... repealed 334
23-4732 ..... repealed 334
23-4737 ..... amended 365
23-4738 ..... repealed 334
23-4740—4743 ..... repealed 334
23-4744.1 ..... repealed 334
23-4745 ..... repealed 334

HeinOnline -- 1977 vol. II 2266 1977

23-4746 ..... amended 334
23-4747—4749 ..... repealed 334
23-4751—4754 ..... repealed 334
23-4756 ..... repealed 334
23-4757—4760 ..... amended 365
23-4763 ..... amended 365
23-4767 ..... amended 365
23-4768 ..... repealed 334
23-4770 ..... amended 365
23-4773 ..... repealed 334
23-4777 ..... amended 365
23-4778 ..... amended 23
23-4781 ..... amended 23
23-4785 ..... amended 365
..... 461
23-4786, 4787 ..... amended 365
23-4788 ..... amended 334
..... 365
23-4793 ..... repealed 334
23-4794, 4795 ..... amended 365
23-4796 ..... enacted 365
23-47-101—139 ..... enacted 334
23-4901, 4902 ..... amended 538
23-4904 ..... amended 538
23-4906 ..... amended 538
25-232 ..... amended 33
..... 548
25-233 ..... repealed 548
25-301 ..... amended 154
25-307 ..... amended 344
25-310 ..... amended 207
25-401 ..... amended 344
25-403 ..... amended 344
25-501 ..... amended 461
..... 468
25-507.1, 507.2 ..... amended 51
25-605 ..... amended 493
26-101.1 ..... amended 417
26-103.1 ..... enacted 417
26-104 ..... amended 417
26-104.4—104.7 ..... amended 417
26-106 ..... repealed 417
26-106.3 ..... enacted 417
26-107 ..... amended 417
26-108 ..... amended 453
..... 417
26-109 ..... amended 417
26-109.1 ..... enacted 417
26-110 ..... amended 417
26-110.3 ..... amended 9
..... 417
26-114 ..... amended 417
26-118, 119 ..... amended 417
26-121 ..... amended 417
26-123 ..... amended 417
26-124 ..... repealed 417
26-126—129 ..... amended 417
26-132 ..... amended 9
..... 417
26-133 ..... amended 417
26-134 ..... amended 9
26-135 ..... amended 417
26-201 ..... amended 235
26-202 ..... amended 9
..... 417

26-202.1 ..... amended 169
..... 235
..... 417
26-202.2 ..... amended 9
26-202.4 ..... amended 417
26-202.5 ..... amended 9
..... 417
26-202.6—202.8 ..... amended 417
26-204 ..... amended 9
..... 417
26-210 ..... amended 417
26-212 ..... amended 417
26-212.1 ..... amended 417
26-213 ..... amended 9
26-215 ..... amended 9
..... 417
26-217 ..... amended 9
26-220 ..... amended 417
..... 421
26-221 ..... amended 421
26-222 ..... amended 417
..... 421
26-223 ..... amended 421
26-225, 226 ..... amended 417
26-228 ..... amended 9
..... 417
26-230 ..... amended 9
..... 417
26-232 ..... amended 9
26-233 ..... amended 417
26-234 ..... amended 82
26-301 ..... amended 9
..... 196
..... 235
..... 400
..... 417
..... 485
26-301.1 ..... amended 417
26-302 ..... amended 9
..... 417
26-303.4 ..... repealed 9
26-303.5 ..... amended 235
..... 417
26-306 ..... amended 9
..... 417
26-307 ..... amended 417
26-307.1 ..... repealed 9
amended 417
26-315 ..... amended 465
26-317 ..... amended 9
26-319 ..... amended 417
..... 465
26-320 ..... amended 417
26-324 ..... amended 9
..... 417
..... 465
26-330 ..... amended 9
26-331, 332 ..... amended 9
..... 417
26-334, 335 ..... amended 417
26-339 ..... repealed 140
26-344 ..... amended 9
..... 417
26-402 ..... amended 417
26-501 ..... amended 9
..... 417

26-501.1 ..... amended 9
..... 417
26-502 ..... repealed 9
26-503 ..... amended 9
26-504 ..... amended 149
26-507 ..... amended 9
26-510 ..... amended 417
26-512 ..... amended 9
26-701 ..... amended 9
26-704, 705 ..... amended 9
26-708 ..... amended 9
26-801, 802 ..... amended 9
26-804, 805 ..... amended 9
26-811 ..... amended 9
26-812 ..... amended 465
26-813, 814 ..... amended 417
26-904 ..... amended 9
26-907 ..... amended 9
..... 129
26-908 ..... amended 9
26-909 ..... repealed 9
amended 417
26-911 ..... amended 417
26-912—915 ..... amended 9
..... 417
26-916, 917 ..... amended 9
26-918—920 ..... amended 417
26-921 ..... amended 9
26-922 ..... repealed 9
26-1006 ..... amended 9
26-1008 ..... amended 9
26-1101, 1102 ..... amended 9
26-1120, 1121 ..... amended 417
26-1123, 1124 ..... amended 417
26-1201 ..... amended 417
26-1206—1208 ..... amended 417
26-1210 ..... amended 417
26-1211 ..... amended 465
26-1306 ..... amended 9
26-1402, 1403 ..... amended 417
26-1502—1504 ..... amended 417
26-1505 ..... amended 417
amended 453
26-1508 ..... amended 417
26-1509 ..... amended 417
26-1514 ..... amended 140
26-1517 ..... amended 140
26-1601—1603 ..... amended 417
26-1605 ..... amended 417
26-1607—1610 ..... amended 417
26-1612—1614 ..... amended 417
26-1701, 1702 ..... amended 417
26-1704 ..... amended 417
26-1705 ..... amended 9
26-1802 ..... amended 417
26-1804—1808 ..... amended 417
27-216, 217 ..... amended 462
27-220 ..... amended 13
..... 462
27-221, 222 ..... amended 462
27-225 ..... amended 462
27-227, 228 ..... amended 462
27-230, 231 ..... amended 462
27-232 ..... amended 13
..... 462

HeinOnline -- 1977 vol. II 2269 1977

27-234, 235 ..... amended 462
27-236 ..... repealed 462
27-237 ..... amended 13
repealed 462
27-238 ..... amended 453
repealed 462
27-240 ..... amended 462
27-242, 243 ..... amended 462
27-245 ..... amended 462
27-405 ..... amended 19
27-407 ..... amended 19
27-430 ..... enacted 245
27-703 ..... amended 403
27-706, 707 ..... amended 187
27-722 ..... amended 187
27-805 ..... amended 187
28-103 ..... amended 397
28-105, 106 ..... amended 397
28-109, 110 ..... amended 397
28-111 ..... amended 110
..... 397
28-114 ..... amended 397
28-117, 118 ..... amended 397
28-122 ..... amended 397
28-124 ..... repealed 110
28-125 ..... repealed 397
28-128 ..... repealed 397
28-129 ..... amended 397
28-601, 602 ..... amended 397
28-603 ..... amended 73
..... 397
28-604 ..... repealed 397
28-605 ..... enacted 397
28-701 ..... repealed 464
29-207 ..... repealed 185
29-208 ..... amended 185
30-106 ..... amended 185
30-208 ..... amended 185
30-407 ..... amended 185
30-504, 505 ..... amended 185
31-104, 105 ..... amended 343
31-105.2 ..... enacted 221
31-110 ..... amended 280
..... 359
31-112.1 ..... enacted 295
31-135.1 ..... enacted 28
31-145 ..... amended 430
31-146 ..... amended 359
..... 430
31-149 ..... amended 430
31-172 ..... repealed 234
31-177 ..... amended 359
31-191, 192 ..... enacted 526
31-201 ..... amended 65
..... 332
31-201.1 ..... enacted 65
31-206 ..... amended 332
31-207, 208 ..... amended 65
31-213 ..... amended 65
31-215 ..... amended 65
31-220 ..... amended 332
31-221 ..... amended 214
31-221.1 ..... enacted 214
31-222, 223 ..... amended 65

HeinOnline -- 1977 vol. II 2270 1977

31-228 ..... amended 65
32-1123.2 ..... amended 269
32-1124 ..... amended 239
32-1126 ..... amended 280
32-2142 ..... amended 289
..... 430
32-2143 ..... amended 287
32-2143.3, 2143.4 ..... enacted 294
32-2144.1 ..... amended 122
32-2144.3, 2144.4 ..... repealed 122
32-2193 ..... amended 244
32-2197 ..... amended 244
32-21-105.1 ..... amended 54
32-21-141.1 ..... amended 489
32-2406 ..... amended 283
32-2407.1—2407.4 ..... enacted 390
32-2601 ..... amended 372
..... 382
32-2607.1 ..... enacted 79
32-2614 ..... amended 78
32-3107 ..... amended 566
32-3403 ..... amended 286
32-3928 ..... amended 143
32-4516 ..... amended 252
32-4519 ..... amended 252
32-4722 ..... amended 234
32-4728 ..... amended 140
34-101 ..... amended 14
34-302 ..... amended 325
34-311, 312 ..... enacted 325
35-503 ..... amended 163
35-526 ..... amended 163
35-601—603 ..... enacted 583
36-110 ..... repealed 33
36-130, 131 ..... repealed 33
36-204 ..... amended 33
37-101—103 ..... repealed 342
amended 365
37-104 ..... repealed 342
37-104.1 ..... repealed 342
amended 365
37-104.2—104.9 ..... repealed 342
37-104.10 ..... amended 38
repealed 342
37-105—108 ..... repealed 342
37-109 ..... amended 334
repealed 342
37-110 ..... repealed 342
37-111 ..... enacted 365
37-115—138 ..... enacted 342
37-201, 202 ..... repealed 342
amended 365
37-203 ..... repealed 342
38-110 ..... amended 37
38-120 ..... amended 37
38-210 ..... repealed 37
..... 450
38-506 ..... amended 37
38-1202 ..... amended 37
..... 568
38-1205, 1206 ..... amended 37
38-1208 ..... amended 37
..... 568
38-1209 ..... amended 568
38-1215, 1216 ..... amended 568

38-1222 ..... amended 37
38-1232 ..... amended 546
38-1301 ..... amended 546
38-1302 ..... amended 37
..... 546
38-1303—1310 ..... amended 546
38-1313 ..... amended 546
38-1322 ..... amended 546
38-1324, 1325 ..... amended 546
38-1328 ..... amended 546
38-1330, 1331 ..... amended 546
40-2726 ..... amended 322
40-2807 ..... amended 319
40-2819 ..... amended 321
40-2827—2829 ..... enacted 212
40-2905, 2906 ..... amended 359
40-2911 ..... enacted 303
40-3010 ..... amended 96
40-3324 ..... amended 359
40-3343 ..... amended 146
40-3427 ..... amended 147
40-3501 ..... amended 320
40-3502.1—3502.3 ..... enacted 320
40-3512 ..... amended 38
..... 320
40-3514 ..... amended 320
40-3514.1 ..... enacted 320
40-3516 ..... repealed 320
40-3516.1 ..... enacted 320
40-3520 ..... amended 292
40-3639 ..... amended 558
40-3643 ..... amended 558
40-3654 ..... amended 469
40-3909 ..... amended 215
40-4401, 4402 ..... amended 234
40-4410 ..... amended 469
40-4759—4763 ..... enacted 119
40-5127 ..... amended 200
40-5134 ..... enacted 200
40-5601, 5602 ..... amended 558
40-5607—5615 ..... repealed 558
40-5616 ..... amended 558
40-5618 ..... amended 558
40-6001—6010 ..... enacted 246
41-121 ..... enacted 56
41-817 ..... amended 37
41-908 ..... amended 343
41-1326—1331 ..... enacted 216
41-1603 ..... amended 343
41-2101—2108 ..... repealed 187
41-2303.1 ..... enacted 448
amended 489
41-2303.2 ..... enacted 448
42-201 ..... repealed 313
42-204 ..... repealed 313
42-301 ..... amended 297
42-303—305 ..... amended 297
42-308 ..... amended 297
42-401—442 ..... enacted 313
43-202 ..... amended 198
43-202.1—202.3 ..... enacted 91
43-205 ..... amended 309
43-214.1 ..... amended 88
43-215, 216 ..... amended 198
43-216.1 ..... enacted 198

HeinOnline -- 1977 vol. II 2272 1977

43-218 ..... amended 103
43-218.1 ..... enacted 103
43-310 ..... amended 103
43-310.1 ..... amended 103
43-310.2 ..... enacted 333
43-310.3 ..... enacted 563
43-311 ..... repealed 103
43-318 ..... repealed 309
43-404 ..... amended 309
43-503 ..... amended 309
43-505 ..... amended 309
43-508 ..... amended 309
43-511 ..... repealed 309
43-519—522 ..... enacted 560
43-709—711 ..... amended 309
43-711.2 ..... amended 309
43-713 ..... amended 309
43-714 ..... repealed 103
..... 309
43-716, 717 ..... amended 309
43-719 ..... repealed 309
43-721 ..... amended 309
43-725 ..... amended 309
43-801 ..... amended 309
43-803 ..... amended 309
43-806 ..... amended 309
43-902 ..... amended 309
43-1111 ..... amended 309
43-1112 ..... amended 103
43-1118 ..... amended 309
44-126.1 ..... enacted 3
44-128 ..... amended 453
44-139 ..... amended 3
44-219.2 ..... amended 3
44-402 ..... amended 142
44-404 ..... repealed 142
44-405 ..... amended 142
44-408—410 ..... repealed 142
44-515.1 ..... enacted 3
44-517 ..... amended 3
..... 366
44-518 ..... amended 3
44-520 ..... amended 3
..... 520
44-522 ..... repealed 3
44-523 ..... amended 366
44-523.1, 523.2 ..... enacted 366
44-529 ..... repealed 3
45-419—421 ..... repealed 464
46-104 ..... amended 359
46-105.1 ..... enacted 16
46-208 ..... amended 12
46-210.1 ..... enacted 190
46-211, 212 ..... amended 12
46-217, 218 ..... amended 12
46-220 ..... amended 12
46-224 ..... amended 12
46-226 ..... amended 12
46-228 ..... amended 12
46-230 ..... amended 12
46-232—235 ..... amended 12
46-238, 239 ..... amended 12
46-243 ..... amended 12
repealed 234
46-248 ..... amended 12

46-605 ..... amended 12
46-609 ..... amended 10
46-703 ..... amended 359
46-706 ..... amended 15
46-708 ..... amended 15
46-801.1 ..... amended 41
46-801.2 ..... amended 312
..... 482
46-801.4 ..... amended 482
46-801.5 ..... enacted 41
46-802 ..... amended 312
46-803, 804 ..... amended 482
46-806 ..... amended 482
46-808 ..... amended 12
46-903 ..... amended 12
46-904, 905 ..... repealed 12
46-906 ..... amended 12
46-906.1 ..... amended 12
46-907 ..... amended 12
46-907.1 ..... amended 12
46-908 ..... amended 12
46-909 ..... amended 44
46-909.1 ..... enacted 192
46-910 ..... amended 12
repealed 44
46-911 ..... amended 12
46-912 ..... amended 12
..... 44
46-913 ..... amended 12
46-915—917 ..... amended 12
46-920, 921 ..... amended 12
46-1011 ..... amended 12
46-1101.2 ..... amended 12
46-1103, 1104 ..... amended 12
46-1107 ..... amended 12
46-1107.1 ..... amended 12
46-1201—1204 ..... repealed 12
46-1406 ..... amended 12
46-1409 ..... amended 199
46-1410 ..... amended 12
46-1708 ..... amended 12
46-1717 ..... amended 12
46-1802 ..... amended 12
46-1902 ..... amended 235
46-1903 ..... amended 235
..... 417
46-1914 ..... amended 566
46-2102 ..... amended 261
46-2104 ..... amended 261
46-2312 ..... amended 22
46-2412 ..... amended 12
46-2903.2 ..... amended 17
46-2906.1 ..... enacted 190
46-3001 ..... amended 12
46-3007 ..... amended 12
47-124 ..... amended 185
47-209 ..... amended 71
47-211 ..... amended 71
47-220 ..... amended 71
47-226 ..... amended 71
47A-3-101—108 ..... enacted 477
47A-3-203—206 ..... amended 351
47A-3-208 ..... amended 351
47A-3-209 ..... enacted 477
47A-3-301—303 ..... enacted 477

HeinOnline -- 1977 vol. II 2274 1977

48-112 ..... repealed 33
48-123 ..... repealed 33
48-126 ..... amended 33
48-134, 135 ..... amended 33
48-137 ..... amended 33
48-139 ..... amended 33
48-144 ..... repealed 33
48-146 ..... amended 33
48-309 ..... amended 33
48-311 ..... amended 279
48-315 ..... amended 537
48-317 ..... amended 33
48-328 ..... amended 174
48-331 ..... amended 33
..... 537
48-333 ..... amended 33
50-202 ..... amended 39
50-204, 205 ..... amended 39
50-303—305 ..... amended 39
50-429 ..... amended 39
50-476 ..... amended 39
50-480.7 ..... amended 39
..... 187
50-714 ..... amended 39
50-805 ..... amended 39
50-1039 ..... amended 352
50-1040 ..... amended 352
50-1043 ..... amended 39
50-1044 ..... amended 352
50-1049 ..... repealed 352
50-1203 ..... amended 39
..... 423
50-1209 ..... amended 39
50-1210 ..... amended 427
50-1216 ..... amended 427
50-1227 ..... enacted 29
50-1404 ..... amended 39
..... 352
50-1503—1516 ..... amended 39
50-1516.1 ..... amended 39
50-1517 ..... amended 39
50-1703 ..... repealed 543
50-1704 ..... amended 543
50-1803, 1804 ..... amended 540
50-1806 ..... amended 540
51-101 ..... repealed 518
51-101.1 ..... repealed 518
51-102 ..... amended and renumbered 51-503 518
51-103 ..... repealed 518
51-104 ..... amended and renumbered 51-512 518
51-105 ..... repealed 518
51-106 ..... amended and renumbered 51-514 518
51-107 ..... amended and renumbered 51-513 518
51-108 ..... amended and renumbered 51-515 518
51-109 ..... amended and renumbered 51-523 518
51-110 ..... amended and renumbered 51-522 518
51-111 ..... amended and renumbered 51-521 518
51-112 ..... repealed 518
51-113 ..... amended and renumbered 51-519 518
51-114 ..... amended and renumbered 51-511 518
51-115 ..... amended and renumbered 51-520 518
51-116 ..... amended and renumbered 51-518 518
51-117 ..... amended and renumbered 51-501 518
51-118 ..... repealed 518
51-401 ..... repealed 518

51-402 ..... amended and renumbered 51-506 518
51-403—410 ..... repealed 518
51-411 ..... amended and renumbered 51-516 518
51-412 ..... repealed 518
51-413 ..... amended and renumbered 51-517 518
51-414 ..... repealed 518
51-501—524 ..... enacted 518
51-601—608 ..... enacted 380
51-609—615 ..... enacted 381
52-322 ..... amended 11
52-409 ..... amended 53
53-101 ..... amended 343
53-106 ..... amended 243
..... 492
53-106.8 ..... amended 67
53-106.10 ..... amended 49
..... 67
53-106.12 ..... enacted 31
53-109 ..... amended 399
53-109.1 ..... amended 399
53-109.4 ..... amended 399
53-114 ..... amended 55
..... 521
..... 566
53-118 ..... amended 535
53-122 ..... amended 243
53-146 ..... amended 243
53-147 ..... amended 243
..... 399
53-157 ..... amended 183
53-161 ..... amended 183
53-644 ..... amended 112
53-647 ..... amended 211
53-712 ..... amended 144
53-1012 ..... amended 417
..... 421
53-1013 ..... amended 421
53-1013.1 ..... enacted 402
53-1014 ..... amended 124
..... 402
..... 421
53-1015, 1016 ..... amended 421
53-1016.1 ..... enacted 421
53-1017 ..... amended 124
..... 421
53-1018 ..... amended 421
53-1019 ..... amended 124
..... 421
53-1020 ..... amended 161
..... 417
..... 421
53-1022 ..... amended 417
..... 421
53-1023 ..... amended 421
53-1024 ..... repealed 421
53-1025 ..... amended 417
..... 421
..... 566
53-1025.1 ..... amended 421
53-1026 ..... amended 124
..... 402
53-1027 ..... amended 421
53-1028 ..... amended 417
..... 421
53-1029 ..... amended 421

53-1101—1115 ..... repealed 237
54-132, 133 ..... amended 359
..... 584
54-133.1 ..... amended 584
54-134, 135 ..... amended 359
54-137, 138 ..... amended 359
54-301 ..... amended 187
54-319 ..... amended 187
58-607.2 ..... enacted 433
59-304 ..... amended 468
59-530.1—530.4 ..... enacted 441
59-538, 539 ..... amended 483
59-604 ..... repealed 198
..... 309
59-607 ..... amended 468
59-610 ..... amended 364
59-611 ..... enacted 364
59-612 ..... amended 364
59-614 ..... amended 364
59-617, 618 ..... amended 364
59-620 ..... amended 364
59-621 ..... enacted 364
59-622 ..... amended 364
59-624 ..... amended 364
59-626—628 ..... amended 364
59-630 ..... amended 364
59-705 ..... repealed 61
59-801 ..... amended 453
59-903 ..... amended 488
59-904 ..... amended 488
..... 565
59-907 ..... amended 471
59-915—922 ..... enacted 563
59-1001 ..... amended 479
59-1102 ..... amended 64
..... 132
59-1102.1 ..... amended 64
59-1104—1106 ..... amended 64
59-1108 ..... amended 489
59-1109—1112 ..... amended 64
59-1402 ..... amended 453
59-1614.1 ..... enacted 57
59-1701—1711 ..... enacted 569
60-126 ..... amended 336
60-131.1 ..... amended 336
60-131.3 ..... amended 336
60-145 ..... amended 178
..... 254
60-203.1—203.3 ..... repealed 77
60-204, 205 ..... repealed 77
60-210—217 ..... repealed 77
60-219, 220 ..... repealed 77
60-222—224 ..... repealed 77
60-226 ..... repealed 77
60-227 ..... amended 39
repealed 77
60-228—233 ..... repealed 77
60-234—245 ..... enacted 77
60-606 ..... amended 39
61-105 ..... amended 33
61-109 ..... amended 33
61-112.1, 112.2 ..... amended 227
61-113 ..... amended 33
61-118 ..... amended 33
61-122 ..... amended 33

HeinOnline -- 1977 vol. II 2277 1977

61-208 ..... amended 33
61-211 ..... amended 33
61-214 ..... amended 33
61-309 ..... amended 33
61-317 ..... repealed 422
61-323 ..... amended 33
61-325, 326 ..... repealed 422
61-328—334 ..... enacted 422
61-401—425 ..... enacted 537
62-301 ..... amended 2
..... 417
62-304 ..... amended 417
62-305 ..... amended 415
..... 417
62-306 ..... amended 2
..... 417
62-308 ..... amended 417
62-310, 311 ..... amended 2
..... 417
62-314 ..... amended 2
..... 417
62-401—403 ..... amended 417
62-503 ..... amended 453
62-505 ..... amended 533
62-508, 509 ..... amended 306
62-706—710 ..... amended 508
62-713 ..... amended 508
62-715.1 ..... enacted 508
62-719, 720 ..... amended 508
62-724, 725 ..... amended 508
62-727.1 ..... enacted 508
62-729—731 ..... amended 508
62-735 ..... amended 508
63-504 ..... amended 62
63-702 ..... amended 62
63-803 ..... amended 62
63-901 ..... amended 62
63-905 ..... amended 62
64-211 ..... repealed 38
64-301 ..... amended 38
64-305 ..... amended 35
64-306 ..... amended 38
64-306.1 ..... amended 27
64-307 ..... amended 38
64-317—321 ..... amended 38
64-323, 324 ..... amended 38
66-101.1 ..... enacted 544
66-103 ..... amended 544
66-106, 107 ..... amended 544
66-110 ..... amended 544
66-113, 114 ..... amended 544
66-115 ..... repealed 544
66-201 ..... amended and renumbered 74-706 263
66-202 ..... amended and renumbered 74-707 263
66-203 ..... amended and renumbered 74-708 263
66-203.1 ..... amended and renumbered 74-709 263
66-204 ..... amended and renumbered 74-710 263
66-205 ..... amended and renumbered 74-711 263
66-206 ..... amended and renumbered 74-712 263
66-207 ..... amended and renumbered 74-713 263
66-208 ..... repealed 263
66-209 ..... repealed 263
amended 265
66-210 ..... repealed 263
66-211 ..... amended and renumbered 74-705 263

66-212 ..... repealed 263
amended 265
66-213 ..... amended and renumbered 74-701 263
66-214, 215 ..... repealed 263
..... 265
66-216 ..... amended and renumbered 74-703 263
66-217, 218 ..... repealed 263
..... 265
66-219 ..... amended and renumbered 74-704 263
66-220 ..... repealed 263
66-221 ..... repealed 263
amended 265
66-222—228 ..... repealed 263
66-229 ..... repealed 263
amended 265
66-230 ..... amended and renumbered 74-716 263
66-409 ..... amended 453
66-411 ..... amended 533
66-503—506 ..... amended 432
66-507 ..... amended 579
66-510 ..... repealed 516
66-510.1—510.3 ..... enacted 516
66-512 ..... amended 516
66-603 ..... amended 176
66-605 ..... amended 533
66-607 ..... amended 101
..... 176
66-608 ..... amended 176
66-806 ..... amended 305
66-808.1 ..... enacted 533
66-809 ..... amended 531
66-813.1 ..... amended 305
66-815 ..... amended 533
66-816 ..... amended 305
66-818 ..... amended 101
66-909 ..... amended 531
66-1027 ..... amended 213
66-1038 ..... amended 101
66-1042 ..... amended 533
66-1052 ..... amended 267
66-1053—1057 ..... enacted 172
66-1242, 1243 ..... amended 101
66-1301 ..... amended 361
66-1301.2 ..... enacted 361
66-1305.1 ..... enacted 361
66-1316 ..... amended 512
66-1406 ..... amended 101
66-1413 ..... amended 101
66-1502 ..... amended 439
66-1506 ..... amended 533
66-1507 ..... amended 439
66-1507.1, 1507.2 ..... enacted 439
66-1508 ..... amended 533
66-1510 ..... repealed 101
66-1516 ..... amended 101
66-1517—1519 ..... repealed 101
66-1522 ..... amended 101
66-1523 ..... repealed 101
amended 403
66-1524 ..... repealed 101
66-1525 ..... amended 101
66-1528—1536 ..... enacted 403
66-1601 ..... amended 185
66-1602 ..... amended 359
66-1607 ..... amended 185

66-1826 ..... amended 533
66-1829.1 ..... amended 101
66-1831.1 ..... amended 101
66-1832 ..... amended 101
66-1838 ..... amended 101
66-1926 ..... amended 385
66-1927.1 ..... enacted 378
66-1933 ..... amended 101
66-1934 ..... amended 533
66-1940 ..... amended 541
66-1946 ..... amended 101
66-2104(1) ..... repealed 101
66-2104(2) ..... amended 101
66-2113 ..... repealed 541
66-2115 ..... amended 541
66-2120 ..... repealed 101
66-2203 ..... amended 531
66-2210 ..... amended 101
66-2212 ..... amended 101
66-2214 ..... amended 101
66-2352 ..... amended 317
66-2356 ..... amended 317
66-2358 ..... amended 101
..... 317
66-2364 ..... repealed 317
66-2402 ..... amended 101
66-2405 ..... amended 541
66-2411 ..... amended 101
66-2416, 2417 ..... amended 504
66-2427 ..... amended 226
..... 504
66-2502 ..... amended 101
66-2509 ..... amended 101
66-2703 ..... amended 531
66-2802 ..... amended 504
66-2805 ..... amended 453
66-2805.1 ..... amended 504
66-2902 ..... amended 101
66-2904—2908 ..... amended 101
66-2909 ..... amended 533
66-2910—2914 ..... amended 101
66-3017 ..... amended 101
66-3022 ..... amended 101
66-3205 ..... amended 453
66-3319 ..... amended 101
66-3322—3326 ..... repealed 541
66-3411 ..... amended 101
66-3505 ..... amended 101
66-3510 ..... repealed 541
66-3607 ..... amended 101
66-3608 ..... amended 533
66-3701 ..... amended 310
66-3701.1 ..... enacted 310
66-3703 ..... amended 453
66-3705—3708 ..... amended 310
66-3708.1 ..... enacted 310
amended 573
66-3709 ..... amended 310
66-3709.1 ..... enacted 310
66-3809 ..... amended 101
66-3905 ..... amended 453
..... 531
66-3906 ..... amended 101
67-205 ..... amended 10
67-308.1 ..... enacted 75

67-2129 ..... amended 359
67-2211 ..... amended 195
67-2219 ..... amended 195
67-2220, 2221 ..... amended 155
68-1401 ..... amended 8
..... 132
..... 330
..... 332
68-1402 ..... amended 8
..... 330
..... 417
68-1402.1 ..... enacted 8
68-1405 ..... amended 8
..... 132
..... 330
..... 332
68-1406 ..... amended 8
..... 332
68-1407 ..... amended 8
..... 330
68-1409 ..... amended 8
68-1410 ..... amended 8
..... 330
..... 578
68-1413 ..... amended 8
68-1415 ..... amended 8
68-1417 ..... amended 8
..... 578
68-1419 ..... amended 332
68-1420 ..... amended 214
68-1420.1 ..... enacted 214
68-1421 ..... amended 8
..... 330
68-1422 ..... amended 8
68-1425 ..... amended 8
repealed 332
68-1427 ..... amended 8
68-1429 ..... amended 8
..... 330
68-1503 ..... amended 132
..... 332
68-1601 ..... amended 132
68-1602 ..... amended 99
..... 132
68-1604 ..... amended 99
68-1605 ..... amended 99
..... 132
68-1606 ..... amended 300
68-1607 ..... amended 89
..... 132
68-1608 ..... amended 89
..... 99
..... 132
68-1703 ..... amended 132
68-1802 ..... amended 453
68-1803 ..... amended 132
..... 332
68-1901 ..... amended 99
..... 286
..... 332
68-1903 ..... amended 132
68-1904 ..... amended 99
..... 132
68-2002 ..... amended 332
68-2003 ..... amended 241
..... 332

68-2004 ..... amended 332
68-2101 ..... amended 241
68-2103 ..... amended 99
..... 241
68-2104 ..... amended 241
..... 332
68-2201 ..... amended 99
68-2203 ..... amended 99
..... 241
..... 332
68-2304 ..... amended 89
..... 99
..... 241
68-2501 ..... amended 332
68-2502.1 ..... enacted 214
68-2503 ..... amended 132
68-2505, 2506 ..... amended 99
68-2509 ..... amended 132
68-2510 ..... amended 445
68-2511 ..... amended 99
68-2512 ..... amended 132
68-2513.1 ..... enacted 241
68-2602 ..... amended 59
..... 332
68-2603 ..... amended 132
68-2604 ..... amended 59
..... 332
68-2605 ..... amended 132
68-2607 ..... amended 59
68-2610 ..... amended 59
68-2614 ..... amended 59
68-2616 ..... amended 59
68-2618 ..... amended 59
..... 93
68-2619 ..... amended 332
68-2620 ..... amended 214
68-2620.1 ..... enacted 214
68-2621, 2622 ..... amended 59
68-2622.1 ..... enacted 145
68-2626—2628 ..... amended 59
68-2701, 2702 ..... amended 60
68-2708 ..... amended 60
69-1401 ..... amended 187
69-1501 ..... amended 152
69-1504 ..... amended 187
69-1508, 1509 ..... amended 187
69-1512 ..... amended 83
69-1601.1 ..... amended 148
69-1607 ..... amended 148
69-1609 ..... repealed 148
69-1701, 1702 ..... repealed 84
69-1802 ..... amended 187
69-1808 ..... amended 187
69-1916 ..... repealed 359
69-1923 ..... amended 187
69-1924 ..... repealed 187
69-1925 ..... amended 187
69-1929 ..... amended 359
69-1931 ..... amended and renumbered 94-8-209.1 359
69-1932 ..... amended and renumbered 94-8-209.2 359
69-2105 ..... amended 504
69-2111 ..... amended 173
..... 187
..... 504

69-2112 ..... amended 504
69-2124 ..... amended 504
69-2125 ..... enacted 504
69-2701, 2702 ..... amended 187
69-3303 ..... amended 39
69-3304 ..... amended 272
69-3305 ..... amended 39
69-3305.1 ..... enacted 272
69-3308 ..... amended 272
69-3414 ..... amended 453
69-3416 ..... amended 533
69-3502 ..... amended 124
..... 417
69-3503 ..... amended 124
69-3504 ..... amended 124
..... 566
69-3505 ..... amended 124
..... 417
69-3507, 3508 ..... amended 124
69-3508.1 ..... amended 124
69-3512—3514 ..... amended 124
69-3516 ..... amended 124
69-3516.1 ..... amended 124
69-3517, 3518 ..... amended 124
..... 417
69-3605 ..... amended 86
69-3906 ..... amended 308
69-3911, 3912 ..... amended 140
69-3914—3917 ..... amended 140
69-3921.1 ..... amended 308
69-3923 ..... repealed 566
69-4001 ..... amended 542
69-4001.1 ..... enacted 542
69-4002—4009 ..... amended 542
69-4011—4020 ..... enacted 575
69-4110 ..... amended 288
69-4111 ..... amended 288
69-4117 ..... repealed 504
69-4420 ..... amended 162
69-4428.1 ..... amended 187
69-4504 ..... amended 187
69-4508 ..... amended 187
69-4802 ..... amended 308
..... 444
69-4806 ..... amended 444
69-4808.2 ..... amended 444
69-4809.1 ..... amended 444
69-4820.1 ..... amended 140
..... 308
..... 444
69-4824 ..... amended 140
69-4902—4904 ..... amended 556
69-4905.1, 4905.2 ..... enacted 556
69-4907 ..... amended 556
69-4908 ..... repealed 556
69-5002 ..... amended 557
69-5003 ..... amended 140
..... 554
69-5005 ..... amended 557
69-5010 ..... enacted 557
69-5201 ..... amended 187
69-5207 ..... amended 187
69-5502 ..... amended 187
69-5507 ..... repealed 504
69-5602, 5603 ..... amended 140

HeinOnline -- 1977 vol. II 2283 1977

69-5607 ..... amended 140
69-5803 ..... amended 140
69-5806 ..... amended 140
69-5817—5821 ..... enacted 68
69-6101 ..... amended 100
69-6106 ..... amended 100
69-6405 ..... repealed 234
69-6508 ..... amended 204
69-6510 ..... amended 103
69-6601 ..... amended 124
69-6608.1 ..... enacted 437
69-6609 ..... amended 437
69-6610 ..... amended 124
69-6615 ..... amended 124
69-6701 ..... amended 187
69-6704 ..... amended 187
69-6801 ..... amended 251
..... 252
69-6802, 6803 ..... amended 252
69-6805 ..... amended 251
69-6806 ..... amended 252
69-6807 ..... amended 140
..... 252
69-6808 ..... amended 252
69-6810 ..... amended 252
69-6811 ..... amended 140
69-6812 ..... amended 252
69-6901—6908 ..... repealed 42
69-7102, 7103 ..... amended 187
69-7105 ..... amended 187
69-7107, 7108 ..... amended 187
69-7110 ..... amended 187
69-7201 ..... enacted 228
69-7301—7310 ..... enacted 383
69-7401—7407 ..... enacted 570
70-104.1 ..... enacted 137
70-113 ..... amended 435
..... 467
70-123 ..... repealed 475
70-128 ..... amended 475
70-129 ..... amended 472
70-134 ..... amended 205
70-704 ..... amended 103
70-707 ..... amended 136
70-707.1 ..... enacted 474
70-708 ..... repealed 136
70-805 ..... repealed 401
70-806 ..... amended 179
71-101 ..... repealed 37
71-107 ..... repealed 37
71-113 ..... amended 37
71-118 ..... repealed 37
71-120 ..... amended 49
71-207 ..... amended 37
71-210 ..... amended 37
71-211—214 ..... amended 37
71-216 ..... amended 37
71-217 ..... amended 37
..... 109
71-222 ..... amended 37
71-226 ..... amended 37
..... 273
71-230 ..... amended 37
71-231.1 ..... repealed 425
71-231.4 ..... enacted 425

HeinOnline -- 1977 vol. II 2284 1977

71-233.1 ..... amended 37
71-233.3 ..... amended 37
71-233.5 ..... repealed 37
71-235 ..... amended 379
71-241.1 ..... enacted 379
71-302.2 ..... amended 37
71-303 ..... amended 37
71-305—307 ..... amended 37
71-308 ..... amended 37
..... 379
71-311 ..... amended 37
..... 168
71-314 ..... amended 37
71-501 ..... amended 37
71-509 ..... amended 37
71-511 ..... amended 379
71-710 ..... amended 37
71-901 ..... amended 37
71-1305.1 ..... amended 35
71-1401 ..... amended 37
71-1516 ..... amended 37
71-1520 ..... amended 327
71-1524 ..... amended 379
71-1801—1805 ..... repealed 434
71-1806—1812 ..... enacted 434
71-1903 ..... amended 37
71-2304 ..... amended 37
71-2402, 2403 ..... amended 559
71-2404 ..... amended 37
..... 559
71-2405 ..... amended 37
71-2406, 2407 ..... amended 559
71-2412 ..... amended 38
71-2414 ..... amended 559
71-2601—2625 ..... enacted 527
72-116 ..... amended 359
72-126, 127 ..... amended 359
72-231 ..... enacted 473
72-617 ..... amended 489
72-622 ..... amended 32
72-652 ..... amended 181
73-115 ..... amended 39
74-604 ..... amended 185
74-606 ..... amended 185
74-608 ..... amended 284
74-610 ..... amended 284
74-611 ..... amended 185
..... 284
74-701—716 ..... enacted 263
75-5205 ..... amended 417
75-5607 ..... amended 266
75-5607.1 ..... enacted 266
75-5607.2 ..... enacted 268
75-5612 ..... amended 268
75-5707 ..... amended 266
..... 277
75-5805 ..... amended 266
75-5806 ..... amended 277
75-5808.1 ..... enacted 238
75-5918 ..... amended 266
75-5932 ..... amended 266
75-5935 ..... amended 266
75-5940 ..... repealed 234
75-6008 ..... amended 171
75-6012—6014 ..... enacted 328

75-6106 ..... amended 277
75-6109 ..... amended 388
75-6201 ..... amended 127
..... 331
75-6205, 6206 ..... amended 127
..... 331
75-6207 ..... amended 127
..... 331
..... 443
75-6207.1 ..... enacted 443
75-6208 ..... amended 127
..... 331
..... 443
75-6209 ..... amended 127
..... 331
75-6211 ..... amended 127
75-6212 ..... amended 127
..... 331
75-6213 ..... amended 127
75-6214 ..... amended 127
..... 331
75-6216 ..... amended 127
..... 331
75-6217 ..... amended 127
75-6304 ..... amended 266
75-6313 ..... amended 266
75-6410 ..... amended 266
75-6412 ..... amended 266
75-6513 ..... amended 277
75-6523 ..... amended 266
75-6606 ..... amended 266
75-6701, 6702 ..... amended 266
75-6703 ..... repealed 277
75-6709 ..... amended 277
..... 354
75-6713, 6714 ..... amended 277
75-6715 ..... repealed 277
75-6716, 6717 ..... amended 277
75-6719—6721 ..... amended 277
75-6727 ..... amended 277
75-6728 ..... repealed 277
75-6801 ..... amended 424
75-6802 ..... amended 266
75-6803 ..... amended 277
75-6805 ..... amended 180
..... 291
75-6807, 6808 ..... amended 266
75-6811.2 ..... enacted 329
75-6905 ..... amended 505
75-6914 ..... amended 266
75-6916 ..... amended 356
75-7003 ..... amended 50
..... 151
75-7016, 7017 ..... amended 266
75-7018 ..... amended 266
..... 529
75-7019 ..... amended 534
75-7024 ..... amended 194
75-7104 ..... amended 566
75-7119 ..... amended 266
75-7203 ..... amended 277
75-7204 ..... amended 121
75-7214 ..... amended 424
75-7309 ..... amended 266
75-7403 ..... amended 130

HeinOnline -- 1977 vol. II 2286 1977

75-7403.1	enacted	130
75-7512	amended	290
75-7514.1	enacted	290
75-7515.1	enacted	290
75-7607	amended	266
75-7709	amended	266
75-7716—7725	enacted	104
75-7801	amended	266
		539
75-7802—7809	amended	539
75-7809.1	enacted	539
75-7811	amended	539
75-7812	repealed	539
75-7813.1	amended	539
75-7814	amended	539
75-7816	amended	539
75-7817	enacted	539
75-8104	amended	566
75-8114	amended	121
75-8117	amended	121
75-8117.1	enacted	121
75-8119	amended	121
75-8132	amended	266
75-8206	amended	504
75-8207	amended	504
75-8209	amended	424
75-8211	amended	424
75-8305	amended	121
75-8307	amended	266
75-8310	amended	234
75-8312	amended	266
75-8314	enacted	350
75-8404	amended	266
75-8408	amended	453
75-8427	amended	343
75-8504	amended	266
75-8605	amended	343
75-8609	amended	266
75-8612	amended	49
75-8615	enacted	463
75-8703	amended	266
75-8705	amended	266
75-8801	amended	343
75-8802	repealed	343
75-9001—9004	repealed	341
75-9108	amended	266
75-9215, 9216	amended	266
75-9401—9408	enacted	515
76-105—107	amended	18
76-108	amended	395
76-114	amended	18
76-118—121	enacted	418
76-301—307	enacted	408
77-501	amended	49
77-604	amended	49
77-707	amended	49
77-1601	amended	49
77-1606	amended	49
77-1705	amended	49
77-2102	amended	49
77-2106	amended	49
77-2301	amended	335
77-2301.1, 2301.2	enacted	335
77-2302—2304	amended	335
77-2305	amended	49
	repealed	335

77-2305.1 ..... enacted 335
77-2306 ..... amended 49
..... 335
77-2307 ..... repealed 335
77-2307.1—2307.4 ..... enacted 335
77-2308 ..... repealed 49
amended 73
77-2309—2311 ..... amended 335
77-2312—2315 ..... enacted 335
77-2404 ..... amended 49
77-2506 ..... amended 135
78-201.1 ..... enacted 3
78-302 ..... repealed 3
78-737—746 ..... repealed 61
78-1001—1010 ..... repealed 61
78-1018, 1019 ..... amended 61
78-1028, 1029 ..... amended 61
78-1202, 1203 ..... repealed 61
78-1209 ..... repealed 61
78-1401 ..... enacted 507
79-108 ..... amended 276
79-109 ..... amended 318
79-110 ..... repealed 61
79-208 ..... amended 61
79-211 ..... amended 357
79-305 ..... amended 61
repealed 343
79-306 ..... amended 286
79-307 ..... amended 92
79-308 ..... amended 203
79-309 ..... amended 540
79-310 ..... amended 316
79-410 ..... amended 438
79-603 ..... amended 61
79-802 ..... repealed 61
79-811, 812 ..... repealed 61
amended 359
79-901 ..... amended 343
79-1012 ..... amended 61
79-1016 ..... amended 453
79-1102—1104 ..... repealed 61
79-1401 ..... amended 286
79-1603 ..... repealed 61
79-1701—1713 ..... repealed 61
79-2001—2004 ..... amended 564
79-2005 ..... enacted 564
79-2303.1 ..... amended 309
79-2304 ..... amended 309
79-2305 ..... amended 103
79-2310 ..... amended 309
79-2314 ..... amended 359
79-2501 ..... amended 577
79-2701 ..... repealed 61
79-2707 ..... amended 61
80-102 ..... amended 266
80-110 ..... repealed 266
80-112 ..... repealed 266
80-1403.1 ..... enacted 206
80-1405 ..... amended 37
80-1410 ..... amended 37
80-1413 ..... amended 37
80-1414.1 ..... amended 231
80-1601, 1602 ..... amended 450
80-1603 ..... amended 37
..... 450

HeinOnline -- 1977 vol. II 2288 1977

80-1604—1606 ..... amended 450
80-1607 ..... enacted 450
80-1908 ..... repealed 546
80-1912 ..... amended 37
80-2412 ..... amended 37
80-2701, 2702 ..... amended 37
80-2709, 2710 ..... amended 414
80-2712 ..... amended 414
80-2714 ..... amended 414
80-2716 ..... amended 414
80-2717 ..... amended 37
..... 414
80-2725 ..... enacted 414
80-2802 ..... amended 37
80-2806 ..... amended 38
81-102 ..... amended 203
81-405 ..... amended 311
81-407.1 ..... enacted 304
81-907.1 ..... enacted 410
81-1404 ..... amended 301
81-1411, 1412 ..... amended 397
81-1415 ..... amended 397
81-1604 ..... repealed 464
81-2503—2507 ..... amended 440
81-2508 ..... amended 3
..... 440
81-2509 ..... amended 440
81-2510 ..... amended 3
..... 440
81-2511—2513 ..... amended 440
82-301 ..... amended 453
82-303 ..... amended 5
82-401 ..... amended 118
..... 343
82-425, 426 ..... enacted 522
82-427—447 ..... enacted 530
82-503 ..... amended 344
82-505 ..... amended 344
82-510—513 ..... enacted 396
82-601 ..... amended 468
82-1104 ..... repealed 61
..... 97
amended 126
82-1117 ..... amended 61
82-1131 ..... amended 97
82-1133 ..... amended 193
..... 487
82-1139 ..... repealed 97
82-1147 ..... amended 97
82-1150 ..... amended 97
82-1201, 1202 ..... amended 187
..... 519
82-1208 ..... amended 453
82-1215 ..... amended 187
82-1226 ..... amended 187
82-1229 ..... amended 187
82-1232 ..... repealed 187
82-1501 ..... amended 468
82-1502 ..... amended 13
82-1506 ..... amended 13
82-1507 ..... amended 16
82-1517 ..... amended 13
82-1519 ..... amended 13
..... 343

82-1902 ..... repealed 97
82-1902.1 ..... enacted 97
82-1904.1, 1904.2 ..... repealed 97
82-1906 ..... repealed 97
82-1909 ..... repealed 97
82-1913 ..... repealed 97
82-1915 ..... repealed 97
82-1917 ..... amended 97
82-1919 ..... amended 230
82-1922 ..... amended 97
82-1926 ..... amended 97
82-1932 ..... amended 97
82-1941—1943 ..... enacted 547
82-2007 ..... amended 344
82-3101, 3102 ..... amended 478
82-3104 ..... amended 389
..... 478
82-3105, 3106 ..... amended 478
82-3205, 3206 ..... repealed 3
82-3310.1, 3310.2 ..... enacted 481
82-3311—3313 ..... repealed 339
82-3317 ..... amended 487
82-3320 ..... amended 371
82-3325 ..... amended 341
82-3332—3341 ..... enacted 339
82-3402, 3403 ..... amended 567
82-3404—3406 ..... enacted 567
82-3607 ..... amended 3
82-3710 ..... amended 540
82-4001 ..... amended 468
82-4201—4203 ..... amended 285
82-4203.1, 4203.2 ..... amended 285
82-4203.3 ..... amended 103
82-4203.4 ..... amended 285
82-4203.5 ..... amended 285
..... 561
82-4204 ..... amended 285
82-4204.1 ..... enacted 285
82-4205 ..... amended 285
..... 561
82-4206—4208 ..... amended 285
82-4212, 4213 ..... amended 285
82-4215—4217 ..... amended 285
82-4219 ..... amended 560
82-4220—4223 ..... amended 285
82-4227, 4228 ..... amended 285
..... 452
82-4229 ..... amended 285
82-4303 ..... amended 360
82-4305, 4306 ..... amended 360
82-4309 ..... amended 360
82-4310 ..... amended 189
82-4311, 4312 ..... amended 360
82-4312.1 ..... enacted 360
82-4313—4316 ..... repealed 360
82-4316.1 ..... enacted 188
82-4317 ..... repealed 360
82-4318, 4319 ..... amended 360
82-4326 ..... repealed 360
82-4328—4334 ..... enacted 189
82-4335 ..... enacted 360
82-4402 ..... amended 453
82-4601—4609 ..... enacted 562
82A-107 ..... amended 285
82A-112 ..... amended 186

82A-207 ..... amended 343
82A-209 ..... repealed 61
82A-210 ..... amended 132
..... 453
82A-210.1, 210.2 ..... repealed 132
82A-212 ..... amended 45
82A-214 ..... amended 468
82A-217 ..... repealed 229
82A-218 ..... amended 3
82A-222, 223 ..... amended 224
repealed 456
82A-224 ..... enacted 163
82A-225 ..... enacted 456
82A-401.1 ..... amended 278
..... 518
82A-404 ..... amended 518
82A-406.1 ..... amended 12
repealed 19
82A-507 ..... amended 453
82A-511 ..... repealed 341
82A-605 ..... amended 524
82A-608 ..... amended 326
82A-706.1 ..... amended 186
82A-907 ..... repealed 163
82A-1014 ..... amended 545
82A-1207 ..... amended 202
82A-1208 ..... repealed 519
82A-1602.6 ..... amended 176
82A-1602.7 ..... amended 579
82A-1602.8 ..... amended 511
82A-1602.16 ..... amended 233
82A-1602.23 ..... amended 378
82A-1602.30 ..... amended 453
82A-1604 ..... amended 533
82A-1607 ..... amended 504
82A-2001 ..... amended 417
82A-2003 ..... repealed 417
82A-2004 ..... amended 417
82A-2101 ..... repealed 114
83-115 ..... enacted 125
83-606 ..... amended 343
83-701—703 ..... repealed 360
83-704 ..... amended 343
repealed 360
83-705, 706 ..... repealed 360
83-706.1 ..... repealed 360
83-707 ..... repealed 360
84-101 ..... amended 498
..... 566
84-102 ..... enacted 52
84-201 ..... amended 126
84-202 ..... amended 52
..... 87
..... 112
..... 126
..... 393
..... 413
..... 492
..... 576
84-202.1 ..... enacted 491
84-207 ..... amended 387
84-212 ..... enacted 498
84-301 ..... amended 497
repealed 566
amended 576

84-301.1—301.15 ..... enacted 566
84-301.16 ..... amended 499
enacted 566
84-301.17—301.19 ..... enacted 566
84-301.20 ..... enacted 498
84-301.21 ..... enacted 502
84-302 ..... repealed 566
84-307 ..... amended 501
84-309, 310 ..... enacted 566
84-401 ..... amended 566
84-402 ..... amended 566
84-404 ..... amended 98
..... 566
84-406 ..... amended 126
..... 211
..... 260
..... 566
84-422.1 ..... enacted 182
84-422.2, 422.3 ..... enacted 255
84-429.7 ..... amended 123
84-437.5 ..... amended 126
84-440 ..... repealed 155
84-501 ..... amended 126
84-514 ..... repealed 126
84-601 ..... amended 355
..... 453
84-602 ..... repealed 155
amended 566
84-603 ..... amended 155
..... 355
84-604 ..... amended 355
84-609 ..... repealed 155
84-702 ..... amended 453
84-704 ..... amended 52
84-708.1 ..... amended 98
..... 566
84-708.9 ..... amended 107
84-709 ..... amended 155
..... 249
84-709.4 ..... enacted 155
84-710 ..... repealed 155
84-711 ..... amended 155
84-713 ..... repealed 126
amended 345
84-719—722 ..... repealed 98
84-723 ..... amended 286
84-728 ..... amended 566
84-801 ..... amended 98
..... 494
84-802 ..... amended 98
84-802.1 ..... repealed 98
84-803, 804 ..... repealed 98
84-901 ..... amended 98
84-903 ..... repealed 98
84-903.1 ..... repealed 98
84-904 ..... repealed 98
84-905 ..... amended 98
84-906, 907 ..... repealed 98
84-1101 ..... repealed 52
84-1102 ..... amended 106
84-1104 ..... amended 106
84-1201 ..... repealed 52
84-1202 ..... amended 108
84-1207 ..... amended 108
84-1209 ..... amended 108

HeinOnline -- 1977 vol. II 2292 1977

84-1213 ..... enacted 108
84-1313 ..... amended 156
84-1314 ..... amended 164
84-1319 ..... amended 156
..... 540
..... 549
84-1320 ..... amended 156
84-1501 ..... amended 257
84-1501.1 ..... amended 405
84-1501.2 ..... amended 34
..... 405
84-1502 ..... amended 405
..... 576
84-1526 ..... enacted 353
84-1601 ..... amended 52
..... 401
84-1602, 1603 ..... amended 401
84-1605 ..... amended 401
84-1606 ..... repealed 401
84-1608 ..... amended 126
84-1610, 1611 ..... enacted 401
84-1704—1706 ..... repealed 36
84-1708 ..... repealed 36
84-1832.1 ..... amended 390
84-1833 ..... amended 236
..... 270
84-1835 ..... amended 258
..... 377
84-1838 ..... amended 34
84-1840 ..... amended 34
84-1841 ..... amended 155
84-1847 ..... amended 390
84-1862 ..... amended 47
84-1862.1 ..... enacted 47
84-1863 ..... amended 47
84-1902, 1903 ..... repealed 126
84-2001 ..... repealed 52
84-2003, 2004 ..... amended 156
84-2008.1 ..... amended 156
84-2010 ..... amended 156
84-2011 ..... repealed 156
84-2201 ..... repealed 52
84-2202 ..... amended 156
..... 160
..... 256
84-2206 ..... amended 156
84-2207 ..... amended 256
84-2209.1 ..... amended 156
84-2212, 2213 ..... enacted 256
84-2301 ..... amended 52
84-2307—2309 ..... repealed 36
84-2401, 2402 ..... amended 52
84-2404 ..... amended 52
..... 419
84-2405 ..... amended 52
84-2410, 2411 ..... amended 52
84-2412 ..... amended 265
..... 518
84-2501—2503 ..... repealed 40
84-2504 ..... repealed 36
..... 40
84-2505 ..... repealed 40
84-2506—2508 ..... repealed 36
..... 40
84-2604 ..... repealed 36

HeinOnline -- 1977 vol. II 2293 1977

84-2606—2608 ..... repealed 36
84-3501, 3502 ..... amended 52
84-3510 ..... amended 52
84-3512 ..... amended 52
84-3803 ..... amended 345
84-3811 ..... enacted 349
84-4002 ..... amended 126
84-4011 ..... repealed 126
84-4101 ..... amended 134
84-4144—4150 ..... repealed 126
84-4155 ..... amended 52
84-4159 ..... repealed 126
84-4166 ..... amended 52
..... 126
84-4169 ..... amended 126
84-41-100 ..... amended 126
84-4202 ..... amended 105
84-4216 ..... amended 126
84-4218 ..... amended 210
84-4502 ..... amended 348
..... 394
84-4605 ..... amended 566
84-4701 ..... amended 566
84-4701.2 ..... amended 566
84-4713 ..... amended 566
84-4821 ..... amended 36
84-4823 ..... repealed 36
84-4825, 4826 ..... repealed 36
84-4903.1 ..... repealed 34
84-4903.8 ..... amended 34
84-4903.12 ..... repealed 21
84-4903.13 ..... repealed 34
84-4905 ..... amended 489
84-4906 ..... amended 102
..... 574
..... 576
84-4906.1, 4906.2 ..... repealed 158
84-4910.1, 4910.2 ..... enacted 500
84-4914 ..... amended 159
84-4923.1 ..... amended 155
84-4926 ..... amended 34
84-4931 ..... amended 346
84-4939, 4940 ..... amended 374
84-4959 ..... enacted 353
84-4960, 4961 ..... enacted 412
84-5103 ..... amended 566
84-5201.1 ..... amended 260
84-5201.3—5201.6 ..... enacted 260
84-5211 ..... amended 120
..... 566
84-5212 ..... amended 120
84-5214 ..... amended 566
84-5216 ..... amended 566
84-5222 ..... enacted 393
84-5402 ..... amended 52
..... 98
..... 498
84-5403 ..... amended 98
84-5405 ..... amended 98
84-5406 ..... amended 566
84-5407 ..... amended 98
84-5408 ..... repealed 98
84-5410 ..... amended 52
repealed 98
84-5413 ..... amended 52

84-5606.6 ..... amended 286
84-5606.18 ..... amended 126
84-5606.24, 5606.25 ..... amended 155
84-5606.26 ..... amended 126
84-5703—5717 ..... repealed 126
..... 508
84-5718, 5719 ..... repealed 126
..... 508
84-5901 ..... repealed 52
84-5902 ..... amended 209
84-5906, 5907 ..... amended 209
84-6008 ..... amended 566
84-6010, 6011 ..... amended 260
84-6013, 6014 ..... amended 260
84-6102, 6103 ..... amended 566
84-6201 ..... amended 52
..... 98
84-6202, 6203 ..... amended 98
84-6204 ..... amended 256
84-6205 ..... amended 566
84-6207 ..... repealed 98
84-6208 ..... amended 256
84-6209 ..... repealed 98
84-6301, 6302 ..... repealed 375
84-6303 ..... repealed 34
..... 375
84-6304 ..... repealed 375
84-6305 ..... amended 34
repealed 375
84-6306 ..... repealed 375
84-6307 ..... amended 34
repealed 375
84-6308 ..... repealed 375
84-6401 ..... amended 52
84-6402 ..... repealed 98
84-6403 ..... amended 98
84-6405 ..... repealed 98
84-6405.1 ..... repealed 98
84-6406 ..... repealed 98
84-6407 ..... repealed 98
amended 566
84-6408 ..... repealed 98
84-6410 ..... repealed 98
84-6608 ..... enacted 250
84-6704 ..... amended 453
84-6903 ..... amended 247
84-6909 ..... enacted 353
84-7003 ..... amended 52
84-7006 ..... amended 495
84-7012 ..... amended 156
84-7104—7107 ..... amended 248
84-7204 ..... amended 354
84-7401 ..... amended 576
84-7403 ..... amended 576
84-7403.1 ..... enacted 576
84-7414, 7415 ..... enacted 574
84-7502 ..... repealed 582
84-7502.1 ..... enacted 582
84-7503 ..... repealed 582
84-7503.1 ..... enacted 582
84-7504 ..... repealed 582
84-7504.1 ..... enacted 582
84-7505 ..... repealed 582
84-7505.1 ..... enacted 582
84-7506—7508 ..... repealed 582

HeinOnline -- 1977 vol. II 2295 1977

84-7508.1 ..... enacted 582
84-7509 ..... repealed 582
84-7509.1 ..... enacted 582
84-7510 ..... repealed 582
84-7510.1 ..... enacted 582
84-7511 ..... repealed 582
84-7511.1 ..... enacted 582
84-7512 ..... repealed 582
84-7512.1 ..... enacted 582
84-7513 ..... amended 566
repealed 582
84-7513.1 ..... enacted 582
84-7514 ..... repealed 582
84-7514.1 ..... enacted 582
84-7515 ..... repealed 582
84-7515.1 ..... enacted 582
84-7516 ..... repealed 582
84-7516.1 ..... enacted 582
84-7517 ..... repealed 582
84-7517.1 ..... enacted 582
84-7518 ..... repealed 582
84-7518.1 ..... enacted 582
84-7519 ..... repealed 582
84-7519.1 ..... enacted 582
84-7520 ..... repealed 582
84-7520.1 ..... enacted 582
84-7521—7526 ..... repealed 582
84-7701—7703 ..... enacted 36
84-7801, 7802 ..... enacted 98
84-7803 ..... enacted 98
amended 494
84-7804—7807 ..... enacted 98
84-7901—7907 ..... enacted 498
85-105 ..... amended 265
85-107 ..... amended 265
85-407—410 ..... amended 265
85-416 ..... amended 407
85-501 ..... amended 191
85-502 ..... repealed 191
85-502.1, 502.2 ..... enacted 191
85-503—506 ..... amended 191
85-507 ..... enacted 191
85-601—607 ..... enacted 367
86-701 ..... amended 454
87-103, 104 ..... amended 528
87-105 ..... amended 428
87-106 ..... amended 133
87-107 ..... amended 20
87-108 ..... amended 24
..... 201
87-109 ..... amended 165
87-130 ..... amended 343
87-135 ..... amended 197
87-136 ..... amended 386
87-145 ..... amended 240
87-148 ..... amended 523
87-149 ..... amended 115
87A-1-101 ..... amended 265
87A-2-328 ..... amended and renumbered 74-702 263
87A-2-403 ..... amended 359
87A-8-102 ..... amended 278
87A-8-320 ..... amended 278
87A-9-302 ..... amended 265
87A-9-302.2 ..... amended 265
87A-9-401 ..... amended 265

HeinOnline -- 1977 vol. II 2296 1977

87A-9-405, 406 ..... amended 265
89-105 ..... amended 460
89-115 ..... amended 73
..... 460
89-125 ..... amended 460
89-128 ..... repealed 460
89-318 ..... amended 46
89-319 ..... amended 460
89-320 ..... amended 46
89-322 ..... amended 46
89-401 ..... amended 460
89-714 ..... amended 359
89-823 ..... amended 460
89-867 ..... amended 416
..... 460
89-875 ..... amended 416
89-877 ..... amended 416
89-880 ..... amended 416
..... 470
89-884 ..... amended 416
89-885 ..... amended 307
..... 416
89-890 ..... amended 416
89-892 ..... amended 416
89-899 ..... amended 460
89-8-100 ..... amended 416
89-8-100.1 ..... enacted 416
89-8-102.2 ..... amended 117
89-8-105 ..... amended 26
89-8-107 ..... amended 416
89-907 ..... amended 460
89-911 ..... amended 460
89-1015 ..... amended 460
89-1107 ..... enacted 253
89-1202 ..... amended 460
89-1204, 1205 ..... amended 460
89-1208 ..... amended 460
89-1220 ..... amended 460
89-1303 ..... amended 302
89-1311 ..... amended 460
89-1319, 1320 ..... amended 460
89-1322 ..... amended 460
89-1411 ..... amended 460
89-1607 ..... amended 314
89-1616 ..... amended 460
89-1701 ..... amended 460
89-1702 ..... amended 492
89-1703—1705 ..... amended 460
89-1713 ..... amended 460
89-1801 ..... amended 460
89-1803 ..... amended 460
89-1805, 1806 ..... amended 460
89-1811 ..... amended 460
89-1816 ..... amended 460
89-1819 ..... amended 460
89-1901 ..... repealed 460
89-2003 ..... amended 460
89-2109 ..... amended 460
89-2126 ..... amended 460
89-2203 ..... amended 460
89-2302 ..... amended 460
89-2330.3 ..... amended 342
89-2348 ..... amended 460
89-2411 ..... amended 460
89-2701 ..... amended 460

HeinOnline -- 1977 vol. II 2297 1977

89-2711	amended	460
89-2810	amended	460
89-2818	repealed	460
89-2911	amended	460
89-2926	amended	460
89-2929, 2930	amended	460
89-3201—3207	repealed	464
89-3403	amended	566
89-3405	amended	417
89-3407	amended	417
89-3425	amended	460
89-3449	amended	417
		460
89-3504	amended	262
89-3514	amended	73
89-3602	amended	323
89-3604—3606	amended	323
89-3607	amended	540
89-3608	amended	323
90-180	amended	76
90-403	repealed	309
91-608	amended	359
91-2301—2303	amended	359
91-4321.1	repealed	409
91-4405	amended	490
91-4409, 4410	amended	490
91-4414	amended	490
91-4416	amended	490
91-4419	amended	490
91-4453	amended	490
91-4469	repealed	409
91-4470—4473	enacted	409
91A-2-111.1	enacted	370
91A-2-401	amended	153
91A-3-203	amended	223
91A-3-1205	repealed	409
91A-5-101	amended	514
91A-5-303	amended	222
		514
91A-5-314	enacted	514
92-116.1	amended	453
92-201	repealed	550
92-202.1	amended	550
92-203	repealed	550
92-204.1	amended	550
92-204.2	enacted	550
92-205	repealed	550
92-207.1	repealed	550
92-209—211	repealed	550
92-212—214	enacted	550
92-411	amended	281
92-435	amended	550
92-614	amended	550
92-1002	amended	324
92-1006	repealed	324
92-1009	repealed	324
92-1102	repealed	550
92-1303	repealed	208
92-1303.1	enacted	208
92-1306	repealed	208
92-1309	repealed	208
92-1311	amended	208
92-1312	repealed	208
92-1312.1	enacted	208
92-1313	repealed	208

92-1314 ..... amended 208
92-1314.1 ..... enacted 208
92-1315 ..... amended 208
92-1315.2 ..... enacted 208
92-1316—1320 ..... amended 208
92-1323—1325 ..... amended 208
92-1328 ..... repealed 208
92-1330 ..... amended 208
92-1334 ..... repealed 208
92-1334.1 ..... enacted 208
92-1335 ..... amended 208
92-1336 ..... repealed 208
92-1337 ..... amended 208
92-1339, 1340 ..... amended 208
92-1343 ..... amended 208
92-1344 ..... repealed 208
92-1346 ..... amended 208
92-1349 ..... repealed 208
92-1352 ..... amended 208
92-1356 ..... repealed 208
92-1358 ..... amended 208
93-102 ..... amended 429
93-104 ..... amended 309
93-219 ..... amended 344
93-221—233 ..... repealed 344
93-301 ..... amended 517
93-302 ..... amended 344
..... 517
93-303 ..... amended 461
93-305 ..... amended 344
93-313 ..... amended 344
93-325 ..... amended 344
93-345—364 ..... enacted 572
93-408 ..... amended 344
93-505 ..... amended 33
..... 344
93-507 ..... amended 344
93-702 ..... amended 344
93-703 ..... repealed 344
93-705 ..... amended 344
93-716 ..... amended 453
93-721 ..... amended 453
93-725, 726 ..... amended 344
93-903 ..... amended 344
93-1107 ..... amended 63
..... 132
93-1107.1 ..... enacted 63
93-1110, 1111 ..... amended 63
93-1112 ..... amended 63
..... 332
93-1113 ..... amended 63
93-1116 ..... amended 63
..... 548
93-1120 ..... amended 63
93-1125 ..... amended 332
93-1126 ..... amended 214
93-1126.1 ..... enacted 214
93-1128 ..... amended 63
93-1131 ..... amended 63
93-1203 ..... amended 344
93-1304 ..... amended 344
..... 489
93-1404 ..... amended 344
93-1502, 1503 ..... amended 344
93-1512 ..... amended 344

93-1602, 1603 ..... amended 344
93-1801—1803 ..... amended 344
93-1805, 1806 ..... amended 344
93-1809 ..... amended 344
93-1903, 1904 ..... amended 344
93-1906 ..... amended 344
93-2002 ..... amended 101
93-2029—2037 ..... repealed 101
93-2625 ..... enacted 220
93-2703 ..... amended 220
93-2721—2724 ..... enacted 525
93-2815 ..... amended 234
93-2830 ..... amended 265
93-4002 ..... amended 359
93-4204.1 ..... enacted 170
93-4301 ..... amended 299
93-4302 ..... repealed 299
93-4302.1 ..... enacted 299
93-4304 ..... amended 299
93-4304.1, 4304.2 ..... enacted 299
93-5008 ..... amended 344
93-6908 ..... amended 299
93-7501 ..... amended 344
93-7602 ..... amended 344
93-7605 ..... amended 344
93-7607 ..... amended 344
93-7608 ..... repealed 344
93-7704 ..... amended 344
93-7707 ..... amended 344
93-7709 ..... amended 344
93-9712.1 ..... enacted 166
93-9921.2 ..... enacted 48
93-601-2 ..... amended 225
93-701-4 ..... amended 225
93-2201-6 ..... repealed 33
93-2601-51 ..... amended 379
93-2601-60 ..... amended 33
93-2801-3 ..... amended 344
94-1-103 ..... amended 359
94-1-105, 106 ..... amended 359
94-2-101 ..... amended 359
..... 489
94-2-103, 104 ..... amended 359
94-2-111 ..... amended 359
94-5-102 ..... amended 338
..... 584
94-5-103 ..... amended 584
94-5-105 ..... repealed 338
amended 359
94-5-202 ..... amended 584
94-5-302 ..... amended 584
94-5-303 ..... amended 338
..... 584
94-5-304 ..... repealed 338
94-5-401 ..... amended 584
94-5-501 ..... amended 359
94-5-503 ..... amended 94
..... 359
..... 584
94-5-506 ..... amended 359
94-5-601 ..... repealed 359
94-5-607 ..... amended 218
..... 359
94-5-608 ..... amended 359
94-5-609 ..... amended 264

HeinOnline -- 1977 vol. II 2300 1977

94-5-610 ..... amended 264
..... 536
94-5-611, 612 ..... repealed 359
94-5-615 ..... amended 187
94-5-617 ..... amended 338
94-5-618 ..... amended 359
94-5-622 ..... amended 338
94-6-101 ..... repealed 359
94-6-105 ..... amended and renumbered 94-8-209.3 359
94-6-201 ..... amended 359
94-6-301 ..... repealed 359
94-6-302 ..... amended 359
94-6-304.1 ..... amended 175
94-6-304.2 ..... enacted 175
94-6-307 ..... amended 359
94-6-308.1 ..... amended 359
94-6-311 ..... amended 167
94-7-101 ..... repealed 359
94-7-103, 104 ..... amended 359
94-7-201 ..... repealed 359
94-7-207 ..... amended 359
94-7-307 ..... amended 359
94-7-503 ..... amended 359
94-8-107, 108 ..... amended 359
94-8-110.1 ..... amended 391
94-8-110.2 ..... amended 359
94-8-114 ..... amended 359
94-8-201 ..... amended 359
94-8-204 ..... amended 359
94-8-209.1—209.5 ..... enacted 359
94-8-210 ..... amended 359
..... 411
94-8-211 ..... repealed 411
94-8-212 ..... amended 359
94-8-214 ..... amended 359
94-8-218 ..... amended 359
94-8-221 ..... amended 359
94-8-223—225 ..... repealed 359
94-8-301, 302 ..... amended 508
94-8-401 ..... amended 508
94-8-402, 403 ..... repealed 508
94-8-404 ..... amended 508
94-8-405 ..... amended 359
94-8-411 ..... amended 508
94-8-413 ..... repealed 508
94-8-422 ..... amended 508
94-8-424 ..... amended 508
94-8-425—427 ..... repealed 508
94-8-429—431 ..... amended 508
95-101 ..... amended 184
95-103—108 ..... repealed 184
95-302 ..... amended 465
95-302.1 ..... enacted 184
95-408 ..... amended 359
95-501 ..... amended 184
95-506 ..... amended 568
95-507 ..... amended 184
95-509 ..... amended 184
95-603 ..... amended 184
95-704 ..... amended 184
95-719 ..... amended 184
95-720—723 ..... enacted 486
95-801, 802 ..... amended 530
95-810 ..... repealed 530
95-814 ..... repealed 530

HeinOnline -- 1977 vol. II 2301 1977

95-1005 ..... amended 184
95-1104 ..... amended 184
95-1118, 1119 ..... amended 184
95-1121, 1122 ..... amended 184
95-1406—1408 ..... amended 184
95-1502 ..... amended 184
95-1504 ..... amended 184
95-1505 ..... amended 431
95-1506 ..... amended 184
95-1507 ..... amended 184
..... 584
95-1704 ..... amended 184
95-1706, 1707 ..... amended 184
95-1711 ..... amended 184
95-1803 ..... amended 184
95-1810 ..... amended 184
95-1813 ..... enacted 128
95-1814—1816 ..... enacted 384
95-1909 ..... amended 184
95-1915 ..... amended 184
95-2004—2007 ..... amended 184
95-2009 ..... amended 184
..... 344
95-2101 ..... amended 184
95-2206 ..... amended 184
..... 436
..... 580
..... 584
95-2206.1 ..... amended 184
repealed 338
95-2206.5 ..... amended 184
repealed 340
95-2206.6—2206.15 ..... enacted 338
95-2206.16 ..... enacted 340
95-2206.17—2206.19 ..... enacted 584
95-2211 ..... repealed 184
95-2213 ..... amended 340
95-2220 ..... amended 580
95-2224 ..... amended 184
95-2229 ..... amended 184
95-2403 ..... amended 184
95-2426 ..... amended 184
95-2601 ..... amended 184
95-2604—2606 ..... amended 184
95-2608 ..... amended 184
95-2801 ..... amended 309
95-2803 ..... amended 309
95-2902 ..... amended 184
95-3004 ..... amended 184
95-3011, 3012 ..... amended 184
95-3110 ..... amended 184
95-3113 ..... amended 184
95-3117 ..... amended 184
95-3120 ..... amended 184
95-3123 ..... amended 184
95-3124 ..... amended 343
95-3124.1 ..... amended 453
95-3125 ..... amended 184
95-3129 ..... amended 184
95-3206 ..... amended 184
95-3214 ..... amended 184
..... 340
..... 580
95-3215 ..... amended 184
..... 340

HeinOnline -- 1977 vol. II 2302 1977

95-3233 ..... repealed 184
95-3306 ..... amended 184
95-3308 ..... amended 184

HeinOnline -- 1977 vol. II 2304 1977

INDEX

TO

SENATE BILLS

AND

HOUSE BILLS

WITH CORRESPONDING CHAPTER NUMBERS

2305

HeinOnline -- 1977 vol. II 2305 1977

HeinOnline -- 1977 vol. II 2306 1977

SENATE BILL INDEX

Bill No.	Chapter No.
SB 2	140
SB 3	3
SB 4	265
SB 5	185
SB 6	71
SB 7	4
SB 8	5
SB 9	508
SB 10	232
SB 11	373
SB 13	49
SB 14	12
SB 15	6
SB 16	124
SB 17	266
SB 19	13
SB 20	1
SB 22	233
SB 23	72
SB 24	186
SB 26	460
SB 27	365
SB 29	187
SB 30	184
SB 31	490
SB 33	334
SB 34	359
SB 35	18
SB 37	560
SB 38	125
SB 40	234
SB 41	188
SB 42	73
SB 43	189
SB 44	540
SB 45	50
SB 46	141
SB 47	235
SB 49	190
SB 53	360
SB 54	14
SB 55	15
SB 58	267

HeinOnline -- 1977 vol. II 2307 1977

SB 63..... 16
SB 64..... 74
SB 65..... 491
SB 70..... 75
SB 71..... 461
SB 72..... 366
SB 73..... 191
SB 78..... 76
SB 79..... 236
SB 83..... 335
SB 84..... 77
SB 89..... 192
SB 91..... 193
SB 92..... 142
SB 93..... 564
SB 94..... 143
SB 98..... 78
SB 100..... 374
SB 102..... 393
SB 103..... 79
SB 104..... 51
SB 105..... 361
SB 107..... 509
SB 108..... 194
SB 111..... 336
SB 112..... 375
SB 113..... 80
SB 115..... 195
SB 116..... 81
SB 117..... 82
SB 118..... 355
SB 119..... 337
SB 120..... 561
SB 124..... 462
SB 125..... 541
SB 128..... 301
SB 129..... 376
SB 130..... 463
SB 131..... 302
SB 132..... 314
SB 133..... 144
SB 134..... 237
SB 135..... 464
SB 137..... 377
SB 138..... 268
SB 140..... 83
SB 141..... 84
SB 144..... 238
SB 147..... 239
SB 149..... 338
SB 150..... 394
SB 152..... 85

HeinOnline -- 1977 vol. II 2308 1977

SB 155 492
SB 157 86
SB 159 87
SB 161 88
SB 162 562
SB 165 362
SB 166 550
SB 167 574
SB 169 196
SB 170 503
SB 171 89
SB 174 145
SB 175 575
SB 177 421
SB 178 269
SB 179 358
SB 181 270
SB 182 367
SB 183 90
SB 184 91
SB 186 197
SB 187 240
SB 190 92
SB 191 198
SB 192 493
SB 194 315
SB 198 551
SB 199 510
SB 200 542
SB 202 363
SB 203 465
SB 207 217
SB 209 395
SB 215 199
SB 218 146
SB 219 303
SB 220 147
SB 223 316
SB 224 552
SB 225 553
SB 226 554
SB 227 555
SB 228 339
SB 229 200
SB 231 271
SB 233 565
SB 234 201
SB 237 378
SB 239 466
SB 241 272
SB 245 467
SB 250 202

HeinOnline -- 1977 vol. II 2309 1977

SB 252..... 494
SB 254..... 273
SB 258..... 274
SB 260..... 241
SB 261..... 304
SB 262..... 203
SB 265..... 317
SB 268..... 543
SB 269..... 556
SB 270..... 305
SB 272..... 148
SB 274..... 93
SB 277..... 306
SB 281..... 149
SB 283..... 242
SB 286..... 468
SB 287..... 275
SB 288..... 150
SB 289..... 318
SB 290..... 276
SB 291..... 319
SB 292..... 320
SB 293..... 321
SB 294..... 322
SB 298..... 323
SB 300..... 277
SB 301..... 278
SB 306..... 469
SB 307..... 511
SB 309..... 495
SB 310..... 557
SB 311..... 422
SB 312..... 243
SB 314..... 204
SB 316..... 307
SB 321..... 151
SB 322..... 244
SB 326..... 279
SB 327..... 280
SB 329..... 544
SB 331..... 512
SB 333..... 470
SB 334..... 152
SB 335..... 218
SB 336..... 368
SB 339..... 94
SB 345..... 558
SB 349..... 219
SB 354..... 578
SB 356..... 220
SB 357..... 324
SB 358..... 281

HeinOnline -- 1977 vol. II 2310 1977

SB 361 205
SB 363 471
SB 365 379
SB 366 282
SB 367 472
SB 373 245
SB 375 473
SB 377 95
SB 380 545
SB 382 474
SB 383 96
SB 384 513
SB 385 340
SB 386 380
SB 389 341
SB 391 475
SB 392 476
SB 393 308
SB 395 221
SB 396 222
SB 397 223
SB 398 153
SB 399 579
SB 401 504
SB 403 342
SB 405 206
SB 413 546
SB 414 154
SB 415 207
SB 419 514
SB 420 283
SB 421 515
SB 425 516
SB 426 381
SB 429 343
SB 430 208
SB 437 246
SB 442 423
SB 443 325
SB 445 477
SB 448 478
SB 449 479
SB 450 480

HeinOnline -- 1977 vol. II 2311 1977

HeinOnline -- 1977 vol. II 2312 1977

HOUSE BILL INDEX

Bill No.	Chapter No.
HB 1	App
HB 2	7
HB 4	517
HB 5	396
HB 12	59
HB 13	52
HB 14	33
HB 15	34
HB 16	2
HB 17	35
HB 18	36
HB 19	155
HB 20	126
HB 21	60
HB 23	61
HB 24	97
HB 25	98
HB 26	156
HB 27	62
HB 28	264
HB 29	459
HB 30	37
HB 31	518
HB 32	63
HB 33	99
HB 34	127
HB 35	64
HB 36	38
HB 37	65
HB 38	8
HB 39	100
HB 40	39
HB 41	496
HB 42	101
HB 43	309
HB 44	9
HB 46	344
HB 47	102
HB 53	27
HB 55	App
HB 57	103
HB 62	157
HB 63	224

HeinOnline -- 1977 vol. II 2313 1977

HB 64 ..... App
HB 66 104
HB 68 397
HB 70 566
HB 71 284
HB 72 53
HB 73 247
HB 74 66
HB 77 285
HB 79 580
HB 80 313
HB 82 67
HB 85 497
HB 89 105
HB 90 519
HB 94 40
HB 95 209
HB 96 248
HB 97 106
HB 98 107
HB 99 108
HB 100 345
HB 101 158
HB 104 159
HB 105 398
HB 108 249
HB 111 160
HB 113 250
HB 116 225
HB 123 481
HB 125 399
HB 126 400
HB 131 28
HB 134 10
HB 135 11
HB 136 41
HB 141 457
HB 143 ..... App
HB 144 ..... App
HB 145 ..... App
HB 147 424
HB 148 482
HB 149 29
HB 150 520
HB 151 401
HB 157 346
HB 159 402
HB 160 ..... App
HB 163 19
HB 164 425
HB 167 17
HB 169 521

HeinOnline -- 1977 vol. II 2314 1977

HB 173 42
HB 175 286
HB 176 109
HB 177 426
HB 178 522
HB 182 483
HB 184 128
HB 185 23
HB 186 347
HB 196 226
HB 197 427
HB 198 498
HB 202 227
HB 203 110
HB 206 54
HB 214 111
HB 215 499
HB 217 392
HB 221 161
HB 226 287
HB 227 162
HB 230 163
HB 234 43
HB 236 288
HB 237 164
HB 239 428
HB 240 44
HB 241 24
HB 242 581
HB 244 165
HB 245 523
HB 246 30
HB 247 429
HB 250 ..... App
HB 251 430
HB 254 68
HB 256 129
HB 258 20
HB 260 289
HB 261 584
HB 263 484
HB 273 166
HB 275 69
HB 276 55
HB 280 431
HB 282 ..... App
HB 283 356
HB 284 357
HB 286 403
HB 288 112
HB 289 45
HB 290 56

HeinOnline -- 1977 vol. II 2315 1977

HB 291 167
HB 292 576
HB 295 ..... App
HB 298 547
HB 299 485
HB 300 310
HB 301 524
HB 302 567
HB 305 290
HB 307 326
HB 308 251
HB 309 348
HB 310 26
HB 314 168
HB 315 130
HB 317 25
HB 318 432
HB 319 57
HB 320 433
HB 321 349
HB 323 131
HB 324 404
HB 325 21
HB 328 132
HB 330 434
HB 331 133
HB 334 525
HB 338 327
HB 339 169
HB 340 382
HB 343 170
HB 347 113
HB 348 328
HB 349 171
HB 351 350
HB 352 435
HB 355 526
HB 356 436
HB 357 527
HB 359 114
HB 360 383
HB 361 70
HB 362 134
HB 363 384
HB 364 31
HB 365 505
HB 370 528
HB 371 228
HB 373 210
HB 376 135
HB 378 529
HB 379 211

HeinOnline -- 1977 vol. II 2316 1977

HB 384 385
HB 389 437
HB 395 136
HB 396 137
HB 402 386
HB 404 291
HB 407 438
HB 408 172
HB 411 568
HB 414 229
HB 415 387
HB 417 138
HB 418 139
HB 420 115
HB 422 405
HB 428 406
HB 430 173
HB 436 116
HB 437 252
HB 447 369
HB 451 117
HB 452 22
HB 455 370
HB 457 407
HB 459 58
HB 461 530
HB 462 569
HB 468 292
HB 472 174
HB 476 212
HB 477 46
HB 481 47
HB 483 48
HB 484 408
HB 485 388
HB 487 439
HB 488 371
HB 490 213
HB 491 531
HB 492 409
HB 493 440
HB 494 410
HB 495 253
HB 497 175
HB 498 486
HB 499 548
HB 500 118
HB 502 ..... App
HB 504 ..... App
HB 508 487
HB 512 441
HB 513 411

HB 514 214
HB 516 254
HB 523 293
HB 526 311
HB 529 176
HB 533 294
HB 535 177
HB 537 351
HB 540 178
HB 542 179
HB 546 180
HB 547 389
HB 551 255
HB 553 256
HB 554 ..... App
HB 558 352
HB 560 442
HB 565 443
HB 567 420
HB 569 506
HB 570 119
HB 580 32
HB 581 181
HB 583 257
HB 584 353
HB 585 444
HB 586 120
HB 587 445
HB 589 446
HB 591 182
HB 595 532
HB 596 329
HB 599 412
HB 607 295
HB 610 533
HB 612 488
HB 617 413
HB 619 121
HB 620 354
HB 623 230
HB 626 122
HB 627 414
HB 630 582
HB 634 447
HB 635 372
HB 636 123
HB 637 258
HB 638 448
HB 641 231
HB 644 415
HB 645 259
HB 647 449

HeinOnline -- 1977 vol. II 2318 1977

HB 649 534
HB 650 535
HB 656 183
HB 658 450
HB 659 451
HB 664 416
HB 669 312
HB 677 296
HB 685 297
HB 693 ..... App
HB 701 583
HB 708 ..... App
HB 709 215
HB 718 452
HB 719 453
HB 721 536
HB 724 570
HB 728 500
HB 735 501
HB 736 216
HB 737 502
HB 738 571
HB 741 330
HB 742 298
HB 745 489
HB 755 260
HB 757 261
HB 758 537
HB 759 262
HB 760 454
HB 762 577
HB 763 299
HB 764 263
HB 765 331
HB 769 390
HB 772 559
HB 773 458
HB 787 455
HB 791 417
HB 794 332
HB 795 364
HB 799 549
HB 800 572
HB 801 456
HB 804 333
HB 805 391
HB 808 538
HB 810 418
HB 815 300
HB 816 539
HB 818 507
HB 826 ..... App

HeinOnline -- 1977 vol. II 2319 1977

HB 828 ..... App
HB 832 ..... App
HB 834 563
HB 835 ..... App
HB 836 ..... App
HB 837 419
HB 838 ..... App
HB 839 573
HB 842 ..... App

HeinOnline -- 1977 vol. II 2320 1977

INDEX

TO

CHAPTER NUMBERS

WITH CORRESPONDING BILL NUMBERS

HeinOnline -- 1977 vol. II 2321 1977

HeinOnline -- 1977 vol. II 2322 1977

CHAPTER NUMBER INDEX

Chapter No.	Bill No.
Ch. 1	SB 20
Ch. 2	HB 16
Ch. 3	SB 3
Ch. 4	SB 7
Ch. 5	SB 8
Ch. 6	SB 15
Ch. 7	HB 2
Ch. 8	HB 38
Ch. 9	HB 44
Ch. 10	HB 134
Ch. 11	HB 135
Ch. 12	SB 14
Ch. 13	SB 19
Ch. 14	SB 54
Ch. 15	SB 55
Ch. 16	SB 63
Ch. 17	HB 167
Ch. 18	SB 35
Ch. 19	HB 163
Ch. 20	HB 258
Ch. 21	HB 325
Ch. 22	HB 452
Ch. 23	HB 185
Ch. 24	HB 241
Ch. 25	HB 317
Ch. 26	HB 310
Ch. 27	HB 53
Ch. 28	HB 131
Ch. 29	HB 149
Ch. 30	HB 246
Ch. 31	HB 364
Ch. 32	HB 580
Ch. 33	HB 14
Ch. 34	HB 15
Ch. 35	HB 17
Ch. 36	HB 18
Ch. 37	HB 30
Ch. 38	HB 36
Ch. 39	HB 40
Ch. 40	HB 94
Ch. 41	HB 136
Ch. 42	HB 173
Ch. 43	HB 234

HeinOnline -- 1977 vol. II 2323 1977

Ch. 44 ..... HB 240
Ch. 45 ..... HB 289
Ch. 46 ..... HB 477
Ch. 47 ..... HB 481
Ch. 48 ..... HB 483
Ch. 49 ..... SB 13
Ch. 50 ..... SB 45
Ch. 51 ..... SB 104
Ch. 52 ..... HB 13
Ch. 53 ..... HB 72
Ch. 54 ..... HB 206
Ch. 55 ..... HB 276
Ch. 56 ..... HB 290
Ch. 57 ..... HB 319
Ch. 58 ..... HB 459
Ch. 59 ..... HB 12
Ch. 60 ..... HB 21
Ch. 61 ..... HB 23
Ch. 62 ..... HB 27
Ch. 63 ..... HB 32
Ch. 64 ..... HB 35
Ch. 65 ..... HB 37
Ch. 66 ..... HB 74
Ch. 67 ..... HB 82
Ch. 68 ..... HB 254
Ch. 69 ..... HB 275
Ch. 70 ..... HB 361
Ch. 71 ..... SB 6
Ch. 72 ..... SB 23
Ch. 73 ..... SB 42
Ch. 74 ..... SB 64
Ch. 75 ..... SB 70
Ch. 76 ..... SB 78
Ch. 77 ..... SB 84
Ch. 78 ..... SB 98
Ch. 79 ..... SB 103
Ch. 80 ..... SB 113
Ch. 81 ..... SB 116
Ch. 82 ..... SB 117
Ch. 83 ..... SB 140
Ch. 84 ..... SB 141
Ch. 85 ..... SB 152
Ch. 86 ..... SB 157
Ch. 87 ..... SB 159
Ch. 88 ..... SB 161
Ch. 89 ..... SB 171
Ch. 90 ..... SB 183
Ch. 91 ..... SB 184
Ch. 92 ..... SB 190
Ch. 93 ..... SB 274
Ch. 94 ..... SB 339
Ch. 95 ..... SB 377

HeinOnline -- 1977 vol. II 2324 1977

Ch. 96 ..... SB 383
Ch. 97 ..... HB 24
Ch. 98 ..... HB 25
Ch. 99 ..... HB 33
Ch. 100 ..... HB 39
Ch. 101 ..... HB 42
Ch. 102 ..... HB 47
Ch. 103 ..... HB 57
Ch. 104 ..... HB 66
Ch. 105 ..... HB 89
Ch. 106 ..... HB 97
Ch. 107 ..... HB 98
Ch. 108 ..... HB 99
Ch. 109 ..... HB 176
Ch. 110 ..... HB 203
Ch. 111 ..... HB 214
Ch. 112 ..... HB 288
Ch. 113 ..... HB 347
Ch. 114 ..... HB 359
Ch. 115 ..... HB 420
Ch. 116 ..... HB 436
Ch. 117 ..... HB 451
Ch. 118 ..... HB 500
Ch. 119 ..... HB 570
Ch. 120 ..... HB 586
Ch. 121 ..... HB 619
Ch. 122 ..... HB 626
Ch. 123 ..... HB 636
Ch. 124 ..... SB 16
Ch. 125 ..... SB 38
Ch. 126 ..... HB 20
Ch. 127 ..... HB 34
Ch. 128 ..... HB 184
Ch. 129 ..... HB 256
Ch. 130 ..... HB 315
Ch. 131 ..... HB 323
Ch. 132 ..... HB 328
Ch. 133 ..... HB 331
Ch. 134 ..... HB 362
Ch. 135 ..... HB 376
Ch. 136 ..... HB 395
Ch. 137 ..... HB 396
Ch. 138 ..... HB 417
Ch. 139 ..... HB 418
Ch. 140 ..... SB 2
Ch. 141 ..... SB 46
Ch. 142 ..... SB 92
Ch. 143 ..... SB 94
Ch. 144 ..... SB 133
Ch. 145 ..... SB 174
Ch. 146 ..... SB 218
Ch. 147 ..... SB 220

HeinOnline -- 1977 vol. II 2325 1977

Ch. 148 ..... SB 272
Ch. 149 ..... SB 281
Ch. 150 ..... SB 288
Ch. 151 ..... SB 321
Ch. 152 ..... SB 334
Ch. 153 ..... SB 398
Ch. 154 ..... SB 414
Ch. 155 ..... HB 19
Ch. 156 ..... HB 26
Ch. 157 ..... HB 62
Ch. 158 ..... HB 101
Ch. 159 ..... HB 104
Ch. 160 ..... HB 111
Ch. 161 ..... HB 221
Ch. 162 ..... HB 227
Ch. 163 ..... HB 230
Ch. 164 ..... HB 237
Ch. 165 ..... HB 244
Ch. 166 ..... HB 273
Ch. 167 ..... HB 291
Ch. 168 ..... HB 314
Ch. 169 ..... HB 339
Ch. 170 ..... HB 343
Ch. 171 ..... HB 349
Ch. 172 ..... HB 408
Ch. 173 ..... HB 430
Ch. 174 ..... HB 472
Ch. 175 ..... HB 497
Ch. 176 ..... HB 529
Ch. 177 ..... HB 535
Ch. 178 ..... HB 540
Ch. 179 ..... HB 542
Ch. 180 ..... HB 546
Ch. 181 ..... HB 581
Ch. 182 ..... HB 591
Ch. 183 ..... HB 656
Ch. 184 ..... SB 30
Ch. 185 ..... SB 5
Ch. 186 ..... SB 24
Ch. 187 ..... SB 29
Ch. 188 ..... SB 41
Ch. 189 ..... SB 43
Ch. 190 ..... SB 49
Ch. 191 ..... SB 73
Ch. 192 ..... SB 89
Ch. 193 ..... SB 91
Ch. 194 ..... SB 108
Ch. 195 ..... SB 115
Ch. 196 ..... SB 169
Ch. 197 ..... SB 186
Ch. 198 ..... SB 191
Ch. 199 ..... SB 215

HeinOnline -- 1977 vol. II 2326 1977

Ch. 200 ..... SB 229
Ch. 201 ..... SB 234
Ch. 202 ..... SB 250
Ch. 203 ..... SB 262
Ch. 204 ..... SB 314
Ch. 205 ..... SB 361
Ch. 206 ..... SB 405
Ch. 207 ..... SB 415
Ch. 208 ..... SB 430
Ch. 209 ..... HB 95
Ch. 210 ..... HB 373
Ch. 211 ..... HB 379
Ch. 212 ..... HB 476
Ch. 213 ..... HB 490
Ch. 214 ..... HB 514
Ch. 215 ..... HB 709
Ch. 216 ..... HB 736
Ch. 217 ..... SB 207
Ch. 218 ..... SB 335
Ch. 219 ..... SB 349
Ch. 220 ..... SB 356
Ch. 221 ..... SB 395
Ch. 222 ..... SB 396
Ch. 223 ..... SB 397
Ch. 224 ..... HB 63
Ch. 225 ..... HB 116
Ch. 226 ..... HB 196
Ch. 227 ..... HB 202
Ch. 228 ..... HB 371
Ch. 229 ..... HB 414
Ch. 230 ..... HB 623
Ch. 231 ..... HB 641
Ch. 232 ..... SB 10
Ch. 233 ..... SB 22
Ch. 234 ..... SB 40
Ch. 235 ..... SB 47
Ch. 236 ..... SB 79
Ch. 237 ..... SB 134
Ch. 238 ..... SB 144
Ch. 239 ..... SB 147
Ch. 240 ..... SB 187
Ch. 241 ..... SB 260
Ch. 242 ..... SB 283
Ch. 243 ..... SB 312
Ch. 244 ..... SB 322
Ch. 245 ..... SB 373
Ch. 246 ..... SB 437
Ch. 247 ..... HB 73
Ch. 248 ..... HB 96
Ch. 249 ..... HB 108
Ch. 250 ..... HB 113
Ch. 251 ..... HB 308

HeinOnline -- 1977 vol. II 2327 1977

Ch. 252 ..... HB 437
Ch. 253 ..... HB 495
Ch. 254 ..... HB 516
Ch. 255 ..... HB 551
Ch. 256 ..... HB 553
Ch. 257 ..... HB 583
Ch. 258 ..... HB 637
Ch. 259 ..... HB 645
Ch. 260 ..... HB 755
Ch. 261 ..... HB 757
Ch. 262 ..... HB 759
Ch. 263 ..... HB 764
Ch. 264 ..... HB 28
Ch. 265 ..... SB 4
Ch. 266 ..... SB 17
Ch. 267 ..... SB 58
Ch. 268 ..... SB 138
Ch. 269 ..... SB 178
Ch. 270 ..... SB 181
Ch. 271 ..... SB 231
Ch. 272 ..... SB 241
Ch. 273 ..... SB 254
Ch. 274 ..... SB 258
Ch. 275 ..... SB 287
Ch. 276 ..... SB 290
Ch. 277 ..... SB 300
Ch. 278 ..... SB 301
Ch. 279 ..... SB 326
Ch. 280 ..... SB 327
Ch. 281 ..... SB 358
Ch. 282 ..... SB 366
Ch. 283 ..... SB 420
Ch. 284 ..... HB 71
Ch. 285 ..... HB 77
Ch. 286 ..... HB 175
Ch. 287 ..... HB 226
Ch. 288 ..... HB 236
Ch. 289 ..... HB 260
Ch. 290 ..... HB 305
Ch. 291 ..... HB 404
Ch. 292 ..... HB 468
Ch. 293 ..... HB 523
Ch. 294 ..... HB 533
Ch. 295 ..... HB 607
Ch. 296 ..... HB 677
Ch. 297 ..... HB 685
Ch. 298 ..... HB 742
Ch. 299 ..... HB 763
Ch. 300 ..... HB 815
Ch. 301 ..... SB 128
Ch. 302 ..... SB 131
Ch. 303 ..... SB 219

HeinOnline -- 1977 vol. II 2328 1977

Ch. 304 ..... SB 261
Ch. 305 ..... SB 270
Ch. 306 ..... SB 277
Ch. 307 ..... SB 316
Ch. 308 ..... SB 393
Ch. 309 ..... HB 43
Ch. 310 ..... HB 300
Ch. 311 ..... HB 526
Ch. 312 ..... HB 669
Ch. 313 ..... HB 80
Ch. 314 ..... SB 132
Ch. 315 ..... SB 194
Ch. 316 ..... SB 223
Ch. 317 ..... SB 265
Ch. 318 ..... SB 289
Ch. 319 ..... SB 291
Ch. 320 ..... SB 292
Ch. 321 ..... SB 293
Ch. 322 ..... SB 294
Ch. 323 ..... SB 298
Ch. 324 ..... SB 357
Ch. 325 ..... SB 443
Ch. 326 ..... HB 307
Ch. 327 ..... HB 338
Ch. 328 ..... HB 348
Ch. 329 ..... HB 596
Ch. 330 ..... HB 741
Ch. 331 ..... HB 765
Ch. 332 ..... HB 794
Ch. 333 ..... HB 804
Ch. 334 ..... SB 33
Ch. 335 ..... SB 83
Ch. 336 ..... SB 111
Ch. 337 ..... SB 119
Ch. 338 ..... SB 149
Ch. 339 ..... SB 228
Ch. 340 ..... SB 385
Ch. 341 ..... SB 389
Ch. 342 ..... SB 403
Ch. 343 ..... SB 429
Ch. 344 ..... HB 46
Ch. 345 ..... HB 100
Ch. 346 ..... HB 157
Ch. 347 ..... HB 186
Ch. 348 ..... HB 309
Ch. 349 ..... HB 321
Ch. 350 ..... HB 351
Ch. 351 ..... HB 537
Ch. 352 ..... HB 558
Ch. 353 ..... HB 584
Ch. 354 ..... HB 620
Ch. 355 ..... SB 118

HeinOnline -- 1977 vol. II 2329 1977

Ch. 356 ..... HB 283
Ch. 357 ..... HB 284
Ch. 358 ..... SB 179
Ch. 359 ..... SB 34
Ch. 360 ..... SB 53
Ch. 361 ..... SB 105
Ch. 362 ..... SB 165
Ch. 363 ..... SB 202
Ch. 364 ..... HB 795
Ch. 365 ..... SB 27
Ch. 366 ..... SB 72
Ch. 367 ..... SB 182
Ch. 368 ..... SB 336
Ch. 369 ..... HB 447
Ch. 370 ..... HB 455
Ch. 371 ..... HB 488
Ch. 372 ..... HB 635
Ch. 373 ..... SB 11
Ch. 374 ..... SB 100
Ch. 375 ..... SB 112
Ch. 376 ..... SB 129
Ch. 377 ..... SB 137
Ch. 378 ..... SB 237
Ch. 379 ..... SB 365
Ch. 380 ..... SB 386
Ch. 381 ..... SB 426
Ch. 382 ..... HB 340
Ch. 383 ..... HB 360
Ch. 384 ..... HB 363
Ch. 385 ..... HB 384
Ch. 386 ..... HB 402
Ch. 387 ..... HB 415
Ch. 388 ..... HB 485
Ch. 389 ..... HB 547
Ch. 390 ..... HB 769
Ch. 391 ..... HB 805
Ch. 392 ..... HB 217
Ch. 393 ..... SB 102
Ch. 394 ..... SB 150
Ch. 395 ..... SB 209
Ch. 396 ..... HB 5
Ch. 397 ..... HB 68
Ch. 398 ..... HB 105
Ch. 399 ..... HB 125
Ch. 400 ..... HB 126
Ch. 401 ..... HB 151
Ch. 402 ..... HB 159
Ch. 403 ..... HB 286
Ch. 404 ..... HB 324
Ch. 405 ..... HB 422
Ch. 406 ..... HB 428
Ch. 407 ..... HB 457

HeinOnline -- 1977 vol. II 2330 1977

Ch. 408 ..... HB 484
Ch. 409 ..... HB 492
Ch. 410 ..... HB 494
Ch. 411 ..... HB 513
Ch. 412 ..... HB 599
Ch. 413 ..... HB 617
Ch. 414 ..... HB 627
Ch. 415 ..... HB 644
Ch. 416 ..... HB 664
Ch. 417 ..... HB 791
Ch. 418 ..... HB 810
Ch. 419 ..... HB 837
Ch. 420 ..... HB 567
Ch. 421 ..... SB 177
Ch. 422 ..... SB 311
Ch. 423 ..... SB 442
Ch. 424 ..... HB 147
Ch. 425 ..... HB 164
Ch. 426 ..... HB 177
Ch. 427 ..... HB 197
Ch. 428 ..... HB 239
Ch. 429 ..... HB 247
Ch. 430 ..... HB 251
Ch. 431 ..... HB 280
Ch. 432 ..... HB 318
Ch. 433 ..... HB 320
Ch. 434 ..... HB 330
Ch. 435 ..... HB 352
Ch. 436 ..... HB 356
Ch. 437 ..... HB 389
Ch. 438 ..... HB 407
Ch. 439 ..... HB 487
Ch. 440 ..... HB 493
Ch. 441 ..... HB 512
Ch. 442 ..... HB 560
Ch. 443 ..... HB 565
Ch. 444 ..... HB 585
Ch. 445 ..... HB 587
Ch. 446 ..... HB 589
Ch. 447 ..... HB 634
Ch. 448 ..... HB 638
Ch. 449 ..... HB 647
Ch. 450 ..... HB 658
Ch. 451 ..... HB 659
Ch. 452 ..... HB 718
Ch. 453 ..... HB 719
Ch. 454 ..... HB 760
Ch. 455 ..... HB 787
Ch. 456 ..... HB 801
Ch. 457 ..... HB 141
Ch. 458 ..... HB 773
Ch. 459 ..... HB 29

HeinOnline -- 1977 vol. II 2331 1977

Ch. 460 ..... SB 26
Ch. 461 ..... SB 71
Ch. 462 ..... SB 124
Ch. 463 ..... SB 130
Ch. 464 ..... SB 135
Ch. 465 ..... SB 203
Ch. 466 ..... SB 239
Ch. 467 ..... SB 245
Ch. 468 ..... SB 286
Ch. 469 ..... SB 306
Ch. 470 ..... SB 333
Ch. 471 ..... SB 363
Ch. 472 ..... SB 367
Ch. 473 ..... SB 375
Ch. 474 ..... SB 382
Ch. 475 ..... SB 391
Ch. 476 ..... SB 392
Ch. 477 ..... SB 445
Ch. 478 ..... SB 448
Ch. 479 ..... SB 449
Ch. 480 ..... SB 450
Ch. 481 ..... HB 123
Ch. 482 ..... HB 148
Ch. 483 ..... HB 182
Ch. 484 ..... HB 263
Ch. 485 ..... HB 299
Ch. 486 ..... HB 498
Ch. 487 ..... HB 508
Ch. 488 ..... HB 612
Ch. 489 ..... HB 745
Ch. 490 ..... SB 31
Ch. 491 ..... SB 65
Ch. 492 ..... SB 155
Ch. 493 ..... SB 192
Ch. 494 ..... SB 252
Ch. 495 ..... SB 309
Ch. 496 ..... HB 41
Ch. 497 ..... HB 85
Ch. 498 ..... HB 198
Ch. 499 ..... HB 215
Ch. 500 ..... HB 728
Ch. 501 ..... HB 735
Ch. 502 ..... HB 737
Ch. 503 ..... SB 170
Ch. 504 ..... SB 401
Ch. 505 ..... HB 365
Ch. 506 ..... HB 569
Ch. 507 ..... HB 818
Ch. 508 ..... SB 9
Ch. 509 ..... SB 107
Ch. 510 ..... SB 199
Ch. 511 ..... SB 307

HeinOnline -- 1977 vol. II 2332 1977

Ch. 512 ..... SB 331
Ch. 513 ..... SB 384
Ch. 514 ..... SB 419
Ch. 515 ..... SB 421
Ch. 516 ..... SB 425
Ch. 517 ..... HB 4
Ch. 518 ..... HB 31
Ch. 519 ..... HB 90
Ch. 520 ..... HB 150
Ch. 521 ..... HB 169
Ch. 522 ..... HB 178
Ch. 523 ..... HB 245
Ch. 524 ..... HB 301
Ch. 525 ..... HB 334
Ch. 526 ..... HB 355
Ch. 527 ..... HB 357
Ch. 528 ..... HB 370
Ch. 529 ..... HB 378
Ch. 530 ..... HB 461
Ch. 531 ..... HB 491
Ch. 532 ..... HB 595
Ch. 533 ..... HB 610
Ch. 534 ..... HB 649
Ch. 535 ..... HB 650
Ch. 536 ..... HB 721
Ch. 537 ..... HB 758
Ch. 538 ..... HB 808
Ch. 539 ..... HB 816
Ch. 540 ..... SB 44
Ch. 541 ..... SB 125
Ch. 542 ..... SB 200
Ch. 543 ..... SB 268
Ch. 544 ..... SB 329
Ch. 545 ..... SB 380
Ch. 546 ..... SB 413
Ch. 547 ..... HB 298
Ch. 548 ..... HB 499
Ch. 549 ..... HB 799
Ch. 550 ..... SB 166
Ch. 551 ..... SB 198
Ch. 552 ..... SB 224
Ch. 553 ..... SB 225
Ch. 554 ..... SB 226
Ch. 555 ..... SB 227
Ch. 556 ..... SB 269
Ch. 557 ..... SB 310
Ch. 558 ..... SB 345
Ch. 559 ..... HB 772
Ch. 560 ..... SB 37
Ch. 561 ..... SB 120
Ch. 562 ..... SB 162
Ch. 563 ..... HB 834

HeinOnline -- 1977 vol. II 2333 1977

Ch. 564 ..... SB 93
Ch. 565 ..... SB 233
Ch. 566 ..... HB 70
Ch. 567 ..... HB 302
Ch. 568 ..... HB 411
Ch. 569 ..... HB 462
Ch. 570 ..... HB 724
Ch. 571 ..... HB 738
Ch. 572 ..... HB 800
Ch. 573 ..... HB 839
Ch. 574 ..... SB 167
Ch. 575 ..... SB 175
Ch. 576 ..... HB 292
Ch. 577 ..... HB 762
Ch. 578 ..... SB 354
Ch. 579 ..... SB 399
Ch. 580 ..... HB 79
Ch. 581 ..... HB 242
Ch. 582 ..... HB 630
Ch. 583 ..... HB 701
Ch. 584 ..... HB 261

HeinOnline -- 1977 vol. II 2334 1977

INDEX

TO

EFFECTIVE DATES

BY CHAPTER NUMBERS

HeinOnline -- 1977 vol. II 2335 1977

HeinOnline -- 1977 vol. II 2336 1977

EFFECTIVE DATE INDEX

Chapter No.	Effective Date
Ch. 1	2/08/77
Ch. 7	2/10/77
Ch. 21	3/07/77
Ch. 23	3/08/77
Ch. 26	3/09/77
Ch. 28	1/01/78
Ch. 29	3/14/77
Ch. 46	3/18/77
Ch. 58	3/19/77
Ch. 75	3/25/77
Ch. 89	3/25/77
Ch. 90	3/25/77
Ch. 93	3/25/77
Ch. 102	3/25/77
Ch. 103	3/25/77
Ch. 107	1/01/78
Ch. 113	3/25/77
Ch. 114	3/25/77
Ch. 118	3/25/77
Ch. 121	3/25/77
Ch. 122	Governor's declaration
Ch. 132	3/25/77
Ch. 135	3/25/77
Ch. 137	3/25/77
Ch. 158	3/29/77
Ch. 159	3/29/77
Ch. 176	4/01/78
Ch. 177	3/29/77
Ch. 192	4/01/77
Ch. 214	4/01/77
Ch. 219	4/04/77
Ch. 229	4/04/77
Ch. 236	4/04/77
Ch. 246	4/04/77
Ch. 249	4/04/77
Ch. 270	4/05/77
Ch. 306	4/05/77
Ch. 310	4/05/77
Ch. 314	4/07/77
Ch. 328	4/07/77
Ch. 331	4/07/77
Ch. 333	4/07/77
Ch. 335	4/08/77

HeinOnline -- 1977 vol. II 2337 1977

Ch. 341 ..... 4/08/77
Ch. 355 ..... 4/11/77
Ch. 363 ..... 4/14/77
Ch. 367 ..... 4/14/77
Ch. 370 ..... 4/14/77
Ch. 373 ..... 4/15/77
Ch. 380 ..... 4/15/77
Ch. 381 ..... 4/15/77
Ch. 383 ..... 4/15/77
Ch. 406 ..... 4/18/77
Ch. 407 ..... 4/18/77
Ch. 410 ..... 4/18/77
Ch. 416 ..... 4/18/77
Ch. 417 ..... 4/18/77
Ch. 422 ..... 4/19/77
Ch. 427 ..... 4/19/77
Ch. 429 ..... 4/19/77
Ch. 435 ..... 4/19/77
Ch. 437 ..... 4/19/77
Ch. 438 ..... 4/19/77
Ch. 439 ..... 7/01/79
Ch. 440 ..... 4/19/77
Ch. 442 ..... 4/19/77
Ch. 447 ..... 4/19/77
Ch. 448 ..... 4/19/77
Ch. 449 ..... 4/19/77
Ch. 450 ..... 4/19/77
Ch. 454 ..... 4/19/77
Ch. 457 ..... 4/20/77
Ch. 458 ..... 4/20/77
Ch. 462 ..... 4/26/77
Ch. 467 ..... 4/26/77
Ch. 471 ..... 4/26/77
Ch. 477 ..... 5/01/77
Ch. 486 ..... 4/26/77
Ch. 499 ..... 4/26/77
Ch. 501 ..... 4/26/77
Ch. 503 ..... 1/01/78
Ch. 527 (§ 1—§ 24) 1/01/78
Ch. 527 (§ 25—§ 27) 7/01/77
Ch. 532 ..... 4/29/77
Ch. 533 ..... 4/29/77
Ch. 545 ..... 5/10/77
Ch. 559 (§ 1—§ 6, § 8) 7/01/77
Ch. 559 (§ 7) 5/11/77
Ch. 577 ..... 5/13/77
Ch. 582 ..... 1/01/78
Ch. 584 ..... 1/01/78
HB 1 ..... 1/07/77
HB 143 ..... 4/18/77
HB 144 (§ 1—§ 11) 5/13/77
HB 144 (§ 12, § 15) 7/01/77

HeinOnline -- 1977 vol. II 2338 1977

HB 160..... 4/20/77
HB 504..... 4/20/77
HB 554..... 4/28/77
HB 836..... 4/20/77

HeinOnline -- 1977 vol. II 2339 1977